

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: <small>This section to be completed by County Judge's Office</small>


Description:

Consider and Approve with Authorization for County Judge to Sign NetGain/
NetLease Software Agreement, Standard Subscription Services Agreement,
Professional Services Addendum, Fixed Price Statement of Work, and Terms
Addendum for NetGain/NetLease Accounting Software.

(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**



Johnson County - NetLease

Johnson County

2 N. Main St.
Eleventh Floor
Cleburne, TX 76031
United States

Reference: 20240805-174450538

Sales order created: August 5, 2024

Sales order expires: August 16, 2024

Sales order by: Brayden Miller

Solutions Consultant

bmiller@netgain.tech

Products & Services

Item & Description

License Start Date

Total

NetLease for NetSuite

Includes 100 Leases

August 1, 2024

\$7,912.80 / year
after 40% discount
for 1 year

NetLease for NetSuite Implementation

<https://www.netgain.tech/stdsow-netlease-for-netsuite-2023-dec>

August 1, 2024

\$2,375.80
after 65% discount

Purchase terms

Contract Terms: 8/1/2024 – 7/31/2027

Payment Schedule:

Year 1: Net30: \$10,288.60 – (Subscriptions \$7,912.80 + 2,375.80 Implementation Fee)

Year 2: 8/1/2024: \$7,912.80

Year 3: 8/1/2025: \$7,912.80

Year 4: 8/1/2026: \$7,912.80

Year 5: 8/1/2027: \$7,912.80

After the initial contract period, Johnson County has the option to renew the contract for the same services with the same usage limits.

The renewal can occur for up to five consecutive 12-month terms. Each renewal term will include an annual cost increase of 5%, resulting in a total cost of \$43,723.21 for the five terms. The Johnson County will pay \$8,744.64 each year they choose to renew, based on the average of the projected uplifts over the period.

Optional Renewal Years and Payment Schedules:

Option Year 1: 8/1/2028: \$8,744.64

Option Year 2: 8/1/2029: \$8,744.64

Option Year 3: 8/1/2030: \$8,744.64

Option Year 4: 8/1/2031: \$8,744.64

Option Year 5: 8/1/2032 : \$8,744.64

Customer acknowledges and agrees to the terms and conditions set forth in the [Subscription & Services Agreement](#). Supplemental terms for professional services are detailed in the [Professional Services Agreement](#).

Signature



Signature

August 12, 2024
Date

Christopher Boedeker, County Judge
Printed name

Countersignature


Countersignature

8/5/2024
Date

BRAYDEN MILLER
Printed name

Questions? Contact me

Brayden Miller

"Solutions Consultant"
bmiller@netgain.tech

Netgain Solutions, Inc.
9189 S. Jamaica Street
Suite 400
Englewood, CO 80112

Standard Subscription Services Agreement

1. OVERVIEW & CUSTOMER

This Subscription & Services Agreement (“Agreement”) is between Netgain Solutions, Inc. (“Netgain”) and the “Customer” that accepted this Agreement through an executed Quote Form that references this agreement. Capitalized terms not defined elsewhere in this Agreement have the meaning given to them in the Definitions section below. This Agreement sets forth the terms and conditions that govern orders placed under this Agreement.

2. DEFINITIONS

“Cloud Products” means, collectively, Netgain’s online business application suite and procured modules as described in the applicable Help Documentation that is procured by Customer from Netgain in the Quote Form and any subsequent Quote Form from time to time.

“Customer Data” means all electronic data or information submitted to and stored in the Cloud Products by Users.

“Electronic Communications” means any transfer of signs, signals, text, images, sounds, data or intelligence of any nature transmitted in whole or part electronically received and/or transmitted through the Cloud Products.

“Quote” or “Quote Form” means a Netgain estimate, renewal notification or order form in the name of and executed by Customer and accepted by Netgain which specifies the Cloud Products, and any Support Services and/or Professional Services to be provided by Netgain subject to the terms of this Agreement.

“Help Documentation” mean the online English language user guides for the Cloud Products, accessible via login at <http://support.netgain.tech>, as updated from time to time.

“Professional Services” means the general consulting, implementation and/or training services to be provided to Customer pursuant to the terms hereof, the additional terms of the applicable version of the Professional Services Addendum available at <https://www.netgain.tech/psa> or such other URL as specified by Netgain (the “Professional Services Addendum”), and a Quote Form or Statement of Work, as applicable.

“Professional Services Addendum” or “PSA” or “Statement of Work” or “SOW” means a separate document or Quote between Netgain and Customer that details the Professional Services to be delivered by Netgain.

“Support Services” means the supplemental, technical support services to be provided to Customer for the Cloud Products pursuant to the terms hereof or additionally specified on Customer Quote. Support Services may be subject to additional fees.

“Term” means the period between the initial license start date and license end dates as set forth in the accompanied Quote, as well as for successive additional renewal periods thereafter, typically set for a minimum of 12 months.

“Third Party Applications” means applications, integrations, services, or implementation, customization and other consulting services related thereto, provided by a party other than Netgain.

“Users” means individuals who are authorized by Customer to use the Cloud Products pursuant to this Agreement or as otherwise defined, restricted or limited in a Quote/Quote Form or amendment to this Agreement. Users may include but are not limited to Customer’s and Customer’s affiliates’ employees, consultants, contractors and agents.

3. SERVICES

Subject to the terms and conditions of this Agreement and associated signed Customer Quote(s) referencing this Agreement, Netgain grants to Customer the non-exclusive, non-transferable, worldwide, limited right to use the Cloud Products, Support Services, and Professional Services (collectively, the “Services”) ordered by Customer during the applicable Term of this Agreement (the “License”). The License is limited to the right to access and use Products for Customer’s own internal business purposes, and those of its affiliates, as expressly authorized under this Agreement. No right to sub-license is granted under this Agreement.

4. QUOTE FORMS

The Services shall be ordered by Customer pursuant to Quote Forms. Each Quote Form shall include at a minimum a listing of the Cloud Products and any Support Services and/or Professional Services being ordered and the associated fees. Except as otherwise provided on the Quote Form, PSA, or this Agreement, once placed, each Quote Form and Statement of Work is non-cancellable, and all sums paid are non-refundable. If Customer exceeds the quantity of Services ordered, Customer promptly must purchase and pay fees for the excess quantity.

5. RESTRICTIONS

5.1. Customer may not, and may not cause or permit others to: (a) use the Services to cause damage or injury to any person or property; violate privacy rights; send unsolicited bulk e-mail, junk mail, spam or chain letters; infringe property rights; or otherwise violate applicable laws, ordinances or regulations; (b) perform or disclose any benchmarking, availability or performance testing of the Services; or (c) perform or disclose any performance or vulnerability testing of the Services, perform or disclose network discovery, port and service identification, vulnerability scanning, password cracking, remote access or penetration testing of the Services.

5.2. Customer may not, and may not cause or permit others to: (a) modify, make derivative works of, disassemble, decompile, reverse engineer, reproduce, republish, download, or copy any part of the Services (including data structures or similar materials produced by programs); (b) access or use the Services to build or support, directly or indirectly, products or services competitive to Netgain; or (c) license, sell, transfer, assign, distribute, outsource, permit timesharing or service bureau use of, commercially exploit, or make available the Services to any third party except as permitted by this Agreement or Customer Quote Form.

6. TERM, FEE, PAYMENT, VOLUME ADJUSTMENTS, & TAXES

6.1. Term

This Agreement is valid for the Quote Forms (including PSAs) which this Agreement accompanies (the "Term"). The initial subscription term of the Cloud Products and/or Support Services procured by Customer shall continue for the term applicable to such Services specified in the applicable Quote Form. Renewal terms will be set for a minimum of 12 months, unless either party provides notice of non-renewal prior to the completion of the current initial or renewal term.

6.2. Fees and Payment

All fees payable are due within 30 days from the invoice date unless otherwise specified in the applicable Quote Form. All fees are non-refundable, except as otherwise explicitly stated in the applicable Estimate/Order Form or this Agreement. Any payments by Customer that are not paid on or before 30 days after the invoice due date under this Agreement shall bear interest, to the extent permitted by law, at 1.5% monthly from the date payment is due. Each party shall have the right to terminate this Agreement in accordance with Section 9 below.

6.3. Volume Usage and Increases

Volume usage limits and pricing are set forth on the Customer Quote associated with each purchase. Netgain will not prevent Customer from increasing product volume usage beyond the

licensed usage volume. Such increases shall trigger an adjustment to the contract terms and result in a supplemental billing for the increased usage at the rates set forth on the Customer Quote, or at prevailing and customary rates if not otherwise indicated. Adjustments will be applied to the remainder of the contracted term. In the event Customer objects to the volume increases, the parties will work together in good faith to reduce the volume below the original Customer Quote volume limits or separately adjust contract terms.

6.4. Taxes

Netgain quotes do not include any local, state, federal or foreign taxes, levies or duties of any nature, including value-added, sales use or withholding taxes ("Taxes). Customer is responsible for paying all Taxes, excluding payroll, franchise, and other taxes based on Netgain's net income. If Netgain has the legal obligation to pay or collect Taxes for which Customer is responsible under this Section, the appropriate amount shall be invoiced to and paid by Customer unless Customer provides Netgain with a valid tax exemption certificate authorized by the appropriate taxing authority.

7. PROPRIETARY RIGHTS

7.1. Ownership of Customer Data

As between Netgain and Customer, all title and intellectual property rights in and to the Customer Data is owned exclusively by Customer. Customer acknowledges and agrees that in connection with the provision of the Services, Netgain may store and maintain Customer Data for a period of time consistent with Netgain's standard business processes for the Services. Following expiration or termination of the Agreement or a Customer account, if applicable, Netgain may deactivate the applicable Customer account(s) and delete any data therein. Customer grants Netgain the right to host, use, process, display and transmit Customer Data to provide the Services pursuant to and in accordance with this Agreement and the applicable Quote Form or PSA. Customer has sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of Customer Data, and for obtaining all rights related to Customer Data required by Netgain to perform the Services.

7.2. Netgain Intellectual Property Rights

All rights, title, and interest in and to the Services (including without limitation all intellectual property rights therein and all modifications, extensions, customizations, scripts, or other derivative works of the Services provided or developed by Netgain) and anything developed or delivered by or on behalf of Netgain under this Agreement are owned exclusively by Netgain. Except as provided in this Agreement, the rights granted to Customer do not convey any rights in the Services, express or implied, or ownership in the Services or any intellectual property rights thereto. Customer grants Netgain a royalty free, worldwide, perpetual, irrevocable, transferable right to use, modify, distribute and incorporate into the Services (without attribution of any kind) any

suggestions, enhancement request, recommendations, proposals, correction or other feedback or information provided by Customer or any Users related to the operation or functionality of the Services. Any rights in the Services or Netgain's intellectual property not expressly granted herein by Netgain are reserved by Netgain.

8. TERMS OF SERVICE

8.1. Users: Passwords, Access, and Notification

Customer shall authorize access to and assign unique passwords and user names to its Users. Customer will be responsible for the confidentiality and use of User's passwords and user names. Customer will also be responsible for all Electronic Communications, including those containing business information, account registration, account holder information, financial information, Customer Data, and all other data of any kind contained within emails or otherwise entered electronically through the Cloud Products or under Customer's account. Netgain will act as though any Electronic Communications it receives under Customer's passwords, user name, and/or account number will have been sent by Customer. Customer shall use commercially reasonable efforts to prevent unauthorized access to or use of the Cloud Products and shall promptly notify Netgain of any unauthorized access or use of the Cloud Products and any loss or theft or unauthorized use of any User's password or name and/or Cloud Products account numbers.

8.2. Support Services

As part of the Cloud Products, Netgain will provide Customer with Help Documentation and other online resources to assist Customer in its use of the Cloud Products. All paying Netgain customers receive "Base Support" as noted below. Netgain also offers optional "for fee" Support Services and Professional Services, which must be separately identified and accompanied within a Quote. Standard Support Services terms are as follows:

"Base Support" (provided for all paying Netgain Product Customers): Includes access to Netgain's product knowledgebase, as well as email support within 2 business days, excluding US and International holidays.

"Enhanced Support" (if added to and noted on Customer Quote Form): Provides for the following additional enhancements: Netgain will provide email support within 4 business hours, excluding U.S. and International Holidays. Monitored after hours support will also be provided along with month-end support prioritization (response times for inquiries received requiring after hours support may be subject to delays caused by required paging and response times). Enhanced Support Customers also receive up to 2 consulting hours per calendar quarter for requests outside the standard scope of support.

“Dedicated Support” (if added to and noted on the Customer Quote Form): Additionally provides for a named support representative, with direct email and phone access. Customer will also receive up to 10 prepaid consulting hours/quarterly, unless otherwise indicated on the Customer Quote.

8.3. Consulting Services

Customer may request and Netgain may provide consulting services for a separate fee, which shall be outlined in a Quote Form or SOW. Unless otherwise agreed upon and noted on the executed Quote Form or SOW, such services are subject to the supplemental terms as set forth in the Standard Professional Services Addendum at <https://www.Netgain.tech/psa>.

8.3. No Rendering of Accounting Advice

NETGAIN NEITHER ACCEPTS REQUESTS FOR ACCOUNTING ADVICE OR SERVICES NOR OFFERS ACCOUNTING ADVICE OR SERVICES, WHETHER WITH THE CLOUD PRODUCTS, SUPPORT SERVICES, OR PROFESSIONAL SERVICES. ANY ACCOUNTING, TAX, OR FINANCIAL INFORMATION PROVIDED DURING THE TERM OF ANY NETGAIN AGREEMENT IS PROVIDED FOR INFORMATIONAL PURPOSES ONLY AND IS NOT INTENDED TO SUBSTITUTE FOR OBTAINING ACCOUNTING, TAX, OR FINANCIAL ADVICE FROM A PROFESSIONAL ACCOUNTANT. INFORMATION PROVIDED BY NETGAIN THROUGH CUSTOMER’S RELATIONSHIP IS NOT INTENDED TO CREATE, AND RECEIPT DOES NOT CONSTITUTE, AN ACCOUNTANT-CLIENT RELATIONSHIP. CUSTOMERS ARE ADVISED NOT TO ACT UPON PROVIDED INFORMATION WITHOUT SEEKING THE SERVICE OF A PROFESSIONAL ACCOUNTANT ACTING IN THAT CAPACITY.

8.4. Updates

During the term of this Agreement, Netgain will maintain, correct and modify, and may upgrade and update the Cloud Products and Help Documentation (collectively, “System Updates”); provided, however, that the nature, substance, content, timing, manner and release of System Updates, if any, shall be in the sole and absolute discretion of Netgain. System Updates will not materially reduce the level of performance, functionality, security, or availability of the Services during the term of Customer’s Quote Form or PSA. To the extent possible, System Updates will be released on weekends or after hours.

8.5. Service Monitoring and Analyses

Netgain monitors the Cloud Products to facilitate Netgain’s operation of the Services; to help resolve Customer service requests; to detect and address threats to the functionality, security, integrity, and availability of the Services as well as any content, data, or applications in the Services. Netgain does not monitor, and does not address issues with, non-Netgain software provided by Customer or any of Customer’s Users that is stored in, or run on or through, the Services.

9. TERMINATION

9.1. Termination by Either Party

Either party may terminate this Agreement (a) by providing notice of non-renewal to the other party within 30 days of expiration of the Term or (b) by providing notice of non-renewal to the other party within 30 days of receipt of renewal invoice or (c) if the other party breaches any material term or condition of this Agreement and fails to cure such breach within 30 days after receipt of written notice of the same, except in the case of a failure to pay, which shall be cured within 14 days of notice of such failure. Either party may terminate this Agreement immediately and without notice if the other party becomes the subject of a voluntary petition in bankruptcy or any voluntary or involuntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors.

9.2. Effect of Termination

Upon termination, cancellation, or expiration of this Agreement for any reason whatsoever: (a) the License shall automatically, and without further notice, be revoked; (b) Customer shall immediately cease all access to and use of Products and all Confidential Information and shall return the same to Netgain; and (c) Netgain shall have the right to terminate and deny Customer access to Products immediately and without further notice.

10. CONFIDENTIALITY

10.1. By virtue of this Agreement, the parties may disclose to each other information that is confidential ("Confidential Information"). Confidential Information shall be limited to the terms and pricing under this Agreement and Customer's Quote Forms, Customer Data residing in the Cloud Products, and all information clearly identified as confidential at the time of disclosure.

10.2. A party's Confidential Information shall not include information that: (a) is or becomes a part of the public domain through no act or omission of the other party; (b) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the other party by a third party without restriction on the disclosure; or (d) is independently developed by the other party.

10.3. Each party agrees not to disclose the other party's Confidential Information to any third party other than as set forth in the following sentence for a period of five years from the date of the disclosing party's disclosure of the Confidential Information to the receiving party; however, Netgain will protect the confidentiality of Customer Data residing in the Cloud Products for as long as such information resides in the Cloud Products. Each party may disclose Confidential Information only to those employees, agents or subcontractors who are required to protect it against unauthorized disclosure in a manner no less protective than required under this Agreement,

and each party may disclose the other party's Confidential Information in any legal proceeding or to a governmental entity as required by law. Netgain will protect the confidentiality of Customer Data residing in the Services as described in this Agreement or such Estimate/Order Form.

11. WARRANTIES, DISCLAIMERS AND EXCLUSIVE REMEDIES.

11.1. Each party represents that it has validly entered into this Agreement and that it has the power and authority to do so. Netgain warrants that during the Term, Netgain will perform (i) the Cloud Products using commercially reasonable care and skill in all material respects, and (ii) any Professional Services and Support Services in a professional manner consistent with industry standards (the warranties described by the foregoing clauses (i) and (ii), collectively, the "Services Warranty"). If the Services provided to Customer were not performed as warranted, Customer must promptly provide Netgain with a written notice that describes the deficiency in the Services. For Professional Services, Customer must notify Netgain of any warranty deficiencies within 60 days from performance of the deficient Professional Services.

11.2. NETGAIN DOES NOT WARRANT THAT THE SERVICES WILL BE PERFORMED ERROR-FREE OR UNINTERRUPTED, THAT NETGAIN WILL CORRECT ALL SERVICES ERRORS, OR THAT THE SERVICES WILL MEET CUSTOMER'S REQUIREMENTS OR EXPECTATIONS. NETGAIN IS NOT RESPONSIBLE FOR ANY ISSUES RELATED TO THE PERFORMANCE, OPERATION OR SECURITY OF THE SERVICES THAT ARISE FROM CUSTOMER DATA OR THIRD-PARTY APPLICATIONS OR SERVICES PROVIDED BY THIRD PARTIES.

11.3. FOR ANY BREACH OF THE SERVICES WARRANTY, CUSTOMER'S EXCLUSIVE REMEDY AND NETGAIN'S ENTIRE LIABILITY SHALL BE THE CORRECTION OF THE DEFICIENT SERVICES THAT CAUSED THE BREACH OF WARRANTY, OR, IF NETGAIN CANNOT SUBSTANTIALLY CORRECT THE DEFICIENCY IN A COMMERCIALY REASONABLE MANNER, CUSTOMER MAY END THE DEFICIENT SERVICES AND NETGAIN WILL REFUND TO CUSTOMER THE FEES FOR THE TERMINATED SERVICES THAT CUSTOMER PRE-PAID TO NETGAIN FOR THE PERIOD FOLLOWING THE EFFECTIVE DATE OF TERMINATION.

11.4. TO THE EXTENT NOT PROHIBITED BY LAW, THESE WARRANTIES ARE EXCLUSIVE AND THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS INCLUDING FOR SOFTWARE, HARDWARE, SYSTEMS, NETWORKS OR ENVIRONMENTS OR FOR MERCHANTABILITY, SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE.

12. LIMITATIONS OF LIABILITY

12.1. IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES, OR ANY LOSS OF

REVENUE, PROFITS (EXCLUDING FEES UNDER THIS AGREEMENT), SALES, DATA, DATA USE, GOODWILL, OR REPUTATION.

12.2. IN NO EVENT SHALL THE AGGREGATE LIABILITY OF NETGAIN AND ITS AFFILIATES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR CUSTOMER'S QUOTE FORM OR PSA, WHETHER IN CONTRACT, TORT, OR OTHERWISE, EXCEED THE TOTAL AMOUNTS ACTUALLY PAID UNDER CUSTOMER'S ESTIMATE/ORDER FORM OR PSA FOR THE SERVICES GIVING RISE TO THE LIABILITY DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY.

13. INDEMNIFICATION

13.1. If a third party makes a claim against either Customer or Netgain ("Recipient" which may refer to Customer or Netgain depending upon which party received the Material), that any information, design, specification, instruction, software, service, data, hardware, or material (collectively, "Material") furnished by either Customer or Netgain ("Provider" which may refer to Customer or Netgain depending on which party provided the Material) and used by the Recipient infringes the third party's intellectual property rights, the Provider, at the Provider's sole cost and expense, will defend the Recipient against the claim and indemnify the Recipient from the damages, liabilities, costs and expenses awarded by the court to the third party claiming infringement or the settlement agreed to by the Provider, if the Recipient does the following:

notifies the Provider promptly in writing, not later than 30 days after the Recipient receives notice of the claim (or sooner if required by applicable law);

gives the Provider sole control of the defense and any settlement negotiations; and

gives the Provider the information, authority, and assistance the Provider needs to defend against or settle the claim.

13.2. If the Provider believes or it is determined that any of the Material may have violated a third party's intellectual property rights, the Provider may choose to either modify the Material to be non-infringing (while substantially preserving its utility or functionality) or obtain a license to allow for continued use, or if these alternatives are not commercially reasonable, the Provider may end the license for, and require return of, the applicable Material and refund any unused, prepaid fees the Recipient may have paid to the other party for such Material. If such return materially affects Netgain's ability to meet obligations under the relevant order, then Netgain may, upon 30 days prior written notice, terminate the order. If such Material is third party technology and the terms of the third party license do not allow us to terminate the license, then Netgain may, upon 30 days prior written notice, end the Services associated with such Material and refund any unused, prepaid fees for such Services.

13.3. The Provider will not indemnify the Recipient if the Recipient (a) alters the Material or uses it outside the scope of use identified in the Provider's user or program documentation or the Help Documentation, or (b) uses a version of the Material which has been superseded, if the infringement claim could have been avoided by using an unaltered current version of the Material which was made available to the Recipient. The Provider will not indemnify the Recipient to the extent that an infringement claim is based upon any Material not furnished by the Provider. Netgain will not indemnify Customer to the extent that an infringement claim is based on a Third Party Application or any Material from a third party portal or other external source that is accessible or made available to Customer within or by the Services (e.g., a social media post from a third party blog or forum, a third party Web page accessed via a hyperlink, marketing data from third party data providers, etc.).

13.4. This Section provides the parties' exclusive remedy for any infringement claims or damages.

14. GOVERNING LAW, ARBITRATION, AND ATTORNEYS' FEES

This Agreement shall be construed and the legal relations between the parties determined in accordance with the laws of the State of Delaware. In the event of a dispute or alleged breach of this Agreement, the parties will work together in good faith first, for a period of no fewer than 30 days, to resolve the matter by escalating it to higher levels of management and, then if unable to resolve the matter giving rise to the dispute, will follow the arbitration provisions set forth in this section. Thereafter, any dispute, controversy or claim arising out of or relating to the Cloud Products, any Support Services, or Consulting Services, or this Agreement, or its negotiation, performance, execution or breach, shall be settled exclusively by arbitration in accordance with the Commercial Rules of the American Arbitration Association ("AAA"). The arbitration and all proceedings shall take place in State of Delaware. There shall be a single arbitrator selected by the parties in accordance with the Commercial Rules of the American Arbitration Association; however, the arbitrator shall be a member of the State of Delaware bar and shall have no less than 10 years' experience in computer law and commercial matters. The decision of the arbitrator shall be final and binding and judgment upon the award rendered by the arbitrator shall be entered in any court having jurisdiction thereof. All proceedings, the decision and submissions made in connection with the arbitration shall be confidential. In any dispute arising out of or relating to this Agreement, the prevailing party shall receive an award of its reasonable attorneys' fees and costs in any proceeding, including on appeal and enforcement.

15. GENERAL PROVISIONS

15.1. Entire Agreement

This Agreement embodies the entire understanding of the parties hereto on the subject matter hereof and supersedes any previous agreements or understandings, written or oral, in effect between the parties relating to the subject matter hereof. The parties expressly declare and

understand that no promises, inducements, consideration, or agreements not herein expressed have been made to them. This Agreement may not be modified or amended except by a written instrument executed by both parties. Except to the extent expressly specified otherwise, if there is any conflict between this Agreement and any of the other Agreement documents, then the following order of precedence applies: (i) any amendment to this Agreement between the Parties, (ii) the Quote Form, (iii) this Agreement, and (iv) the Standard License Agreement & Professional Services Addendum.

15.2. Other General Provisions

15.2.1. This Agreement shall inure to benefit and bind the parties hereto, their successors and assigns, but neither party may assign this Agreement without written consent of the other, except that Netgain may assign without consent to a related entity or the successor of all or substantially all of the assignor's business or assets to which this Agreement relates. There are no third-party beneficiaries to this Agreement.

15.2.2. This Agreement does not create any joint venture, partnership, agency, or employment relationship between the parties.

15.2.3. If any provision is held by a court of competent jurisdiction to be contrary to law, such provision shall be eliminated or limited to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect. A waiver of any breach under this Agreement should not constitute a waiver of any other breach or future breach.

15.3. Force Majeure

Neither party shall be liable for loss, delay, nonperformance (including failure to meet the service level commitment but excluding payment obligations) to the extent resulting from any force majeure event, including, but not limited to, acts of God, strike, riot, fire, explosion, flood, earthquake, natural disaster, terrorism, act of war, civil unrest, criminal acts of third parties, failure of the Internet, governmental acts or orders or restrictions, failure of suppliers, labor stoppage or dispute (other than those involving Netgain employees), or shortage of materials, provided that such party uses reasonable efforts, under the circumstances, to notify the other party of the circumstances causing the delay and to resume performance as soon as possible and any delivery date shall be extended accordingly.

15.4. Interpretation, Survival, & Execution

The Section headings used in this Agreement are included for reference purposes only and shall not affect the meaning or interpretation of this Agreement in any way. Provisions that survive termination or expiration of this Agreement are those relating to limitation of liability, indemnification, payment, and others which by their nature are intended to survive. The Quote Form and this associated Agreement may be executed in counterparts and/or by facsimile or electronic signature and if so executed shall be equally binding as an original copy of this Agreement executed in ink by both parties.

PROFESSIONAL SERVICES ADDENDUM

1. OVERVIEW

THIS PROFESSIONAL SERVICES ADDENDUM ("PSA") is an addendum to the Subscription Services Agreement (the "Agreement") between Netgain Solutions, Inc. ("Netgain") and Customer, as defined in the Agreement. Customer has entered into the Agreement for the provision of the Services as noted on the Customer Quote Form. If Customer procures Professional Services from Netgain, all such services shall be provided pursuant to the terms and conditions herein. Capitalized terms used in this PSA shall have the meaning defined under the Agreement. The terms and conditions of this PSA are hereby incorporated by reference into the Agreement.

2. SCOPE OF SERVICES

2.1 Professional Services Statement of Work

Subject to the terms and conditions of the Agreement and this PSA, Netgain will provide Customer with Professional Services as set forth in the applicable statement(s) of work executed by Netgain and Customer or a Quote/Order Form executed by Netgain and Customer (each, a "Statement of Work" or "SOW"). All Statements of Work shall be deemed part of and subject to this PSA. Any Professional Services not expressly included in the Quote/Order Form, this PSA or a SOW are considered out of scope for Netgain.

Subject to terms and conditions of this PSA, and during the term of this PSA, Netgain hereby provides Customer with the non-exclusive, worldwide, limited right to use any deliverables and/or training materials delivered by Netgain to Customer as part of the Professional Services ("Deliverables") solely for Customer's internal business operations including in connection with its authorized use of the applicable Cloud Service (as defined below).

2.2 Remote Delivery

Netgain will perform all Professional Services remotely unless otherwise agreed to and noted on the Quote/Order Form and related Statement(s) of Work.

3. CUSTOMER OBLIGATIONS

3.1 Customer Obligations and Project Assumptions

Customer acknowledges that Netgain's ability to perform the outlined Professional Services in the attached Statement(s) of Work depends upon Customer's fulfillment of the following obligations and project assumptions:

Provide Netgain with full access to relevant functional, technical, and business resources with adequate skills and knowledge to support the performance of Professional Services.

Provide any notices, and obtain any consents, required for Netgain to perform Professional Services.

Timely provision of and access to office accommodations, facilities, equipment, assistance, cooperation, complete and accurate information and data from Customer's officers, agents, and employees, in advance of deadlines for delivered services.

Supplemental Requirements for NetSuite Cloud Service Products/SuiteApps only:some text

NetSuite subscription license service prior to the commencement of Professional Services under this PSA and maintain such subscription for the duration of the Professional Services provided under this PSA.

Administrator-level access (or equivalent) to any NetSuite production and/or shared development/sandbox environments for Netgain to perform Professional Services.

Uninterrupted access to NetSuite environment(s) during the Professional Services Period without environment refreshes that require duplication or recreation of services.

3.2 Project Timelines and Service Impacts

Project timeline Quotes are based on the availability of Customer resources and key decision makers. Lack of access or change to project stakeholders may impact project timelines and costs if decisions cannot be made in timely fashion, and Netgain will not be responsible for any deficiency in performing Professional Services if such deficiency results from Customer's failure to meet the obligations above.

4. CHANGE ORDERS

4.1 Change Order Request Process

If Customer or Netgain requests a change in any of the specifications, requirements, Deliverables, or scope (including drawings and designs) of the Professional Services described in any Statement(s) of Work, the party seeking the change shall propose the applicable changes by written notice. Within three (3) business days of receipt of the written notice, each party's project leads shall meet, either in person or via telephone conference, to discuss and agree upon the proposed changes. Netgain will prepare a change order via a Quote Form and related Statement(s) of Work describing the proposed changes to the SOW and the applicable change in fees and expenses or timeline, if any (each, a "Change Order").

4.2 Change Order Execution

Change Orders are not binding unless and until they are executed by both parties. Executed Change Orders shall be deemed part of, and subject to, this PSA. If the parties disagree about the proposed

changes, the parties shall promptly escalate the change request to their respective senior management for resolution.

5. PROFESSIONAL SERVICES FEES, EXPENSES, & TERM

5.1 Professional Services Fees

Customer acknowledges that the Quoted total price indicated in the Quote is based solely on the information provided to Netgain and the assumptions documented in this PSA and applicable Statement(s) of Work. Any requirement(s) not included or documented here in or within the applicable Statement(s) of Work will be considered outside of the scope of this PSA and related Statement(s) of Work and will be handled through a Change Order and may result in additional cost.

5.2 Professional Services Expenses

Because Professional Services are typically performed remotely, no expenses are expected under this agreement, unless otherwise agreed to and provided for in the Quote Form and related Statement(s) of Work.

5.3 Term

This PSA is valid for the Quote/Order Forms (including Statement(s) of Work) which reference this PSA. Each SOW shall be effective as of the Effective Date of the Agreement, and shall expire upon completion of the project set forth in the applicable SOW, or as otherwise set forth in the applicable SOW. In the event that any portion of the Professional Services not used within the Professional Services Period due to Customer's failure to fulfill its obligations hereunder, such Professional Services will be forfeited by Customer, with no further action required of either party, and Customer will not be entitled to a refund, or any credit toward additional or other Professional Services, for any unused portion of the fees paid for any unused portion of the Professional Services. In order for Netgain to provide Professional Services to Customer after the Professional Services Term, Customer and Netgain must mutually agree to a Change Order, and Netgain is not obligated to perform tasks related to changes in time, scope, cost, or contractual obligations until Customer and Netgain have agreed to the proposed change to this PSA and related Statement(s) of Work.

6. GENERAL AND OTHER PROVISIONS

6.1 Entire Agreement

This PSA incorporates by reference all Statement(s) of Work, and this PSA, together with such referenced items, constitute the entire understanding between Customer and Netgain and are intended to be the final and entire expression of their agreement. The parties expressly disclaim any reliance on any and all prior discussions, emails, RFP's and/or agreements between the parties.

There are no other verbal agreements, representations, warranties undertakings or other agreements between the parties.

In the event of any inconsistencies between the terms of a SOW and this PSA, the SOW shall take precedence.

This PSA shall not be modified, or amended, except as expressly set forth herein, or in writing and signed or accepted electronically by the party against whom the modification, amendment or waiver is to be asserted, or by a properly executed SOW.

6.2 Tools

Notwithstanding any other provision of this PSA: (i) nothing herein shall be construed to assign or transfer any intellectual property rights in the proprietary tools, libraries, know-how, techniques and expertise ("Tools") used by Netgain to develop the Deliverables, and to the extent such Tools are delivered with or as part of the Deliverables, they are licensed, not assigned, to Customer, on the same terms as the Deliverables, or as otherwise agreed by Customer; and (ii) the term "Deliverables" shall not include the Tools. Tools are Netgain Confidential Information.

6.2 Subcontracting

Netgain's relationship with Customer pursuant to this PSA will be that of an independent contractor. Neither party will have any authority to bind the other, to assume or create any obligation, to enter into any agreements, or to make any warranties or representations on behalf of the other.

6.3 Force Majeure

Neither party shall be liable for loss, delay, non-performance (excluding payment obligations) to the extent resulting from any force majeure event including, but not limited to, acts of God, strike, riot, fire, explosion, flood, earthquake, natural disaster, terrorism, act of war, civil unrest, criminal acts of third parties, failure of the Internet, governmental acts or orders or restrictions, failure of suppliers, labor stoppage or dispute (other than those involving Netgain employees), or shortage of materials, provided that such party uses reasonable efforts, under the circumstances, to notify the other party of the circumstances causing the delay and any to resume performance as soon as possible and any delivery date shall be extended accordingly.

FIXED PRICE STATEMENT OF WORK

NETLEASE

1. OVERVIEW

THIS STATEMENT OF WORK ("SOW") describes the professional services (the "Professional Services") to be performed by Netgain Solutions, Inc. ("Netgain") for Customer (collectively "Parties") pursuant to the applicable agreement governing Netgain's performance of the Professional Services (the "PS Terms") listed below (in order of preference, as applicable):

the Professional Services Addendum to the Netgain Subscription Services Agreement (the "Agreement") entered by and between the Parties, or

the separate Netgain Professional Services Addendum to the Netgain Subscription Services Agreement (the "Agreement") entered by and between the Parties

Once executed by the Parties, this SOW shall be incorporated by reference into the PS Terms. In the event of any inconsistency or conflict between the terms and conditions of this SOW and the PS Terms, the terms and conditions of this SOW shall govern with respect to the subject matter of this SOW only. Capitalized terms used in this SOW shall have the meaning defined under the PS Terms. This SOW may not be modified or amended except in writing signed by a duly authorized representative of each party. As used in this SOW, "You" or "Your" shall refer to the Customer as defined in the Agreement.

1.1. Professional Services Period

The Professional Services herein must be completed within 90 days from the signature date of the Quote/Order Form ("Professional Services Period"). In order for Netgain to provide Professional Services to You after the Professional Services Period, You and Netgain must mutually agree, in writing, under a separate Quote/Order Form and SOW, to the terms and fees for such Professional Services.

1.2. Term and Termination

Unless otherwise agreed upon by both Parties and duly executed in writing, the obligation of Netgain to provide Professional Services to the Customer under this SOW expires the earlier of:

expiration or termination of the PS Terms;

completion of the Professional Services described in this SOW; or
the timeframe stated in Section 1.1 above as the Professional Services Period.

2. SCOPE OF SERVICES

NETLEASE

The following activities will be performed under this SOW when a standard implementation for NetLease is purchased. The primary responsibility for each activity will reside with Customer, Netgain, or both, as outlined in the Scope of Services below, unless separately indicated within this Statement of Work.

NetLease Implementation Assumptions and Exclusions:

Netgain will perform the above responsibilities in one sandbox account and one production environment, any additional environments must be stated in this Statement of Work or will require a Change Order.

Netgain will perform 2 hours of training as stated in this Statement of Work, which can be recorded upon request. All subsequent training sessions must be stated in this Statement of Work or will require a Change Order.

Netgain does not provide support for API integrations unless specifically stated in this Statement of Work or a Change Order.

Netgain will modify existing out of the box reports for specific client needs. Any additional reporting configuration or customization must be stated in this Statement of Work or a Change Order.

3. PROJECT ASSUMPTIONS

3.1. Working with Third Party Vendors

For the purposes of this section, the term "Vendor" refers to third parties that have contracted directly with the Customer to provide services and/or products that may touch/interact with any portion of the Netgain products and/or solution(s) being implemented by Netgain ("Vendor Project"). Netgain and Customer shall agree on Vendor coordination activities as part of Project planning for this SOW, subject to the assumptions in this SOW and the PS Terms.

It is assumed that any discussions relating to the Vendor Project will be handled directly by the Customer and Vendor. Vendor has contracted directly with the Customer for all services and

deliverables related to the Vendor Project, and deliverables listed in those contracts are not in scope of this Statement of Work and Netgain will not be responsible or liable for the Vendor Project or the provision of any Vendor deliverables or services.

3.2. Project Staffing/Project Participation

This SOW is based on the assumption that the implementation of the Service under this SOW is performed jointly with Customer as a cooperative, hands-on Project, jointly managed by Netgain and Customer pursuant to a shared consulting model for performing an implementation. Netgain delivery team resources will actively lead and participate in design, configuration and deployment of the Netgain products with coordination required from Customer.

Customer is responsible for providing and ensuring Customer's committed participation of resources required during the Project. The pricing and schedule reflect this important assumption. Section 2 above ("Scope of Services") identifies expected touch points and activities where Customer input/participation is involved.

Netgain delivery team resources are not necessarily dedicated to any single project and may be engaged across other projects for various customers. Netgain team resources and client resources may be acting in one or multiple project roles on project, depending on size/complexity of project.

3.3. Project Assumptions

Customer acknowledges that its participation and cooperation are critical for the success of the Project. Unless otherwise noted in this SOW or agreed to in writing, the following assumptions are based on information provided by Customer to Netgain relating to the Project and have been used to develop Netgain's current level of effort and fees. Deviations from these assumptions may lead to commensurate changes in the timeline and fees and will be handled through the Change Order Request Process described in the PS Terms.

Timely decisions: Project timeline estimates are based on availability of Customer resources and key decision makers. Lack of access or change to project stakeholders/sponsors will impact project timelines and costs if decisions cannot be made in timely fashion.

Netgain delivery team resources: Netgain consulting resources are not dedicated to any single project and tend to be engaged across multiple projects for various customers.

Timeliness of responses:

Customer is responsible for acknowledging and responding to documents and emails relating to this Project. Emails could be ad-hoc clarification questions or communications around project

planning, scheduling of sessions or any other type of business communication in relation to the project. Documents could be (but not limited to) testing plans, design documents, data templates, escalation issues, end-of-project notices, or other like documents. Some documents may require Customer's acknowledgement (either via email or e-signature) before Netgain can continue with the implementation.

Both Netgain and Customer are responsible for responding in a timely and collaborative fashion.

Cancellation / Postponement: Netgain and Customer shall use commercially reasonable efforts to attend all scheduled Project meetings. The repeated cancellation of Project meetings may result in Project delay and/or additional costs.

Scope: Any item or activity not specifically included within the scope of this SOW is deemed outside the scope of this SOW and may require a Change Order or separate SOW.

Consistent processes: Customer is responsible for ensuring that common, consistent functional processes exist across the organization; including parent and all subsidiary companies, unless specifically stated otherwise within this SOW (e.g. there will be one common leasing process across the entire organization).

Future product release: This SOW does not include time for management of the release process, analysis or implementation of functions and features that are not available within the current general release of the Service.

Onsite considerations: At Your request and in Netgain's discretion, Netgain may agree to conduct an onsite visit(s) to provide Professional Services related to this SOW. You agree to be responsible for any travel and out-of-pocket expenses incurred by Netgain related to providing any Professional Services onsite.

Language: All project documentation, presentations and project communications are in English, or such other available languages the parties may agree upon in writing.

Work hours: Unless other arrangements are specifically stated in this SOW, Netgain delivery team members will generally work normal business hours within their own time zone.

Go-Live: You and Netgain understand and acknowledge that go-live occurs upon cut-over to Your production environment (i.e. the date when you start using the Production environment as the system of record for transactions) ("Go-Live") and that post Go-Live monitoring begins at cut-over.

Recording of Remote Sessions: Customer may desire to record remote sessions throughout the implementation and is responsible for initiating and saving any such recording. Customer acknowledges that content discussed and statements made by Customer or Netgain during these working sessions (whether or not recorded) do not alter any existing agreement between Netgain and Customer, and do not constitute a Change Order. Changes to the scope or terms of this agreement must follow the Change Order process as outlined in Section 4 (Change Orders). Unauthorized distribution of recorded material is prohibited, and Netgain may also reserve the right to limit recordings of remote sessions at any time.

4. CHANGE ORDERS

4.1. Change Order Request Process

If Customer or Netgain requests a change in any of the specifications, requirements, Deliverables, or scope (including drawings and designs) of the Professional Services described in any Statement(s) of Work, the party seeking the change shall propose the applicable changes by written notice. Within three (3) business days of receipt of the written notice, each party's project leads shall meet, either in person or via telephone conference, to discuss and agree upon the proposed changes. Netgain will prepare a change order via a Quote Form and related Statement(s) of Work describing the proposed changes to the SOW and the applicable change in fees and expenses or timeline, if any (each, a "Change Order").

4.2. Change Order Execution

Change Orders are not binding unless and until they are executed by both parties. Executed Change Orders shall be deemed part of, and subject to, this PSA. If the parties disagree about the proposed changes, the parties shall promptly escalate the change request to their respective senior management for resolution.

**JOHNSON COUNTY CONTRACT TERMS
ADDENDUM TO NETGAIN SOLUTIONS, INC. AGREEMENT
(NETGAIN)**

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 **NETGAIN SOLUTIONS, INC.** **NETGAIN SOLUTIONS, INC.** may be referred to herein as “**NETGAIN**” or “**COMPANY**”.

1.2

JOHNSON COUNTY and NETGAIN as applicable, may be collectively identified as the “**Parties**” or each individually a “**Party**”. **This Addendum is part of the Agreement with NETGAIN and is intended to modify (as set forth in this Addendum) all documents, including the NetLease for NetSuite Agreement, Fixed Price Statement of Work, the Standard Subscription Services Agreement, the Professional Services Agreement, and any Quotes or Proposals put forth by NETGAIN. This Addendum modifies (as set forth in this Addendum) any other document proffered to COUNTY by NETGAIN or their agents and other documents defining the Agreement between JOHNSON COUNTY, TEXAS and NETGAIN.**

1.3

NOT APPLICBLE (Co-op Reference)

1.4

This Addendum, combined with the terms of the attached Proposal from NETGAIN SOLUTIONS, INC., upon execution by both parties, constitutes a contractual Agreement between JOHNSON COUNTY, TEXAS and NETGAIN SOLUTIONS, INC.

2.1

This Agreement will be governed by and construed according to the laws of the State of Texas. 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. NETGAIN 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. NETGAIN 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 NETGAIN 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 NETGAIN might lawfully seek to claim as confidential, then COUNTY will forward the request to NETGAIN. It shall be the obligation of NETGAIN 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 NETGAIN in making such submission to the Texas Attorney General's Office. **NETGAIN acknowledges and understands that contracts, agreements, payment and revenue of a political subdivision of the State of Texas are public information and are not confidential.**

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

NETGAIN 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. **NETGAIN** hereby certifies that it is not ineligible to receive State or Federal funds due to child support arrearages

7.2 – 7.5 – Removed

7.6

NETGAIN 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 United States Government.

7.7

NETGAIN 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, **NETGAIN** 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 **NETGAIN** 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 **NETGAIN** is being contracted to provide construction management services, construction services or engineering services and to accumulate data and information then **NETGAIN** 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 NETGAIN possesses or controls access to JOHNSON COUNTY data, upon request by COUNTY, NETGAIN 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. NETGAIN 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 NETGAIN, 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

NETGAIN 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 any provision to the contrary is hereby deleted. ***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 NETGAIN IS HEREBY DELETED.***

APPROVED AS TO FORM AND CONTENT:

JOHNSON COUNTY:

CPH Bob
Christopher Boedeker
As Johnson County Judge

8-12-24
Date

Attest: April Long
County Clerk, Johnson County



8-12-24
Date

NETGAIN:
[Signature]
Signature of Authorized Person

8/7/2024
Date

BRAYDEN MILLER
Printed Name of Authorized Person

ACCOUNT EXECUTIVE
Position of NETGAIN 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.

Informal Bids Tabulation Summary				VENDOR #1		VENDOR #2		VENDOR #3		VENDOR #4		VENDOR #5			
				Vendor Name:				NetGain		Debtbook					
				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		\$10,288.60		\$12,350.00		\$0.00		\$0.00		\$0.00		
Year 2	1	1	ea		\$7,913.80		\$12,350.00		\$0.00		\$0.00		\$0.00		
Year 3	1	1	ea		\$7,912.80		\$12,350.00		\$0.00		\$0.00		\$0.00		
Year 4	1	1	ea		\$7,912.80		\$12,350.00		\$0.00		\$0.00		\$0.00		
Year 5	1	1	ea		\$7,912.80		\$12,350.00		\$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				\$41,940.80		\$61,750.00		\$0.00		\$0.00		\$0.00		
	TOTALS				\$41,940.80		\$61,750.00		\$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 AND COPIES OF ALL QUOTES MUST BE ATTACHED TO THE PURCHASE REQUISITION.