

## GRAVITON PROFESSIONAL SERVICES AGREEMENT

THIS GRAVITON PROFESSIONAL SERVICES AGREEMENT is made and entered into this 2<sup>nd</sup> day of May, 2023, by and between Tulare County, a political subdivision of the State of California ("County"), and Graviton Consulting Services, an independent contractor ("Contractor"), (collectively, "the Parties") as pursuant to the following terms and conditions.

### WITNESSETH:

#### 1. DEFINITIONS

- A. Acceptance Criteria – the conditions that a Deliverable or Work Product must meet to be accepted by the County.
- B. Agreement – this document and all schedules attached or incorporated by reference, and any subsequent addendums or amendments made in accordance with the provisions hereof.
- C. Authorized Representative – an authorized agent with signatory powers as per the Parties' by-laws.
- D. Change Order – a mutually agreed upon amendment to the original Statement of Work that outlines changes to the scope of work, schedule, and associated charges, if applicable.
- E. Covered Data – personal information, records, data, or financial information; individually identifiable information about an individual, including first and last name, physical address, social security number, telephone number, and email address.
- F. Deliverable – a tangible report, document, or Work Product, defined by the Statement of Work, that must be produced to complete the project.
- G. Disputed Matter – Any dispute, disagreement, claim or controversy between the Parties arising out of or relating to this Agreement.
- H. Execution Date – the date the agreement is signed and finalized with the Parties.
- I. Milestone – a scheduled event defined by the Statement of Work signifying the completion of a major work product or a set of related work products.
- J. Services – the consulting services defined by one or more Statements of Work that are part of this agreement and performed by Contractor to plan, design, build, test, and deploy the Oracle Cloud SaaS solution for the County.
- K. Statement(s) of Work or SOW – mutually agreed upon statement of the scope of work to be performed by Contractor, scope of Services and Work Products.

- L. Work Products – the lowest level of project outputs that are individually assigned, executed, and measured, and defined by one or more statements of work that are part of this agreement and performed by Contractor.

## **2. SCOPE OF SERVICES**

Contractor agrees to provide to County, under the terms and conditions of this Agreement, the mutually agreed upon Services and Work Products which are described on one or more Statements of Work which will become part of this Agreement. The initial SOW is attached hereto as Exhibit A. All work to be performed by Contractor shall be documented in an SOW signed by the Authorized Representatives of both Parties.

## **3. CHANGES TO THE SOW OR THIS AGREEMENT**

At any time prior to completion of Services or a Work Product under a SOW, either Party may request that a change (including without limitation, a modification, addition, or reduction) be made to such SOW or this Agreement. Any such changes shall be by written amendment detailing the changes involved and any related changes to the schedule and charges, including zero-dollar changes. Contractor shall not proceed with any work beyond the scope of work set forth in an SOW until a Change Order is executed by an Authorized Representative of each Party. The County shall not be liable for any fees without a mutually approved and executed Change Order.

## **4. TERM**

SERVICES OPTION: The term of this Agreement shall commence on the Execution Date and terminate thirty (30) days after completion of all Services, except as provided for in Section 17.

## **5. COMPENSATION**

SERVICES OPTION: Contractor shall be compensated for Services performed in an amount not to exceed that listed within each SOW.

For Services and Work Products provided on a fixed price basis, the Contractor shall submit an invoice for any approved milestone or deliverable payment after County's acceptance of such milestone or deliverable. All fixed price payments will be identified in each applicable SOW, and unless otherwise stated include all expenses.

For Travel Expenses provided on a not-to-exceed basis, the Contractor shall submit an invoice for any travel authorized by the County. All travel expenses reimbursement will be in accordance with the County Travel Policy at the time of travel.

All undisputed invoices shall be due and payable within thirty (30) days from the date of receipt of the invoice. The Contractor will send invoices via email. The date of receipt will be the day the email is opened and read by the County. The County must notify Contractor of any concern or dispute with respect to an invoice within thirty (30) days from the date of receipt of the invoice. There shall be no penalties for late payments.

## 6. ACCEPTANCE

Acceptance Criteria for Services and Work Products shall be set forth in each SOW, or in such other document that the Parties mutually agree in writing. Contractor shall notify the County upon delivery and completion of such Services and Work Products. The County shall, upon receiving such notification, inspect the Services and Work Products indicated as delivered and complete to confirm conformance with Acceptance Criteria. The County shall accept or reject Services and Work Products within five (5) business days from the time of submittal for acceptance unless mutually agreed to another timeline. If the County accepts such Services and Work Products, the County shall notify Contractor immediately upon acceptance. If the County does not accept such Services and Work Products, the County shall notify Contractor of intent to provide written notice specifying the reason for non-acceptance within the five (5) business days and will provide the written notice within ten (10) business days of initial delivery.

## 7. INSURANCE

Contractor shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, or employees.

### 1. MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

(1) Coverage at least as broad as Commercial General Liability, insurance Services Office Commercial General Liability coverage occurrence form GC 00 01, with limits no less than \$2,000,000 per occurrence including products and completed operations, property damage, bodily injury, and personal & advertising injury. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

(2) Comprehensive Automobile Liability Insurance of \$1,000,000 per occurrence for bodily injury and property damage. If the annual aggregate applies it must be no less than two million dollars (\$2,000,000).

(3) Workers' Compensation insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000.00 per accident for bodily injury or disease.

(4) Professional Liability (Errors and Omissions) of no less than \$2,000,000.00 per occurrence or claim for design and build.

(5) Cyber Liability Insurance with limits not less than \$2,000,000 per occurrence or claim, \$3,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by CONTRACTOR in this agreement and shall include, but not limited to, claims involving infringement of intellectual property, including, but not limited to, infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft,

damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.

## 2. OTHER INSURANCE PROVISIONS

The insurance policies are to contain, or be endorsed to contain, the following provision:

(1) Additional Insured Status: The County, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 forms if a later edition is used).

(2) Primary Coverage: For any claims related to this Agreement, the Contractor's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees, or volunteers shall be in excess of the Contractor's insurance and shall not contribute with it.

(3) Notice of Cancellation: Each insurance policy required above shall state that coverage shall not be canceled, except with notice to the County.

(4) Waiver of Subrogation: Contractor hereby grants to County a waiver of any right to subrogation which any insurer of said Contractor may acquire against the County by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the County has received a waiver of subrogation endorsement from the insurer.

(5) Verification of Coverage: Contractor shall furnish the County with original certificates and amendatory endorsements, or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the County before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The County reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

## 8. **HOLD HARMLESS/INDEMNIFICATION**

Contractor shall hold harmless, defend and indemnify County and its officers, employees, agents, and volunteers, from and against any and all liability, loss, damage, expense, costs (including without limitation costs and fees of litigation) of every nature arising out of or in connection with Contractor's performance or subcontractor's performance of work hereunder or its failure to



comply with any of its obligations contained in this Agreement, except such loss or damage which was caused by the sole negligence or willful misconduct of County.

#### **9. INDEPENDENT CONTRACTOR**

It is the expressed intention of the Parties that Contractor is an independent contractor and not an employee, agent, joint venturer or partner of County. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between County and Contractor or any employee or agent of Contractor. Both Parties acknowledge that Contractor is not an employee for state or federal tax purposes. Contractor shall retain the right to perform services for others during the term of this Agreement.

#### **10. LIMITS OF LIABILITY**

Contractor's liability hereunder for damages, regardless of the form of action, shall not exceed two hundred percent (200%) of the sum total of all SOWs under this Agreement. The Parties agree that the amounts stated herein are fair under the circumstances and that the prices reflect the limitation of liability.

#### **11. STATE AND FEDERAL TAXES**

As Contractor is not County's employee, Contractor is responsible for paying all required state and federal taxes. In particular:

- a. County will not withhold FICA (Social Security) from Contractor's payments;
- b. County will not make state or federal unemployment insurance contributions on behalf of Contractor;
- c. County will not withhold state or federal income tax from payment to Contractor;
- d. County will not make disability insurance contributions on behalf of Contractor;
- e. County will not obtain workers' compensation insurance on behalf of Contractor.

#### **12. ASSIGNMENT**

It is understood and agreed that this Agreement contemplates personal performance by the Contractor and is based upon a determination of its unique personal competence and experience and upon its specialized personal knowledge. Assignments of any or all rights, duties or obligations of the Contractor under this Agreement will be permitted only with the express written consent of the County.

### 13. NOTICE

All notices, reports or other communications to be given to County or Contractor shall be given to the persons representing the respective Parties at the following addresses:

**CONTRACTOR:**

Graviton Consulting  
Attn: Vineet Srivastava  
Phone: 916-337-6551  
Email: vineet@gravitonconsulting.com

**County:**

Tulare County, TCICT  
Attn: Dawnette Jones  
5957 S. Mooney Blvd, Ste. 2270  
Visalia, CA 93277  
Phone: 559-622-7286  
Email: DXJones@tularecounty.ca.gov

Either Party to this Agreement shall notify the other within (10) ten business days of any change to the representative receiving notice.

### 14. COMPLIANCE

Contractor shall comply with all federal, state and local laws, codes, ordinance and regulations applicable to Contractor's performance under this Agreement, including, but not limited to, laws related to prevailing wages. Specifically, Contractor shall not engage in unlawful employment discrimination, including, but not limited to, discrimination based upon a person's race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, gender, citizenship, or sexual orientation, as prohibited by state or federal law.

### 15. ENTIRE AGREEMENT AND MODIFICATION

This Agreement, including applicable Exhibits as identified herein, contains the entire agreement of the Parties relating to the subject matter of this Agreement and supersedes all prior agreements and representations with respect to the subject matter hereof. This Agreement may only be modified by a written amendment hereto, executed by both Parties; however, matters concerning the scope of services which do not affect the agreed price may be modified by mutual written consent of the Contractor and the County.

### 16. ENFORCEABILITY AND SEVERABILITY

The invalidity or enforceability of any term or provisions of this Agreement shall not, unless otherwise specified, affect the validity or enforceability of any other term or provision, which shall remain in full force and effect.

### 17. TERMINATION AND RIGHTS UPON TERMINATION

- A. This Agreement may be terminated upon mutual written consent of the Parties, or as a remedy available at law or in equity. In the event of the termination of this Agreement, Contractor shall immediately be paid all undisputed fees earned as of the effective date of termination for the proportion of work completed and accepted.

- B. The County may terminate this Agreement for convenience upon thirty (30) calendar days' written notice to Contractor.
- C. Should Contractor default in the performance of this Agreement or materially breach any of its provisions, County, at its option, may terminate this Agreement by giving written notification to Contractor. The termination date shall be the effective date of the notice. For the purposes of this subsection, default or material breach of this Agreement shall include, but not be limited to, any of the following: failure to perform required Services, failure to perform in a timely manner, willful destruction of County property, dishonesty, or theft.
- D. Upon termination of this Agreement for any reason, including expiration, Contractor shall place no further orders nor enter into subcontracts for materials or services unless it is necessary in accordance with agreed upon disengagement procedures. Contractor shall, upon receipt of termination notice, unless otherwise directed by the County (i) take such action as may be necessary for the protection and preservation of the County's materials and property; and (ii) shall act in good faith to mitigate costs to County.

#### **18. FORCE MAJEURE**

In the event either Party is delayed or prevented from performing this Agreement due to any cause beyond its reasonable control, including but not limited to, natural disaster, strike, civil unrest, embargo, court order, or acts of God, such delay shall be excused during the continuance of such delay, and the period of performance shall be extended to such extent as may be reasonable to perform after the cause of delay has been removed. In the event any such delay continues for a period of more than ninety (90) days, either Party may terminate any SOW under which performance is delayed upon written notice to the other Party. In the event of any such termination, County shall pay Contractor for work performed through the effective date of termination.

#### **19. NO WAIVER**

The failure to exercise any right to enforce any remedy contained in this Agreement shall not operate as to be construed to be a waiver or relinquishment of the exercise of such right or remedy, or of any other right or remedy herein contained.

#### **20. DISPUTES**

Disputed Matters shall be resolved by mutual agreement by first having the Project Manager for Contractor and the Project Manager or Project Leader for County meet to endeavor to resolve such dispute. If a resolution to such dispute does not occur during such meeting or within five (5) business days thereafter, the Parties agree to elevate the dispute to a meeting of the County's Project Steering Committee. If either of the representatives at this level concludes, after a good faith attempt to resolve the Disputed Matter, that amicable resolution through continued negotiation does not appear likely, either Party may seek relief by mediation and/or legal action.

It is agreed by the Parties hereto that unless otherwise expressly waived by them, any action brought to enforce any of the provisions hereof or for declaratory relief hereunder shall be filed and remain in a court of competent jurisdiction in Tulare County, California.

During the pendency of a dispute between the Parties, notwithstanding anything to the contrary contained herein, and even if any problem or other dispute arises between the Parties and regardless of whether or not it requires at any time the use of the dispute resolution procedures described above, in no event nor for any reason shall Contractor interrupt or suspend or terminate the provision of Services to County or perform any action that prevents, impedes, or reduces in any way the provision of Services or County's ability to conduct its activities, unless authority to do so is granted by County or conferred by a court of competent jurisdiction the nature of the dispute makes progress of the Services infeasible.

## **21. MANDATORY AND PERMISSIVE**

"Shall" is mandatory. "May" is permissive.

## **22. SUCCESSORS AND ASSIGNS**

All representations, covenants and warranties specifically set forth in this Agreement, by or on behalf of, or for the benefit of any or all the Parties hereto, shall be binding upon and inure to the benefit of such Party, its successors and assigns.

## **23. CONTROLLING LAW**

The validity, interpretation and performance of this Agreement shall be controlled by and construed under the laws of the State of California.

## **24. AUTHORITY**

Each Party and each Party's signatory warrant and represent that each has full authority and capacity to enter into this Agreement in accordance with all requirements of law. The Parties also warrant that any signed amendment or modification to the Agreement shall comply with all requirements of law, including capacity and authority to amend or modify the Agreement.

## **25. NEGOTIATED AGREEMENT**

This Agreement has been arrived at through negotiation between the Parties. Each Party represents and warrants that in executing this Agreement it does so with full knowledge of the rights and duties it may have with respect to the other Party. Each Party also warrants and represents that it has received independent legal advice from its attorney with respect to the matters set forth in this Agreement and the rights and duties arising out of this Agreement, or that such Party willingly foregoes any such consultation.



## **26. WARRANTY**

Contractor warrants that (a) the Services it provides hereunder will be performed in a professional and workmanlike manner in accordance with industry standards; (b) it will perform the Services in a manner that complies with all applicable laws and regulations; (c) that it and its personnel have obtained and will maintain any necessary certifications, clearances, and is authorization to provide consulting services related to configuration of the Oracle software in scope or other third party products furnished by Contractor listed in the SOW; (d) that it will staff the project with an appropriate number of skilled and experienced consultants; and (e) that it will not alter or modify any part of the Oracle Cloud services or access any source code from which the Oracle software or any part thereof is compiled or interpreted.

County shall have the right to review Contractor personnel assigned to the project. This includes but is not limited to the ability to require a timely qualified replacement. Contractor warrants that each person assigned to the project is assigned for the duration of the project in their respective area of expertise unless due to the following exceptions: County request for replacement, illness, death, termination, or resignation from Contractor.

County will not be responsible for paying the time or costs related to briefing, training, or onboarding any new Contractor personnel assigned to the project, regardless of circumstance. Contractor will be responsible for any breach of this Agreement by its employees.

## **27. CONFIDENTIALITY**

This agreement is subject to State and Federal law.

- A. Acknowledgment of access to information characterized as covered data: Both Parties acknowledge that this Agreement may allow either Party access to the other Party's confidential information or information provided by the other Party including, but not limited to Covered Data, notwithstanding the manner in which or from whom it is received, which is subject to state laws that restrict or require the use and disclosure of the received information. Both Parties shall maintain the privacy of, and shall not release, Covered Data without full compliance with all applicable state and federal laws, the provisions of this Agreement and prior written consent of the other Party. Both Parties agree that they will include all of the terms and conditions contained in this clause in all subcontractor or agency contracts providing services under this Agreement. Where a federal, state, or local law, ordinance, rule, or regulation is required to be made applicable to this Agreement, it shall be deemed to be incorporated herein without amendment to this Agreement. If under the California Public Records Act the County is required to release information pertaining to this Agreement, the County will provide third party notice to Contractor.
- B. Prohibition on unauthorized use or disclosure of Covered Data: Both Parties agree to hold Covered Data received from or created on behalf of the other Party in strictest confidence. Either Party shall not use or disclose Covered

Data except as permitted or required by this Agreement, as required by law, or as otherwise authorized in writing by the other Party. If required by a court of competent jurisdiction or an administrative body to disclose Covered Data, either Party will notify the other Party in writing prior to any disclosure in order to provide opportunity to oppose any such disclosure.

- C. **Safeguard standard:** Both Parties agree that they will protect the Covered Data according to commercially acceptable standards and no less rigorously than they protect their own confidential information, but in no case less than reasonable care. Both Parties shall develop, implement, maintain, and use appropriate administrative, technical, and physical security measures which may include but not be limited to encryption techniques, to preserve the confidentiality, integrity and availability of all such Covered Data.
- D. **Return or destruction of Covered Data:** Upon termination, cancellation, expiration or other conclusion of this Agreement, both Parties shall return the Covered Data to the other Party unless the other Party requests that such data be destroyed. This provision shall also apply to all Covered Data that is in the possession of subcontractors or agents of either Party. Both Parties shall complete such return or destruction not less than thirty (30) calendar days after the conclusion or termination of this Agreement. Within this thirty (30) day period, both Parties shall certify in writing to the other Party that the return or destruction has been completed.
- E. **No third-party rights:** Nothing in this Agreement is intended to make any person or entity who is not signatory to the Agreement a third-party beneficiary of any right created by this Agreement or by operation of law.

## **28. INTELLECTUAL PROPERTY RIGHTS/LICENSE**

Unless Contractor and the County agree otherwise in writing, the Work Products developed for County by Contractor pursuant to this Agreement and any SOW shall be considered “works made for hire” as defined in the Copyright Act, 17 U.S.C. §101, and shall belong to County. The foregoing provisions do not apply to any third party works or products provided by Contractor to County or to Contractor Know-How (as defined below).

- A. **Contractor Know-How and License.** County acknowledges that Contractor’s business depends substantially on the accumulation of expertise, methodologies and general materials that Contractor utilizes and develops during engagements for clients. Accordingly, County agrees that Contractor shall retain all right, title and interest in and to all “Contractor Know-How,” which includes all discoveries, concepts, ideas, software, scripts and utilities whether installed on end-user equipment, County equipment or Contractor equipment, business processes, proposals, methodologies, delivery strategies, approaches and practices, solutions, programs, training materials, templates, documentation, all whether or not they can be registered under patent, copyright or similar statutes, trademarks, trade secrets, as well as

modifications and improvements thereof, which Contractor, its agents or employees, whether alone or jointly with others, conceives, makes, develops, acquires or obtains knowledge of at any time before, after or during the term of this Agreement without breach of Contractor's duty of confidentiality to County. To the extent Contractor Know-How is included in or reflected in any Work Product delivered hereunder, County shall (i) have a limited perpetual, personal, irrevocable, nonexclusive, worldwide, and royalty free license to use, execute, reproduce, and modify the Contractor Know-How, but only for Customer's internal use in conjunction with the Work Products and (ii) be allowed to share the Work Products with other governmental entities or third party vendors with a need to access information contained within the Work Products as part of their scope of work with the County. For avoidance of doubt, this does not pertain to any Intellectual Property that is developed or originated by the County.

## **29. SUBCONTRACTORS**

Contractor shall be fully responsible for all acts and omissions of its subcontractors to the same extent that Contractor is responsible for the acts and omissions of persons directly employed by it. Nothing in this Agreement shall create any contractual relationship between any subcontractor and County or any obligation on the part of County to pay or to see the payment of any monies due any subcontractor. Contractor will not subcontract any services under this Agreement without County's prior written consent, not to be unreasonably withheld. In the event the proposed or actual use of a subcontractor, in no event shall the costs under an applicable Statement of Work increase as a result of the use of a subcontractor unless specifically authorized in advance by the County.

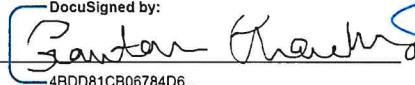
County shall have the right to review subcontractor personnel assigned to the project. County will not be responsible for paying the time or costs related to briefing, training, or onboarding any new subcontractor personnel assigned to the project, regardless of circumstance. Contractor will be responsible for any breach of this Agreement by its subcontractors.

## **30. ORDER OF PRECEDENCE**

If there is a conflict between or among the provisions of this Agreement, the order of precedence is as follows: 1) the terms and conditions set forth in this Graviton Professional Services Agreement; 2) the applicable Statement of Work (Exhibit A); 3) the Graviton Proposal Response to RFP GC\_ERP2021 (Exhibit B).

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first written above.


**GRAVITON CONSULTING SERVICES, INC. TULARE COUNTY, CA**

DocuSigned by:  
Signature:   
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Name: Gautam Chaudhary

Title: vice President

Signature Date: 4/18/2023

DocuSigned by:  
Signature:   
AA28F87F0E74433...

Name: Vineet SRIVASTAVA

Title: President

Signature Date: 4/18/2023

Signature: 

Name: DENNIS TOWNSEND

Title: CHAIRMAN, BOARD OF SUPERVISORS

Signature Date: May 2, 2023

Approved as to Form:

DocuSigned by:  
 4/18/2023  
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Deputy County Counsel

Matter No. 2023298



Exhibit A  
STATEMENT OF WORK

Exhibit B  
GRAVITON RESPONSE to RFP GC\_ERP2021