

NAPA COUNTY AGREEMENT NO. 250232B

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into as of this _____ day of _____, 2024, by and between NAPA COUNTY, a political subdivision of the State of California, hereinafter referred to as “COUNTY”, and BRIGHTLY SOFTWARE, INC a Delaware corporation, whose mailing address is 11000 Regency Parkway, Suite 300, Cary, NC 27518, hereinafter referred to as “CONTRACTOR”;

RECITALS

WHEREAS, COUNTY wishes to obtain specialized services, as authorized by Government Code section 31000, in order to perform facility condition assessment to support infrastructure capital and operations management and forecasting; and

WHEREAS, CONTRACTOR is willing to provide such specialized services to COUNTY under the terms and conditions set forth herein; and

TERMS

NOW, THEREFORE, COUNTY hereby engages the services of CONTRACTOR, and CONTRACTOR agrees to serve COUNTY in accordance with the terms and conditions set forth herein:

1. **Term of the Agreement.** The term of this Agreement shall commence on the date first above written and shall expire on June 30, 2025, unless terminated earlier in accordance with Paragraphs 9 (Termination for Cause), 10 (Other Termination) or 23(a) (Covenant of No Undisclosed Conflict); except that the obligations of the parties under Paragraphs 7 (Insurance) and 8 (Indemnification) shall continue in full force and effect after said expiration date or early termination in relation to acts or omissions occurring prior to such dates during the term of the Agreement, and the obligations of CONTRACTOR to COUNTY shall also continue after said expiration date or early termination in relation to the obligations prescribed by Paragraphs 15 (Confidentiality), 20 (Taxes) and 21 (Access to Records/Retention). For purposes of this Agreement, “fiscal year” shall mean the period commencing on July 1 and ending on June 30.

2. **Scope of Services.** CONTRACTOR shall provide COUNTY those services set forth in Exhibit “A”, attached hereto and incorporated by reference herein.

3. **Compensation.**

(a) **Rates.** In consideration of CONTRACTOR's performance of the work set forth in Exhibit A, COUNTY shall pay CONTRACTOR at the rates set forth in Exhibit “B”, attached hereto and incorporated by reference herein.

(b) **Expenses.** No travel or other expenses will be reimbursed by COUNTY unless included in Exhibit A.

(c) **Maximum Amount.** Notwithstanding subparagraphs (a) and (b), the maximum

payments under this Agreement shall be a total of FORTY-NINE THOUSAND DOLLARS (\$49,000); provided, however, that such amounts shall not be construed as guaranteed sums, and compensation shall be based upon services actually rendered and reimbursable expenses actually incurred.

4. Method of Payment.

(a) Professional Services. All payments for compensation and reimbursement for expenses shall be made only upon presentation by CONTRACTOR to COUNTY of an itemized billing invoice in a form acceptable to the Napa County Auditor which indicates, at a minimum, CONTRACTOR's name, address, Social Security or Taxpayer Identification Number, itemization of the hours worked, a detailed description of the tasks completed during the billing period, the names of person(s) performing the services and the position(s) held by such person(s), and the approved hourly or task rate.

(b) Expenses. If the Agreement provides for expense reimbursement, requests for reimbursement shall describe the nature and cost of the expense, the date incurred. With the exception of per diem reimbursements, receipts must be attached.

(c) Fixed Price. If the Agreement provides for a fixed price, if CONTRACTOR presents interim invoices, CONTRACTOR must state the percentage of work completed, which must be verified by COUNTY, i.e., 35% design, 95% design, draft report, et cetera, at which time CONTRACTOR shall be paid the equivalent percentage of the fixed price.

(d) CONTRACTOR shall submit invoices not more often than monthly to the PUBLIC WORKS ADMINISTRATIVE MANAGER who, after review and approval as to form and content, shall submit the invoice to the Napa County Auditor no later than fifteen (15) calendar days following receipt. A sample invoice showing the level of detail required is attached as Exhibit "C".

(e) Legal status. So that COUNTY may properly comply with its reporting obligations under federal and state laws pertaining to taxation, if CONTRACTOR is or becomes a corporation during the term of this Agreement, proof that such status is currently recognized by and complies with the laws of both the state of incorporation or organization and the State of California, if different, shall be provided to the PUBLIC WORKS ADMINISTRATIVE MANAGER upon request in a form satisfactory to the Napa County Auditor. Such proof shall include, but need not be limited to, a copy of any annual or other periodic filings or registrations required by the state of origin or California, the current address for service of process on the corporation or limited liability partnership, and the name of any agent designated for service of process by CONTRACTOR within the State of California.

5. Independent Contractor. CONTRACTOR shall perform this Agreement as an independent contractor. CONTRACTOR and the officers, agents and employees of CONTRACTOR are not, and shall not be deemed, COUNTY employees for any purpose, including workers' compensation and employee benefits. CONTRACTOR shall, at CONTRACTOR's own risk and expense, determine the method and manner by which duties imposed on CONTRACTOR by this Agreement shall be performed; provided, however, that COUNTY may monitor the work performed by CONTRACTOR. If Services are provided at COUNTY's site, CONTRACTOR will provide them during normal local business hours (excluding holidays); and comply with COUNTY's reasonable site rules provided in writing before performance starts. COUNTY shall not deduct or withhold any amounts whatsoever from the compensation paid to CONTRACTOR, including, but not limited to amounts required to be

withheld for state and federal taxes, unless required to do so by court order. As between the parties to this Agreement, CONTRACTOR shall be solely responsible for all such payments.

6. **Specific Performance.** [RESERVED.]

7. **Insurance.** CONTRACTOR shall obtain and maintain in full force and effect throughout the term of this Agreement, and thereafter as to matters occurring during the term of this Agreement, the following insurance coverage:

(a) Workers' Compensation Insurance. To the extent required by law during the term of this Agreement, CONTRACTOR shall provide workers' compensation insurance for the performance of any of CONTRACTOR's duties under this Agreement, including but not limited to, coverage for workers' compensation and employer's liability and a waiver of subrogation, and shall provide COUNTY with certification of all such coverages upon request by COUNTY's Risk Manager.

(b) Liability Insurance. CONTRACTOR shall obtain and maintain in full force and effect during the term of this Agreement the following liability insurance coverages, **issued by a company admitted to do business in California and having an A.M. Best rating of A:VII or better, or equivalent self-insurance:**

(1) General Liability. Commercial general liability [CGL] insurance coverage (personal injury and property damage) of not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit per occurrence, covering liability or claims for any personal injury, including death, to any person and/or damage to the property of any person arising from the acts or omissions of CONTRACTOR or any officer, agent, or employee of CONTRACTOR under this Agreement. If the coverage includes an aggregate limit, the aggregate limit shall be no less than twice the per occurrence limit.

(2) Professional Liability/Errors and Omissions. [RESERVED]

(3) Comprehensive Automobile Liability Insurance. Comprehensive automobile liability insurance (Bodily Injury and Property Damage) on owned, hired, leased and non-owned vehicles used in conjunction with CONTRACTOR's business of not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit per occurrence. Coverage shall be business auto insurance coverage using Insurance Services Office (ISO) form number CA 0001 06 92 including symbol 1 (any Auto) or the exact equivalent. If CONTRACTOR owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the General Liability Insurance described in subparagraph (b)(1) above. If CONTRACTOR or CONTRACTOR's employees, officers, or agents will use personal automobiles in any way in the performance of this Agreement, CONTRACTOR shall provide evidence of personal auto liability coverage for each such person upon request.

(c) Certificates of Coverage. All insurance coverages referenced in 7(b), above, shall be evidenced by one or more certificates of coverage or, with the consent of COUNTY's Risk Manager, demonstrated by other evidence of coverage acceptable to COUNTY's Risk Manager, which shall be filed by CONTRACTOR with the Department of Public Works prior to commencement of performance of any of CONTRACTOR's duties.

(1) The certificate(s) or other evidence of coverage shall reference this Agreement by its COUNTY number or title and department; shall be kept current during the term of this Agreement; shall provide that COUNTY shall be given no less than thirty (30) days prior written notice of any non-renewal, cancellation, other termination, or material change, except that only ten (10) days prior written notice shall be required where the cause of non-

renewal or cancellation is non-payment of premium; and shall provide that the inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, the coverage afforded applying as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the company's liability.

(2) **Waiver of Subrogation and Additional Insured Endorsements.** For the commercial general liability insurance coverage referenced in 7(b)(1) and, for the comprehensive automobile liability insurance coverage referenced in 7(b)(3) where the vehicles are covered by a commercial policy rather than a personal policy, CONTRACTOR shall also file with the evidence of coverage an endorsement from the insurance provider naming COUNTY, its officers, employees, agents and volunteers as additional insureds and waiving subrogation. For the Workers Compensation insurance coverage, CONTRACTOR shall file an endorsement waiving subrogation with the evidence of coverage.

(3) The certificate or other evidence of coverage shall provide that if the same policy applies to activities of CONTRACTOR not covered by this Agreement, then the limits in the applicable certificate relating to the additional insured coverage of COUNTY shall pertain only to liability for activities of CONTRACTOR under this Agreement, and that the insurance provided is primary coverage to COUNTY with respect to any insurance or self-insurance programs maintained by COUNTY. The additional insured endorsements for the general liability coverage shall use Insurance Services Office (ISO) Form No. CG 20 09 11 85 or CG 20 10 11 85, or equivalent, including (if used together) CG 2010 10 01 and CG 2037 10 01; but shall not use the following forms: CG 20 10 10 93 or 03 94.

(4) Upon request by COUNTY's Risk Manager, CONTRACTOR shall provide or arrange for the insurer to provide within thirty (30) days of the request, certified copies of the actual insurance policies or relevant portions thereof.

(d) Deductibles/Retentions. [R E S E R V E D]

(e) Inclusion in Subcontracts. CONTRACTOR agrees to require all subcontractors and any other entity or person who is involved in providing on site services under this Agreement to comply with the Workers Compensation and General Liability insurance requirements set forth in this Paragraph 7.

8. Hold Harmless/Defense/Indemnification/Disclaimers.

(a) In General. To the full extent permitted by law, CONTRACTOR shall defend at its own expense, and indemnify COUNTY and its officers, agents, employees, volunteers, or representatives from and against any liability, claims, actions, proceedings, losses, injuries, damages or expenses, including litigation costs and reasonable attorney's fees arising from third party claims for personal injury or property damage to the extent caused by the gross negligence or willful misconduct of the CONTRACTOR. . Each party shall notify the other party immediately in writing of any claim or damage related to activities performed under this Agreement. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement, providing that nothing shall require either party to disclose any documents, records or communications that are protected under peer review privilege, attorney-client privilege, or attorney work product privilege.

(b) Employee Character and Fitness. CONTRACTOR accepts responsibility for determining and approving the character and fitness of its employees (including volunteers, agents or representatives) to provide the services required of CONTRACTOR under this Agreement, including completion of a satisfactory criminal/background check and period

rechecks to the extent permitted by law. Notwithstanding anything to the contrary in this Paragraph, CONTRACTOR shall hold COUNTY and its officers, agents and employees harmless from any liability for injuries or damages resulting from a breach of this provision or CONTRACTOR's actions in this regard.

(c) Limitation of Liability. CONTRACTOR's aggregate liability for all claims under the agreement is limited to the total fees paid under this agreement; provided, however, this limitation will not apply to the extent liability cannot be limited or excluded according to applicable law. Even if foreseeable, CONTRACTOR will never be liable for: any indirect, incidental, consequential, special, exemplary, or punitive damages; interruption of operations; loss of use; contractual claims of third parties; or loss of revenue, profits, capital and interest, or anticipated savings. This Section 7(c) will exclusively govern CONTRACTOR's liability for all claims, costs, damages, and indemnities, regardless of the form of action, whether based in contract, statute, tort (including negligence) or otherwise.

(d) Services Warranty. The professional services will be performed in a professional manner with the level of care reasonably expected under similar circumstances. The warranty period for professional services is 90 days following completion of the professional services. COUNTY will notify CONTRACTOR in writing of any breach of this professional services warranty promptly upon discovery and always within the applicable warranty period. CONTRACTOR will remedy all breached by reperforming the professional services within a reasonable time. If CONTRACTOR is unable to remedy the breach using commercially reasonable efforts: (1) COUNTY may terminate the agreement in accordance with Section 9 (Termination for Cause), and (2) CONTRACTOR will refund the fees paid for the non-conforming portion of the professional services. CONTRACTOR excludes any warranty or liability for: noncompliance with instructions made available to the COUNTY; any cause outside of CONTRACTOR's control; modifications made by anyone other than CONTRACTOR or their authorized representatives; or use of or implementation of suggestions, recommendations, reports, or other documents including their outcomes. This Section 7(d) states CONTRACTOR's entire liability and COUNTY's exclusive rights and remedy for warranty claims. CONTRACTOR makes no other warranty, express, implied, or statutory, about the professional services, including any warranties of merchantability or fitness for a particular purpose.

9. **Termination for Cause.** If either party shall fail to fulfill in a timely and proper manner that party's obligations under this Agreement or otherwise breach this Agreement and fail to cure such failure or breach within thirty (30) days of receipt of written notice from the other party describing the nature of the breach, the non-defaulting party may, in addition to any other remedies it may have, terminate this Agreement by giving five (5) days prior written notice to the defaulting party in the manner set forth in Paragraph 13 (Notices). The Napa County Purchasing Agent or designee pursuant to Napa County Code section 2.36.050 is hereby authorized to make all decisions and take all actions required under this Paragraph to terminate this Agreement on behalf of COUNTY for cause.

10. **Other Termination.** This Agreement may be terminated by either party for any reason and at any time by giving prior written notice of such termination to the other party specifying

the effective date thereof at least thirty (30) days prior to the effective date, as long as the date the notice is given and the effective date of the termination are in the same fiscal year; provided, however, that no such termination may be effected by COUNTY unless an opportunity for consultation is provided prior to the effective date of the termination. COUNTY hereby authorizes the Napa County Executive Officer to make all decisions and take all actions required under this Paragraph to terminate this Agreement on behalf of COUNTY for the convenience of COUNTY.

11. Disposition of, Title to and Payment for Work Upon Expiration or Termination.

(a) Each party will retain all rights in:

(1) The intellectual property they developed or acquired outside of this agreement; and

(2) The improvements, modifications, or derivatives that they make to it under an Order. Any intellectual property developed under Exhibit A is owned by CONTRACTOR and licensed to COUNTY as specified in this Section 10. CONTRACTOR grants COUNTY a non-exclusive, worldwide, perpetual, and non-transferable right to use CONTRACTOR’s intellectual property in unmodified form for the COUNTY’s internal business purpose. CONTRACTOR shall be entitled to receive compensation for any work completed in accordance with Exhibit A prior to expiration or receipt of the notice of termination or commenced prior to receipt of the notice of termination and completed satisfactorily prior to the effective date of the termination; except that CONTRACTOR shall not be relieved of liability to COUNTY for damages sustained by COUNTY by virtue of any breach of the Agreement by CONTRACTOR whether or not the Agreement expired or otherwise terminated, and COUNTY may withhold any payments not yet made to CONTRACTOR for purpose of setoff until such time as the exact amount of damages due to COUNTY from CONTRACTOR is determined.

12. No Waiver. The waiver by either party of any breach or violation of any requirement of this Agreement shall not be deemed to be a waiver of any such breach in the future, or of the breach of any other requirement of this Agreement.

13. Notices. All notices required or authorized by this Agreement shall be in writing and shall be delivered in person or by deposit in the United States mail, by certified mail, postage prepaid, return receipt requested. Any mailed notice, demand, request, consent, approval or communication that either party desires to give the other party shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address. Any notice sent by mail in the manner prescribed by this paragraph shall be deemed to have been received on the date noted on the return receipt or five days following the date of deposit, whichever is earlier.

COUNTY

Napa County Public Works
1195 Third St.
Napa, CA 94559

CONTRACTOR

Brightly Software Inc.
Corporate Trust Center
1209 Orange Street
Wilmington, DE 19801

14. **Compliance with COUNTY Policies on Waste, Harassment, Drug/Alcohol-Free Workplace, and Computer Use.** CONTRACTOR hereby agrees to comply, and require its employees and subcontractors to comply, with the following policies, copies of which are on file with the Clerk of the Board of Supervisors and incorporated by reference herein.

CONTRACTOR also agrees that it shall not engage in any activities, or permit its officers, agents and employees to do so, during the performance of any of the services required under this Agreement, which would interfere with compliance or induce violation of these policies by COUNTY employees or contractors.

(a) Waste Source Reduction and Recycled Product Content Procurement Policy adopted by resolution of the Board of Supervisors on March 26, 1991.

(b) County of Napa “Policy for Maintaining a Harassment and Discrimination Free Work Environment” revised effective June 20, 2017.

(c) County of Napa Drug and Alcohol Policy adopted by resolution of the Board of Supervisors on June 25, 1991.

(d) Napa County Information Technology Use and Security Policy adopted by resolution of the Board of Supervisors on April 17, 2001. To this end, all employees and subcontractors of CONTRACTOR whose performance of services under this Agreement requires access to any portion of the COUNTY computer network shall sign and have on file with COUNTY’s ITS Department prior to receiving such access the certification attached to said Policy.

(e) Napa County Workplace Violence Policy, adopted by the BOS effective May 23, 1995 and subsequently revised effective November 2, 2004, which is located in the County of Napa Policy Manual Part I, Section 37U.

15. **Confidentiality.**

(a) Maintenance of Confidential Information. Confidential information is defined as all information disclosed to CONTRACTOR which relates to COUNTY's past, present, and future activities, as well as activities under this Agreement. CONTRACTOR shall hold all such information as CONTRACTOR may receive, if any, in trust and confidence, except with the prior written approval of COUNTY, expressed through its Director of Public Works. Upon cancellation or expiration of this Agreement, CONTRACTOR shall return to COUNTY all written and descriptive matter which contains any such confidential information, except that CONTRACTOR may retain for its files a copy of CONTRACTOR’s work product if such product has been made available to the public by COUNTY.

(b) Protection of Personally Identifiable Information and Protected Health Information. [RESERVED]

16. **No Assignments or Subcontracts.**

(a) In General. A consideration of this Agreement is the personal reputation of CONTRACTOR; therefore, CONTRACTOR shall not assign any interest in this Agreement without the written consent of the COUNTY; provided, however, CONTRACTOR may assign to an affiliate or an acquirer of all or substantially all of the business covered by the Agreement. CONTRACTOR may use affiliates and subcontractors to fulfill its obligations under this agreement. CONTRACTOR will remain responsible for its obligations and those of its Affiliates and subcontractors. CONTRACTOR is to perform hereunder without the prior written consent

of COUNTY, which shall not be unreasonably withheld. The inability of the assignee to provide personnel equivalent in experience, expertise, and numbers to those provided by CONTRACTOR, or to perform any of the remaining services required under this Agreement within the same time frame required of CONTRACTOR shall be deemed to be reasonable grounds for COUNTY to withhold its consent to assignment. For purposes of this subparagraph, the consent of COUNTY may be given by the Director of Public Works.

(b) Effect of Change in Status. If CONTRACTOR changes its status during the term of this Agreement from or to that of a corporation, limited liability partnership, limited liability company, general partnership, or sole proprietorship, such change in organizational status shall be viewed as an attempted assignment of this Agreement by CONTRACTOR. Failure of CONTRACTOR to obtain approval of such assignment under this Paragraph shall be viewed as a material breach of this Agreement.

17. **Amendment/Modification.** Except as specifically provided herein, this Agreement may be modified or amended only in writing and with the prior written consent of both parties. Failure of CONTRACTOR to secure such authorization in writing in advance of performing any extra or changed work shall constitute a waiver of any and all rights to adjustment in the contract price or contract time and no compensation shall be paid for such extra work.

18. **Interpretation; Venue.**

(a) Interpretation. The headings used herein are for reference only. The terms of the Agreement are set out in the text under the headings. This Agreement shall be governed by the laws of the State of California without regard to the choice of law or conflicts.

(b) Venue. This Agreement is made in Napa County, California. The venue for any legal action in state court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement shall be in the Superior Court of California, County of Napa, a unified court. The venue for any legal action in federal court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement lying within the jurisdiction of the federal courts shall be the Northern District of California. The appropriate venue for arbitration, mediation or similar legal proceedings under this Agreement shall be Napa County, California; however, nothing in this sentence shall obligate either party to submit to mediation or arbitration any dispute arising under this Agreement.

19. **Compliance with Laws.** CONTRACTOR shall observe and comply with all applicable Federal, State and local laws, ordinances, and codes. Such laws shall include, but not be limited to, the following, except where prohibited by law:

(a) Non-Discrimination. During the performance of this Agreement, CONTRACTOR and its subcontractors shall not deny the benefits thereof to any person on the basis of race, color, ancestry, national origin or ethnic group identification, religion or religious creed, gender or self-identified gender, sexual orientation, marital status, age, mental disability, physical disability, genetic information, or medical condition (including cancer, HIV and AIDS), or political affiliation or belief, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, color, ancestry, national origin or ethnic group identification, religion or religious creed, gender or self-identified gender, sexual orientation, marital status, age (over 40), mental disability, physical disability, genetic information, or medical condition (including cancer, HIV and AIDS), use of family care leave, or political

affiliation or belief. CONTRACTOR shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination or harassment. In addition to the foregoing general obligations, CONTRACTOR shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900, et seq.), the regulations promulgated thereunder (Title 2, California Code of Regulations, section 7285.0, et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (sections 11135-11139.5) and any state or local regulations adopted to implement any of the foregoing, as such statutes and regulations may be amended from time to time. To the extent this Agreement subcontracts to CONTRACTOR services or works required of COUNTY by the State of California pursuant to agreement between COUNTY and the State, the applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990 (a) through (f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are expressly incorporated into this Agreement by reference and made a part hereof as if set forth in full, and CONTRACTOR and any of its subcontractors shall give written notice of their obligations thereunder to labor organizations with which they have collective bargaining or other agreements.

(b) Documentation of Right to Work. CONTRACTOR agrees to abide by the requirements of the Immigration and Control Reform Act pertaining to assuring that all newly-hired employees of CONTRACTOR performing any services under this Agreement have a legal right to work in the United States of America, that all required documentation of such right to work is inspected, and that INS Form 1-9 (as it may be amended from time to time) is completed and on file for each employee. CONTRACTOR shall make the required documentation available upon request to COUNTY for inspection.

(c) Inclusion in Subcontracts. To the extent any of the onsite services required of CONTRACTOR under this Agreement are subcontracted to a third party, CONTRACTOR shall include all of the provisions of this Paragraph 19 in all such subcontracts as obligations of the subcontractor.

(d) Prevailing Wages. [RESERVED]

20. **Taxes.** CONTRACTOR agrees to file federal and state tax returns or applicable withholding documents and to pay all applicable taxes or make all required withholdings on amounts paid pursuant to this Agreement and shall be solely liable and responsible to make such withholdings and/or pay such taxes and other obligations including, without limitation, state and federal income and FICA taxes. CONTRACTOR agrees to indemnify and hold COUNTY harmless from any liability it may incur to the United States or the State of California directly resulting from CONTRACTOR's failure to pay or withhold, when due, all such taxes and obligations. In the event that COUNTY is audited for compliance regarding any withholding or other applicable taxes or amounts, CONTRACTOR agrees to furnish COUNTY with proof of payment of taxes or withholdings on those earnings.

21. **Access to Records/Retention.** COUNTY, any federal or state grantor agency funding all or part of the compensation payable hereunder, the State Controller, the Comptroller General of the United States, or the duly authorized representatives of any of the above, shall have access to any financial books, documents, papers and records of CONTRACTOR which are directly pertinent to the subject matter of this Agreement for the purpose of making audit, examination, excerpts and transcriptions. Except where another retention period is required by any federal or

state law, CONTRACTOR shall maintain all required records for at least seven (7) years after COUNTY makes final payment for any of the work authorized hereunder and all pending matters are closed, whichever is later.

22. **Authority to Contract.** CONTRACTOR and COUNTY each warrant hereby that they are legally permitted and otherwise have the authority to enter into and perform this Agreement.

23. **Conflict of Interest.**

(a) Covenant of No Undisclosed Conflict. The parties to the Agreement acknowledge that they are aware of the provisions of Government Code section 1090, et seq., and section 87100, et seq., relating to conflict of interest of public officers and employees. CONTRACTOR hereby covenants that it presently has no interest not disclosed to COUNTY and shall not acquire any interest, direct or indirect, which would conflict in any material manner or degree with the performance of its services or confidentiality obligation hereunder, except as such as COUNTY may consent to in writing prior to the acquisition by CONTRACTOR of such conflict. CONTRACTOR further warrants that it is unaware of any financial or economic interest of any public officer or employee of County relating to this Agreement. CONTRACTOR agrees that if such financial interest does exist at the inception of this Agreement, COUNTY may terminate this Agreement immediately upon giving written notice without further obligation by COUNTY to CONTRACTOR under this Agreement.

(b) Statements of Economic Interest. CONTRACTOR acknowledges and understands that COUNTY has developed and approved a Conflict of Interest Code as required by state law which requires CONTRACTOR to file with the Elections Division of the Napa County Assessor-Clerk Recorder “assuming office”, “annual”, and “leaving office” Statements of Economic Interest as a “consultant”, as defined in section 18701(a)(2) of Title 2 of the California Code of Regulations, unless it has been determined in writing that CONTRACTOR, although holding a “designated” position as a consultant, has been hired to perform a range of duties so limited in scope as to not be required to fully comply with such disclosure obligation.

By executing this Agreement, the COUNTY hereby determines in writing that CONTRACTOR has been hired to perform a range of duties so limited in scope as to not be required to comply with such disclosure obligation.

24. **Third Party Beneficiaries.** Nothing contained in this Agreement shall be construed to create any rights in third parties and the parties do not intend to create such rights.

25. **Attorney's Fees.** In the event that either party commences legal action of any kind or character to either enforce the provisions of this Agreement or to obtain damages for breach thereof, the prevailing party in such litigation shall be entitled to all costs and reasonable attorney's fees incurred in connection with such action.

26. **Severability.** If any provision of this Agreement, or any portion thereof, is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severable and shall not in any way impair the enforceability of any other provision of this Agreement.


27. **Entirety of Contract.** This Agreement, including any documents expressly incorporated by reference whether or not attached hereto, constitutes the entire agreement between the parties relating to the subject of this Agreement and supersedes all previous agreements, promises, representations, understandings and negotiations, whether written or oral, among the parties with respect to the subject matter hereof.

28. **Special Terms and Conditions.** [RESERVED]

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, this Agreement was executed by the parties hereto as of the date first above written.

BRIGHTLY SOFTWARE INC.

Signed by:
By:  _____
515587D5E38B490...
BRIAN BENFER, Senior Vice President

DocuSigned by:
By:  _____
84D82DD7828F42F...
MICHAEL BEIERWALTES, Chief Financial Officer

"CONTRACTOR"

NAPA COUNTY, a political subdivision of
the State of California

By: _____
JOELLE GALLAGHER, Chair
Board of Supervisors

"COUNTY"

<p>APPROVED AS TO FORM Office of County Counsel</p> <p>By: <u>Jason M. Dooley</u> Deputy County Counsel</p> <p>Date: <u>October 11, 2024</u></p>	<p>APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS</p> <p>Date: _____</p> <p>Processed By: _____</p> <p>_____ Deputy Clerk of the Board</p>	<p>ATTEST: NEHA HOSKINS Clerk of the Board of Supervisors</p> <p>By: _____</p> <p>_____</p>
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EXHIBIT “A”

SCOPE OF WORK

CONTRACTOR shall provide COUNTY with the following services:

I. DESCRIPTION OF SERVICES

See Attached. For purposes of this Exhibit “A”, references in the Attachment to Napa County and “Subscriber” and “Client” shall mean “County”; references to “Company” and “Brightly” shall mean “Contractor”; and references to “will” and “wishes to” shall mean “shall” whenever it refers to something which the Contractor is required to do under the Agreement.

II. COMPLIANCE WITH GOVERNMENT CODE SECTION 7550. As required by Government Code section 7550, each document or report prepared by CONTRACTOR for or under the direction of COUNTY pursuant to this Agreement shall contain the numbers and dollar amounts of the Agreement and all subcontracts under the Agreement relating to the preparation of the document or written report. The Agreement and subcontract dollar amounts shall be contained in a separate section of the document or written report. If multiple documents or written reports are the subject of the Agreement or subcontracts, the disclosure section may also contain a statement indicating that the total contract amount represents compensation for multiple documents or written reports.

EXHIBIT “B”

FIXED PRICE COMPENSATION

Professional Services		
Item	Pricing Based On	Investment
Custom Professional Services	414,332.00 Sq. Ft.	22,966.42 USD
Custom Data Gathering	414,332.00 Sq. Ft.	14,377.32 USD
Custom Barcoding	414,332.00 Sq. Ft.	6,708.04 USD
Custom PM Schedule	414,332.00 Sq. Ft.	4,358.77 USD
		Subtotal: 48,410.55 USD
Total Initial Investment		48,410.55 USD

EXHIBIT "C"

**SAMPLE
INVOICE**

[Company Name]
 [Street Address]
 [City, ST ZIP Code]
 Phone [phone] Fax [fax]
 Taxpayer ID #

INVOICE # _____
 DATE: _____

TO:

FOR:

[Customer Name]
 [Street Address]
 [City, ST ZIP Code]

[Project or service description]
 Contract No.

Date	DESCRIPTION	Employee & Title	HOURS	RATE	AMOUNT
1/1/15	Site visit/investigation 123 Main St, Napa. Conf w/Owner AutoCad, Bldg X, 3 rd Floor	Smith, Engineer	1.5	\$165.00	247.50
1/1/15		Smith, Engineer	1	\$165.00	165.00
1/1/15		Smith, Engineer	4	\$165,00	660.00
1/2/15	Rev plans, phone conf w/Owner	Jones, PE	1.75	\$195.00	341.25
1/2/15	AutoCad Bldg X, 3 rd Floor Conf w/Owner re 2 nd Floor	Smith, Engineer	4	\$165.00	660.00
1/2/15		Smith, Engineer	.5	\$165.00	82.50
1/3/15	Mtg w/Jones re 2 nd Floor; conf w/Owner Mtg w/Smith; conf w/Owner re 2 nd Floor	Smith, Engineer	1.5	\$165.00	247.50
1/3/15		Jones, PE	1.5	\$195.00	292.50
TOTAL					



PREPARED FOR

Napa County ("Customer")

1195 3rd St #101

Napa, CA 94558

PREPARED BY

Brightly Software Inc

11000 Regency Parkway, Suite 300

Cary, NC 27518

PUBLISHED ON

October 17, 2024



Q-406360

Kirk Matoza
 Facilities Superintendent
 Napa County
 3075 California Blvd.
 Napa, CA
 94558

Dear Kirk,

As a follow-up to our discussions, I am pleased to present the following proposal for Real Time Infrastructure Asset Condition & Renewal Capital Management Software. Our software platform, Origin, along with our facility condition assessment delivery process will support your infrastructure capital & operational budget preparations for this year and forecasting for years beyond.

Sourcewell/NJPA purchasing contract

- <https://www.sourcewell-mn.gov/cooperative-purchasing/090320-sdi#tab-contract-documents> (<https://www.sourcewell-mn.gov/cooperative-purchasing/090320-sdi#tab-contract-documents>).
- Contract #090320-SDI

Subscription Term: 8 months (11/01/2024 - 06/30/2025)

Professional Services		
Item	Pricing Based On	Investment
Custom Professional Services	414,332.00 Sq. Ft.	22,966.42 USD
Custom Data Gathering	414,332.00 Sq. Ft.	14,377.32 USD
Custom Barcoding	414,332.00 Sq. Ft.	6,708.04 USD
Custom PM Schedule	414,332.00 Sq. Ft.	4,358.77 USD
		Subtotal: 48,410.55 USD
Total Initial Investment		48,410.55 USD



Custom FCA Desktop Update PDS Statement of Work

This statement of work (SOW) is dated as of **May 17, 2024**, and is entered into and between Brightly Software, Inc. (Company) and **Napa County** (Subscriber) for professional services to be performed by the Company's service provider, **Alpha Facilities Solutions, LLC** (Partner)

Summary:

Company wishes to engage Partner to provide certain professional services to its Subscriber. These professional services include:

1. Facility Condition Assessment (Desktop Update)

In Scope:

FCA Desktop Update

A Partner asset management expert will meet with Subscriber virtually to assist in organizing the facility information within Maintenance Edge and Capital Forecast. Partner will work with Subscriber to confirm current condition, cost and update life cycle information so Subscriber can generate reports that can be used in presentation materials summarizing building facility condition indices and financial needs. These reports are intended to support facility-planning activities associated with developing the next fiscal year budget.

The scope of work for this project consists of the following activities to support the development of the next fiscal year budget:

- 2-3 Virtual Workshops;
- Draft report updates and review;
- Finalization of updated reports.

Virtual Workshop Activities

- Confirm dates of construction and gross square footage (GSF) for all buildings included in the scope of work.
- Discuss major building additions/renovations.
- Discuss building system and component replacements performed since last inspections
- Discuss and agree on lifecycles to assign for each building system
- Review unit costs as shown in cost models and agree on any changes if needed
- Perform life cycle modeling to determine expected conditions.

Deliverables:

1. Updated FCA data set provided to Company and imported into Asset Essentials.



Acceptance Process:

Partner has provided the excel based workbook with the updated FCA information to Company for import into Subscriber's Asset Essentials account.

Assumptions:

- Subscriber will schedule time for the appropriate resources to be available to the Partner for the duration of any confirmed virtual meeting(s). The success of this process is dependent on the attendance and responsiveness of the key stakeholders.
- Activities will be delivered virtually

Project Schedule:

Project schedule may vary, but Partner anticipates 8-10 weeks to complete this activity.

Change Management:

Subscriber may request that the Company add services not in the specifications by submitting a written proposed change order to the Company. Submitted change requests will be reviewed for approval. Approved change orders will become part of the applicable SOW when executed by both Parties, and the services described therein will become part of the services.

Invoicing:

Invoicing for the FCA Desktop Update will occur at 100% on delivery of updated asset data.



Custom Preventative Maintenance Schedule Creation PDS Statement of Work

This statement of work (SOW) is dated as of **May 17, 2024**, and is entered into and between Brightly Software, Inc. (Company) and **Napa County** (Subscriber) for professional services to be performed by the Company's service provider, **Alpha Facilities Solutions, LLC** (Partner)

Summary:

Company wishes to engage Partner to provide certain professional services to its Subscriber. These professional services include:

1. Preventative Maintenance Schedules

In Scope:

The items below will be considered in scope of this SOW.

Preventive maintenance schedules will be developed and delivered in an format required for import into Subscriber's CMMS Solution.

Services include providing basic set-up and steps are described below:

- **Format equipment listings:** We will format the equipment information by classification and type.
- **Design process:** A teleconference with Subscriber will take place to edit the planned maintenance actions and review the scheduling sequence. The wording of the actions and the scheduling of PM work orders are determined in order to customize your planned maintenance program. Time estimates and PM work assignments are also determined.
- **Optional Template load:** Upon concurrence of PM schedules, the Excel file will be provided to Brightly so that the PM Schedules can imported into the solution.

Deliverables:

All Preventive Maintenance Schedule Creation services include the following deliverables:

1. Excel File – PM Schedules – PM Schedules will be created for all in scope assets and loaded into a format which will be imported into Asset Essentials.
2. Preventive Maintenance Hours – A breakdown of hours by classification e.g. HVAC, Electrical, Plumbing, Life Safety, Fire Protection and Kitchen Equipment will be provided in a summary format.

Acceptance Process:

- Partner has provided Excel file of PM Schedules and breakdown of M schedule hours to Company for import.



- Subscriber will review and provide any feedback related to data sent to them for review by Company Service Provider or Company within 15 business days or unless otherwise determined.
- If Data is not reviewed within the 15-business day period, Company will assume that the Data provided by the Company Service Provider is approved and will load into the Subscriber's software.

Assumptions:

- Partner will be creating PM Schedules on in scope assets and building components. Creating PM Schedules for building systems is excluded from services.
- Subscriber will provide feedback/review of PM Schedules within 15 business days of delivery from the Partner. If feedback/review of PM Schedules exceeds 30 business days, If feedback is not provided during this time period, Company will assume delivery of the service and import the PM schedules as "inactive" in the system. Company will provide training on how updates can be made within the software or perform mass updates if needed for a fee.
- Once PM Schedules are imported into the Company Work and Asset Management applications, any updates and/or alterations of those schedules need to be communicated to Company within 30 days. Company will only make updates related to the below items:
 - Discontinuation of PM Schedules created with the service
 - Alteration of frequency on existing schedules created with the service
 - Alteration of start dates for the schedules created with the service

Otherwise, any revisions beyond this 30-day period will be the responsibility of the Subscriber to perform within the software or Company to perform at an additional fee.

- Reconciliation of existing PM Schedules in the Subscriber's account is subject to additional costs depending upon the number of active PM's and is not a part of the standard SOW.

Project Schedule:

1. Partner gathers the asset data (out of scope of this SOW but a dependency on this project) and provides the draft version to the Subscriber to review and approve, Company completes the corresponding project milestone.
2. Subscriber has 15 business days to review, accept/object to the data before Company imports the asset data (out of scope of this SOW but a dependency on this project).
3. Once we have acceptance of the asset data (actively or passively), the Partner shifts from Data Gathering to PM creation.
4. Create the PM against associated asset(s)
5. Provide to Subscriber for review and acceptance
6. Data provided to Company for import into Subscriber software

Partner anticipates 8-10 weeks to complete this activity.

Invoicing:

Invoicing for the PM Schedule Creation Service will be provided upon receipt of PM Schedule drafts at 100%



**Custom Data Gathering
PDS Statement of Work**

This statement of work (SOW) is dated as of **May 17, 2024**, and is entered into and between Brightly Software, Inc. (Company) and **Napa County** (Subscriber) for professional services to be performed by the Company's service provider, **Alpha Facilities Solutions, LLC** (Partner)

Summary:

Company wishes to engage Partner to provide certain professional services to its Subscriber. These professional services include:

1. Advanced Data Gathering

In Scope:

The items below will be considered in scope of this SOW:

I. Asset Inventory

An asset survey will be conducted for the purpose of noting remaining useful life of major building equipment. We will inventory the fixed, visible and accessible building equipment included in the following: or as otherwise defined:

Heating, Ventilation and Air Conditioning (HVAC)

- Air-Handling, Condensing, Make-Up Air and Energy Recovery Units
- Boilers
- Chemical Feed Injection System
- Chillers
- Chilled and Hot Water Circulation Pumps (1HP or Greater)
- Cooling Towers and Cooling Tower Pumps
- Exhaust Fans (Rooftop Only)
- Fan Coil Units
- Furnaces
- Heat Pumps
- Mini Split Systems (Ductless Systems Captured as Single Item)
- Packaged Units (Rooftop or Ground Units)
- Unit Heaters
- Unit Ventilators
- VAV Boxes, PTAC's and Window Units (Collected from client supplied drawings only, items not tagged)(Unit's condition will be based on age or client provided information only)

Electrical

- Distribution Panels
- Switchgear
- Motor Control Centers
- Emergency Generators (Mobile Units not Included)
- Automatic Transfer Switch
- Electric Door Systems (Exterior Doors Only)
- Transformers
- Emergency Lights and Lighted Exit Signs (System Level Only).



Equipment

- Trash Compactors (Permanently Installed – Client Owned)
- Laundry (Washers and Dryers)

Plumbing

- Main Backflow Preventer (Includes Domestic and Fire)
- Domestic Water Booster Pumps (1 HP or Greater)
- Sump Pumps
- Domestic Hot Water Heaters
- Hot Water Storage Tanks

Commercial Kitchen

- Broilers, Grills, Fryers
- Ovens, Stoves, Proofers and Warmers
- Refrigerators, Coolers and Freezers (Both Walk-In and Reach-In)
- Dishwashers
- Garbage Disposals
- Grease Traps (No Barcode Tag Applied)
- Large Appliances – Meat Slicers, Mixers, Microwaves, Commercial Toasters, Sheeters, etc.
- Exhaust Hoods

Life Safety/Security

- Fire Alarm Panel (Main Panel Only)
- Sprinkler System (System Level)
- Fire Suppression System (Kitchen and IT Based Systems)
- Fire Pump (Main and Jockey Pumps Greater than 1 HP)
- Fire Extinguishers and Automated External Defibrillators (System Level Only)
- Eyewash / Safety Showers (Permanently Installed)

Conveying

- Elevators
- Escalators
- Dumb Waiters

Exterior Enclosure

- Overhead Garage Door (Commercial Type Doors Only)
- Garage Door Openers (Commercial Type Openers Only)

We will collect information noted on the equipment identification label when readily accessible, legible, and safe, such as:

1. Manufacturer, Model, and Serial
2. Capacities, Horsepower, and Voltage
3. Location by Building, Space, and Floor
4. Date Placed in Service

Asset photos will be collected for internal Quality Control and Assurance purposes. Photos can be made available to the client at the end of the project via a Share Point site.



As part of this effort, our team will visibly inspect and verbally interview staff so that the following information can be provided as well:

- Asset Condition
- Asset Life Cycle, Estimated Remaining Service Life and Estimated Replacement Costs

Items collected at the System Level will be grouped into a single item within the asset inventory so that work can be tracked against it.

Deliverables:

1. Excel File – Equipment Inventory – Equipment inventory data will be delivered in an Excel file and prepared in a format to be uploaded into Company CMMS Solution.

Acceptance Process:

Partner has provided the excel based workbook with the inventory information to Company for import into client’s Asset Essentials account.

Assumptions:

- Asset will not be turned off, unplugged or moved around in an effort to locate manufacturer data plates.
- When data plates are not accessible, information will be notated as Unknown unless an identical asset has already been collected.
- Subscriber will provide knowledgeable escort to assist with access and location of assets.
- Subscriber will provide mechanical room keys (when escorts are not available), floor plans, ladders and copies of maintenance logs as requested to support the project.

Project Schedule:

Project schedule may vary, but Partner anticipates 8-10 weeks to complete this activity.

Change Management:

Subscriber may request that the Company add services not in the specifications by submitting a written proposed change order to the Company. Submitted change requests will be reviewed for approval. Approved change orders will become part of the applicable SOW when executed by both Parties, and the services described therein will become part of the services.

Invoicing:

Invoicing for the Advanced Asset Inventory adder will follow the Equipment Inventory Data Gathering billing milestone schedule.

Equipment Inventory Data Gathering Milestones	Description	Percentage



Mobilization	Project acquisition template set up, Vendor kickoff call with Subscriber, Travel arrangement costs; other miscellaneous pre-visit preparation	20%
On-Site Field Data Capture	Project launch meeting with Subscriber first day of onsite, acquisition of data to Scope of Work at all locations included in project and closing meeting at end of onsite activity to confirm completion and review next step actions.	60%
Data Management	Data activity, including quality assurance and control that occurs after field work is completed to produce the data file.	20%





Equipment Inventory Barcoding Service

Purpose

The Equipment Inventory Barcoding Service works with your Brightly Work & Asset Management solution in conjunction with an "Equipment Inventory" (Data Gathering) or a Facility Condition Assessment (FCA) service offering.

Value

Barcoding identifies equipment by assigning a unique number to that equipment item which will then serve as an identifier in your Brightly Work & Asset Management system database allowing for easier identification and tracking of the item. The barcoding of equipment inventory occurs during the onsite equipment data gathering/ collection process.

Deliverables by Brightly to the Client include the following:

- Commercially produced weather resistant barcodes will be applied to the major pieces of equipment covered in the scope of work provided in the Data Gathering or Facility Condition Assessment services.
- Barcode numbers will be available for use at the time equipment inventory data is imported into your Brightly Work & Asset Management solution.

The Brightly Service Provider will make an effort to apply barcodes in a convenient location so the facility's maintenance staff can easily identify them. Based upon our professional expertise, we recommend the following –

- Application of the barcode shall be placed **next to the Data Plate of an Asset**. Placing barcodes in this location ensures that the barcode can be easily identified and associated to the asset in a CMMS software.
- If data plate is not present, or is inaccessible, the barcode will be placed in an accessible area that is easily seen by maintenance technicians, does not detract from the appearance of the equipment, isn't in danger of being tampered with, or will be otherwise destroyed through normal use and cleaning of the asset.

Assumptions

- Purchase of service is made prior to onsite activity. If onsite activity has been completed, custom pricing would be required as a revisit would be needed for the placement of the barcodes.
- For Asset Essentials Clients, determination of 1D (Standard) vs 2D (QR Codes) is required prior to onsite activity. URL creation along with QR code purchase and encoding is needed prior to onsite activity. If determination is not provided prior to onsite activity, 1D (Standard) barcodes will be used.

Invoice Schedule

Invoicing for the Barcoding Service will be provided upon completion of onsite activity at 100%.



Order terms

BY SIGNING THIS ORDER FORM, WHETHER BY ELECTRONIC OR WRITTEN SIGNATURE, YOU ARE PLACING A BINDING ORDER FOR THE OFFERINGS SHOWN. IF THE INDIVIDUAL ENTERING INTO THIS AGREEMENT IS ACCEPTING ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, THE INDIVIDUAL REPRESENTS THAT THEY HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, IN WHICH CASE THE TERM "CUSTOMER" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT DOES NOT HAVE SUCH AUTHORITY OR DOES NOT AGREE WITH THE TERMS AND CONDITIONS SET FORTH HEREIN, THE INDIVIDUAL MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE OFFERINGS.

- The "Effective Date" of the Agreement between Customer and Brightly Software, a Siemens Company ("Siemens") is the date Customer accepts this Order
- Proposal expires in sixty (60) days.
- The Siemens entity entering into this Agreement is Brightly Software, Inc., a Delaware corporation, and the notice address shall be Corporate Trust Center, 1209 Orange Street, Wilmington, DE 19801 USA, Attn: Brightly Software.
- By accepting this Order, and notwithstanding anything to the contrary in any other purchasing agreement, Customer agrees to pay all relevant Subscription Fees for the full Subscription Term defined above.
- Payment terms: Net 30
- This Order and its Offerings will be subject to the terms and conditions of the Terms of Service (the Base Terms together with any applicable Supplemental Terms) found at <http://brightlysoftware.com/terms> (<http://brightlysoftware.com/terms>) ("Agreement"), unless Customer has a separate written agreement executed by Brightly Software, Inc. for the Offerings, in which case the separate written agreement will govern its defined Term. Acceptance is expressly limited to the terms of the Agreement. No other terms and conditions will apply. The terms of any purchase order or other document from Customer are excluded and such terms will not apply to the Order and will not supplement or modify the Agreement irrespective of any language to the contrary in such document.
- Siemens shall invoice Customer and Customer agrees to pay Siemens the amount specified on this Order. Quantities purchased may not be decreased during the relevant Subscription Term. Customer is responsible for providing complete and accurate billing and contact information to Siemens and notifying Siemens promptly of any changes to such information.
- If Customer is paying by credit card or Automated Clearing House ("ACH"), Customer shall establish and maintain valid and updated credit card information or a valid ACH auto debit account (in each case, the "Automatic Payment Method"). Upon establishment of such Automatic Payment Method, Siemens is hereby authorized to charge any applicable Subscription Fee using such Automatic Payment Method.
- Customer is responsible for paying all taxes associated with its purchases hereunder. Siemens shall invoice Customer and Customer shall pay that amount unless Customer provides Siemens with a valid tax exemption certificate, direct pay permit, or other government-approved documentation. Notwithstanding the foregoing, Customer is responsible for, and, to the extent permitted by law, will indemnify Siemens for: 1) any encumbrance, fine, penalty or other expense which Siemens may incur as a result of Customer's failure to pay any taxes required hereunder, and 2) any taxes, including



withholding taxes, resulting from making an Offering available to Users in geographic locations outside the country in which Customer is located as per the Order. For clarity, Siemens is solely responsible for taxes assessable against Siemens based on its income, property and employees.

- Siemens maintains the right to increase fees within the Subscription Term for Recurring Fee Offerings by an amount not to exceed the greater of prices shown in the investment table or the applicable CPI and other applicable fees and charges every 12 months. Any additional or renewal Subscription Terms will be charged at the then-current rate.
- In the event Customer purchases the Cloud Services (including any renewals thereof) through an authorized reseller of Siemens, the terms and conditions of this Agreement shall apply and supersede any other agreement except for any terms and conditions related to fees, payment or taxes. Such terms and conditions shall be negotiated solely by and between Customer and such authorized reseller. In the event Customer ceases to pay the reseller, or terminates its agreement with the reseller, Siemens shall have the right to terminate Customer's access to the Cloud Services at any time upon thirty (30) days' notice to Customer unless Customer and Siemens have agreed otherwise in writing.
- Customer shall use reasonable efforts to obtain appropriation in the full amount required under this Order annually. If the Customer fails to appropriate funds sufficient to maintain the Offerings described in this Order, then the Customer may terminate the Offerings at no additional cost or penalty by giving prior written notice documenting such non-appropriation. Customer shall use reasonable efforts to provide at least thirty (30) days prior written notice of non-appropriation. Customer agrees non-appropriation is not a substitute for termination for convenience, and further agrees Offerings terminated for non-appropriation may not be replaced with functionally similar products or services prior to the expiration of the Services Term set forth in this Order. Customer will not be entitled to a refund or offset of previously paid, but unused Fees.

Cloud Services

- Billing frequency: Annual
- Cloud Services Offerings will be subject to the terms and conditions of the General Software and Cloud Supplemental Terms found at <http://brightlysoftware.com/terms> (<http://brightlysoftware.com/terms>).
- During the Term, Siemens shall, as part of Customer's Subscription Fees, provide telephone and email support ("Support Services") during the hours of 8:00 AM and 6:00 PM EST, Monday through Friday ("Business Hours"), excluding holidays.
- Siemens shall use commercially reasonable efforts to make its Software or Cloud Service available 99.9% of the time for each full calendar month during the Subscription Term, determined on twenty-four (24) hours a day, seven (7) days a week basis (the "Service Standard"). The Service Standard availability for access and use by Customer(s) excludes unavailability when due to: (a) any access to or use of the Cloud Service by Customer or any Account User that does not strictly comply with the terms of the Agreement or the Documentation; (b) any failure of performance caused in whole or in part by Customer's delay in performing, or failure to perform, any of its obligations under the Agreement; (c) Customer's or its Account User's Internet connectivity; (d) any Force Majeure Event; (e) any failure, interruption, outage, or other problem with internet service or non-Cloud Service; (f) Scheduled Downtime; or (g) any disabling, suspension, or termination of the Cloud Service by Siemens pursuant to the terms of the Agreement. "Scheduled Downtime" means, with respect to any applicable Cloud Service, the total amount of time (measured in minutes) during an applicable calendar month when such Cloud Service is unavailable for



the majority of Customer's Account Users due to planned Cloud Service maintenance. To the extent reasonably practicable, Siemens shall use reasonable efforts to provide eight (8) hours prior notice of Cloud Service maintenance events and schedule such Cloud Service maintenance events outside the applicable business hours.

- Siemens reserves the right to block IP addresses originating a Denial of Service (DoS) attack. Siemens shall notify Customer should this condition exist and inform Customer of its action. Once blocked, an IP address shall not be able to access the Cloud Service and the block may be removed once Customer is satisfied corrective action has taken place to resolve the issue. Siemens also reserves the right to suspend or terminate service if Customer: 1) performs load tests, network scans, penetration tests, ethical hacks or any other security auditing procedure on the Cloud Service, 2) interferes with or disrupts the integrity or performance of the Cloud Service or data contained therein, or 3) otherwise violates the use restrictions under this Agreement.

Professional Services:

- Professional Services Offerings will be subject to the terms and conditions of the Services Supplemental Terms found at <http://brightlysoftware.com/terms> (<http://brightlysoftware.com/terms>).
- Unless otherwise specified in an applicable Order: (i) Siemens will perform the Professional Services during workdays, Monday through Friday, up to 8 hours a day; (ii) any estimate of hours or costs are reasonable, good faith estimates only; and (iii) each task is performed as firm fixed price work or time and materials as described in this Order. Siemens is only obliged to supply Professional Services and/or Deliverables as expressly stated in this Order. Siemens shall not be obliged to supply any Professional Services and/or Deliverables without a valid Order.
- **Scheduling.** Siemens requires at least 6 weeks advanced notice from the acceptance of an Order to schedule Professional Services delivery dates when travel is required. Onsite Professional Services shall be delivered consecutively in a single onsite visit unless the applicable Order includes the additional fees and incidental expenses associated with multiple visits.
- **Unused Professional Services.** Unless otherwise specified in the Order, Siemens reserves the right to expire any unused Professional Services 6 months from the Effective Date set forth on the Order, and Customer will not be entitled to receive a refund for any fees prepaid for such expired Professional Services.
- **Customer Cooperation.** Customer will cooperate reasonably and in good faith with Siemens in its performance of Professional Services by: (i) providing access to any necessary Customer Data, (ii) allocating sufficient resources and timely performing any tasks reasonably necessary to enable Siemens to perform its obligations under the Order, and (iii) actively participate in scheduled project meetings. Any delays in the performance of Professional Services or delivery of Deliverables caused by Customer may result in additional applicable charges for resource time.
- **Incidental Expenses.** Customer will reimburse Siemens for travel and related business expenses incurred in connection with Professional Services. If an estimate of incidental expenses is included in the Order, Siemens will not exceed a 5% inflation of such estimate without the written consent of Customer.

Additional information

- Prices shown above do not include any taxes that may apply. Any such taxes are the responsibility of Customer. This is not an invoice. For customers based in the United States, any applicable taxes will be determined based on the laws and regulations of the taxing authority(ies) governing the "Ship To" location provided by Customer. Tax exemption certifications can be sent



to accountsreceivable@brightlysoftware.com (<mailto:accountsreceivable@brightlysoftware.com>).

- Billing frequency other than annual is subject to additional processing fees.
- Provide Siemens with the purchase order number, if applicable. Acceptance of this Order without a purchase order number indicates that a purchase order is not necessary. Please reference Q-406360 on any applicable purchase order and email to Purchaseorders@Brightlysoftware.com (<mailto:Purchaseorders@Brightlysoftware.com>)
- Brightly Software, Inc. can provide evidence of insurance upon request.



Signature

Presented to:

Q-406360

July 03, 2024, 12:08:19 PM

Accepted by:

Printed Name

Signed Name

Title

Date