MASTER SOFTWARE SUBSCRIPTION AND SERVICES AGREEMENT
(Software as a Service)

between

ICON SOFTWARE

("Licensor")

having its principal place of business at:

3453 Lawrenceville-Suwanee Rd. Suite A

Suwanee, GA 30024

and

FULTON COUNTY GEORGIA

("Customer")

having its principal address at:

136 Pryor Street, S.W.,

Atlanta, Georgia 30303

This **Master Software Subscription and Services Agreement** (the "**Agreement**") is dated effective as of January 1, 2022 through December 31, 2022 between Customer and Licensor. Customer and Licensor may each be referred to individually as a "**Party**" and together as the **"Parties**." The Schedules to this Agreement (Schedules A-D) are attached and incorporated by reference.

 1. ***Definitions.*** The following definitions shall apply in this Agreement:

a. *Deliverables* – those components, milestones, and/or materials, including, without limitation, the Software, documentation, maintenance modifications, and enhancements to be completed by one Party and delivered or otherwise provided to the other Party in accordance with the terms of this Agreement. Deliverables can mean either Deliverables required from Licensor ("Licensor Deliverables") or Deliverables required from Customer ("Customer Deliverables").

b. *Documentation* – the written description of the functions and use of the Software.

c. *Error* – (1) any error or defect resulting from an incorrect functioning of Software caused by the Software's failure to meet a Functional Specification; or, (2) any error or defect resulting from an incorrect or incomplete statement in Documentation caused by the failure of the Software and/or the documentation to meet a Functional Specification.

d. *Functional Specifications* – the functions and/or criteria for the Software described as documentation related to the Software or as described in the Schedules.

e. *Intellectual Property* – all interests of any kind including: (1) trade secrets, (2) copyrights, (3) derivatives, (4) documentation, (5) patents, (6) the Software, (7) technical information, (8) technology, and (9) any and all proprietary rights relating to any of the foregoing.

f. *Customer Data* – all data of Customer, whether proprietary or non-proprietary to Customer, converted for use with the Licensor Deliverables. The services provided to Customer under this Agreement includes the hosting and operation of the Software at a third-party hosting facility that meets and maintains industry standard certifications for the privacy and security of Customer Data.

g. *New Product* - Any change or addition to Software and/or related documentation that: (1) has a value or utility separate from the use of the Software and documentation; (2) may be priced and offered separately from the Software and documentation; and, (3) is not made available to Licensor's subscription customers generally without separate charge. In the event of any disagreement between the Parties with respect to whether a change or addition constitutes a New Product, the good faith determination of such issue by Licensor shall be final, binding, and conclusive.

h. *Statement of Work* – the attached Schedule B that provides the written description and specifications for the services to be provided by Licensor to Customer, including the Deliverables and milestone, delivery, and acceptance schedules.

i. *Software* – the Licensor software and any Third-Party Software supplied by Licensor pursuant to this Agreement as described in the attached Schedule A. The term "Software" does not include New Products except to the extent added to the Software by separate agreement of the Parties and the payment to Licensor of the additional fees and under additional terms and conditions, if required by Licensor.

j. *Software Acceptance Date* – the date of acceptance of the Licensor Deliverables by Customer as described in this Agreement or the date that Customer uses the Software in a live environment, whoever is sooner.

k. *Taxes* – all federal, state, local, or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, capital stock, franchise, profits, withholding, social security (or similar taxes), unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated, or other taxes of any kind, including without limitation any interest, penalty, or additions, whether or not disputed.

.	*Test Validation Criteria* – the acceptance criteria for the Licensor Deliverables, including, without limitation, the Software, set forth in the Statement of Work.

a.	*Warranty Period* – the thirty (30) day period commencing on the installation of the Software

2. Contract Documents. Customer hereby engages Licensor, and Licensor hereby agrees to perform the services hereinafter set forth in accordance with this Agreement, consisting of the following contract documents:

I.	Form of Agreement;
II.	Schedule A: Description of Software and Scope of Authorized Use;
III.	Schedule B: Statement of Work;
IV.	Schedule C: Pricing and Payment Schedule Service Fees; and
V.	Schedule D: Service Level Agreement.

The foregoing documents constitute the entire Agreement of the Parties and is intended as a complete and exclusive statement of promises, representations, discussions, and agreements, oral or otherwise, that have been made in connection therewith. No modifications or amendments to this Agreement shall be binding upon the Parties unless the same is in writing, conforms to Fulton County Purchasing Code §102-420 governing change orders, is signed by the Customer's and the Licensor's duly authorized representatives, and entered upon the meeting minutes of the Fulton County Board of Commissioners.

If any portion of the contract documents shall be in conflict with any other portion, the various documents comprising the contract documents shall govern in the following order of precedence: 1) the Agreement, 2) change orders, and 3) the exhibits.

3. *Subscription License.*

a.	*License.* Licensor grants the Customer a license to access and use the Licensor Software and Licensor Deliverables described in the attached Schedule A during the Term of this Agreement and in accordance with the terms and conditions of this Agreement. As part of the subscription by Customer, Licensor will perform the services described in this Agreement.

b.	*Scope of License Limited.* The right of Customer to use the Software and associated documentation is for Customer's internal use only and limited to the Field of Use described in the attached Schedule A. No title or ownership in the Software or documentation is transferred to Customer. Customer shall not copy or in any way duplicate the Software, except for necessary backup and archival procedures approved by Licensor in advance and in writing. Only Customer's employees and necessary contractors acting in the proper scope of their services to Customer may access or use the Software or documentation. Customer shall not adapt, modify, reverse engineer, decompile, or disassemble, in whole or in part, any of the Software and/or any documentation.

c.	*Additional Software.* Customer may subscribe to additional Software hereunder by execution of a subsequent schedule.

d.	*Restrictions.* Customer shall not remove, edit, alter, abridge or otherwise change in any manner any Licensor Intellectual Property notices. Customer may not, and may not permit others to reverse engineer, decompile, decode, decrypt, disassemble, or in any way derive source code from, the software or Service; modify, translate, adapt, alter, or create derivative works from the Service; copy (other than one back-up copy), distribute, publicly display, transmit, sell, rent, lease or otherwise exploit the Service; or distribute, sublicense, rent, lease, loan or grant any third party access to or use of the Service to any third party.

e.	*Installation at Data Center.* The Software will be installed (hosted) at and operated from a third-party data center. The data center will meet industry standard certifications or processes for data security.

4. *Fees, Installation Charges, and Taxes.*

a.	*Subscription Fees.* The subscription fees for the use of the Software are set forth on the attached Schedule C. Subsequent orders shall be at the fees in effect at the time of receipt by Licensor of any applicable subsequent schedule that identifies additional software to be included under this Agreement executed by Customer and Licensor. Fees resulting from the provision by Licensor to Customer of Third-Party Software are passed through by Licensor to Customer, and, in that context, such fees payable by Customer shall increase, and such increase shall be payable, as and to the extent of any such fee increases payable by Licensor.

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b. *Configuration, Installation and Services Fees.* Customer shall also pay for configuration and installation of Software and any other services required under that Agreement or requested by Customer as described in this Agreement at the then prevailing fees, plus any travel expenses required, including reasonable mileage, airfare, meals, lodging, and similar expenses. Meals will be billed at the applicable GSA per diem rate.

c. *Taxes.* The Licensor shall pay all sales, retail, occupational, service, excise, old age benefit and unemployment compensation taxes, consumer, use and other similar taxes, as well as any other taxes or duties on the materials, equipment, and labor for the work provided by the Licensor which are legally enacted by any municipal, county, state or federal authority, department or agency at the time bids are received, whether or not yet effective. The Licensor shall maintain records pertaining to such taxes as well as payment thereof and shall make the same available to the Customer at all reasonable times for inspection and copying. The Licensor shall apply for any and all tax exemptions which may be applicable and shall timely request from the Customer such documents and information as may be necessary to obtain such tax exemptions. The Customer shall have no liability to the Licensor for payment of any tax from which it is exempt.

5. *Delivery and Acceptance.*

a. *Delivery.* Each Party shall timely perform delivery of its required Deliverables in accordance with the Statement of Work, including the delivery schedule specified therein. Customer shall pay or reimburse Licensor for all costs of shipping Software to Customer, including freight, insurance, and special packaging charges, if any. The ca rrier, method of shipment, and other matters relating to shipment shall be determined by Licensor. Customer is responsible for movement into or within Customer's premises, site preparation per Licensor requirements, and other site expenses required for installation.

b. *Testing.* Testing of Licensor Deliverables shall be completed by Customer in accordance with the Test Validation Criteria within fifteen (15) days following initial delivery to Customer.

c. *Installation.* Within thirty (30) days following completion of testing of the Licensor Deliverables, Licensor shall install the Licensor Deliverables at the hosting facility for acceptance testing.

d. *Acceptance.* Within ten (10) days following completion of installation, Customer shall either: (i) accept the Licensor Deliverables in writing; or, (ii) reject the Licensor Deliverables and provide Licensor with a statement of Errors resulting in operation not in conformance with the Test Validation Criteria. Licensor will correct any Error and redeliver the Licensor Deliverables to Customer within thirty (30) days following receipt of the statement of Errors. Customer shall, within ten (10) days following such redelivery, accept or reject the redelivered Licensor Deliverables in accordance with the procedures set forth herein. Failure by Customer to provide a statement of acceptance or Errors within either of the ten (10) day periods specified herein shall be deemed to be acceptance by Customer of the Licensor Deliverables.

6. *Payment.*

a. *Fees for Initial Subscription Services.* Payment of Software subscription fees, installation fees, and other fees on the initial Schedule C attached will be made in installments as follows:

    (i)   Seventy percent (70%) of such subscription fees for all modules, as indicated on the attached Schedule C, is due at the time Customer signs this Agreement.

    (ii)   Thirty percent (30%) of such subscription fees is due upon the Software Acceptance Date for each individual module of Software as described in the attached Schedule C.

    (iii)   Fees for installation of the Software including data conversion, system implementation, training, and forms generation, as indicated on the attached Schedule C, will be billed monthly as incurred and are payable within thirty (30) days following invoice by Licensor. Payments for all Third-Party Software provided by Licensor as described in the attached Schedule C shall be payable at least thirty (30) days prior to due date for payment by Licensor to Licensor's provider.

    (iv)   The per-unit pricing during any renewal term may increase by up to eight percent (8%) above the applicable pricing in the prior term, unless Licensor provides Customer notice of different pricing at least eight (8) months prior to the applicable renewal term. Except as expressly provided in the applicable Statement of Work, renewal of promotional or one-time priced subscriptions will be at Licensor's applicable list price in effect at the time of the applicable renewal. Notwithstanding anything to the contrary, any renewal in which subscription volume for any Software or service(s) has decreased from the prior term will result in re-pricing at renewal without regard to the prior term's per-unit pricing.

(v)   If any Third-Party Software is obtained directly from Licensor, Customer will pay Licensor fifty (50%) percent of all fees at the time Customer signs this agreement, twenty-five (25%) percent of fees after products are installed at Customer's facility and twenty five (25%) percent upon Customers use of the Third-Party Software or the date of Acceptance, whichever comes first. These fees, if applicable, shall be detailed in Schedule C.

b. *Fees for Subsequent Software Subscription.* Payment of subscription fees, installation fees, and other fees to Licensor on any subsequent schedule shall be made as specified in such subsequent schedule.

c. *End of Life Upgrade Path.* If at any point in the future, and at Licensor's sole discretion, the Software is deemed to be a non-viable product, Licensor will provide a minimum of twelve (12) months' notice prior to Software end of life. During this period, all maintenance and support services will remain as stated in this Agreement. Pursuant to §5(b) above, Customer will, at their request, be moved to an equivalent software with no greater than a one hundred percent (100%) increase in annual recurring fees.

d. *Ancillary Charges and Out of Pocket Expenses.* All additional or ancillary charges (*e.g.*, additional training charges) and all out of pocket expenses of Licensor (*e.g.*, travel expenses) which are payable by Customer hereunder shall be due and payable within thirty (30) days following invoice by Licensor.

e. *Failure of Payment.* In the event payment is not made as specified in this Agreement, Customer shall pay interest at the rate of one and one-half percent (1.5%) per month (or the highest applicable legal rate, whichever is lower) on the outstanding overdue balance for each month or part thereof that such sum is overdue; *provided, however*, that if Customer is a governmental agency or authority subject to a "Prompt Payment" or similar statutory requirement for the transaction contemplated in this Agreement, such statutory requirement shall control to the extent the same is inconsistent with the requirements of this §5(e).

7.   *Warranty, Exclusions, and Disclaimer.*

a. *Software Warranty.* Licensor warrants that the Software shall conform to the Functional Specifications and will be free of Errors during the Warranty Period. Licensor's sole obligation and responsibility to Customer under the foregoing warranty is to remedy, at no cost to Customer, any such Error reported to Licensor during the Warranty Period. Notwithstanding the foregoing or any other term or provision of this Agreement, with respect to Third Party Software provided by Licensor hereunder, Licensor makes no warranties, but shall, to the extent legally permitted, pass through to Customer all warranties provided by the original licensor/manufacturer.

b. *Software Warranty Exclusions.* The foregoing warranties do not apply to any of the following:

(i)   Damage arising from any cause beyond Licensor's reasonable control, including, without limitation, damage due to the improper operation or use of Software by Customer, abuse, or misuse of Software other than as designed or intended, malfunctions caused by alteration or tampering, or any reason specified in §15 (Excusable Delays) of this Agreement.

(ii)   Damage resulting from movement of Software after its initial installation.

( )   Malfunction or breakdown of Software due to attachment to, or addition or use of, software not supplied by Licensor with the Software, or as a result of attachment of the Software to hardware or software by anyone other than Licensor, or as a result of hardware associated problems.

(iii)   Damage, malfunction, or breakdown of Software due to improper operating environment, including, without limitation, temperature, humidity, dust, or static charge.

(iv)   Destruction or damage, in whole or in part, of Software by any Person other than Licensor.

c. *SOFTWARE WARRANTY DISCLAIMER.* EXCEPT FOR THE EXPRESS WARRANTIES STATED IN THIS §6 OF THIS AGREEMENT, Licensor DISCLAIMS AND CUSTOMER WAIVES ALL WARRANTIES ON THE SOFTWARE FURNISHED HEREUNDER, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND LICENSES THE SOFTWARE "AS IS" AND "WITH ALL FAULTS."

8. ***Functional Specifications.*** Customer understands that such Functional Specifications shall be defined in accordance with Licensor standard applications and that any application and/or communication and/or functions not currently supported by Licensor shall be considered "customized" and, as such, may incur additional costs and delivery schedules beyond those stated and agreed to by Licensor.

9. ***Training.*** Licensor shall provide training in the operation and maintenance of the Software. The number of training days is described in attached Schedule B. Customer may request additional training time and/or additional personnel to be trained, provided that any such additional training shall be chargeable to Customer at Licensor's then current fee for the requested training, plus reasonable travel expenses if such training occurs anywhere other than Licensor's facilities.

10. ***Third Party Software Licenses.*** Customer shall execute all documents reasonably requested by Licensor and will abide by all reasonable requirements with respect to all Third Party Software licensed or sublicensed by Licensor to Customer under this Agreement, or necessary to the performance of the Software hereunder in accordance with the Functional Specifications, and Customer agrees to maintain in effect all required licenses and approvals of all applicable third Persons.

11. ***Restrictions Upon Disclosure of Confidential Information.***

a.   *Protection.* Recipient shall use commercially reasonable care, but in no event less than the same degree of care it uses to protect its own most confidential and proprietary information, to prevent the unauthorized use, disclosure, publication, or dissemination of Discloser's Confidential Information.   Recipient shall provide Discloser's Confidential Information to its employees and necessary contractors only on a "need to know" basis, and always subject to the terms of this Agreement. Recipient agrees to accept and use Discloser's Confidential Information solely in connection with Recipient's participation in, and solely with respect to, this Agreement. Recipient shall inform its employees and necessary contractors of these confidentiality obligations and shall take such steps as may be reasonably requested by Discloser to prevent unauthorized disclosure, copying, or use of Discloser's Confidential Information. Recipient acknowledges that, in the event of a breach by Recipient of its obligations under this §10, in addition to any other right or remedy available to Discloser, at law or in equity, Discloser will suffer irreparable injury, and shall be entitled to preliminary and final injunctive relief (without bond except as otherwise required by applicable law) in order to prevent any further or other breach or any unauthorized use of Discloser's Confidential Information. Recipient shall notify Discloser immediately upon discovery of any prohibited use or disclosure of any of Discloser's Confidential Information or any other breach of these confidentiality requirements (including by any third parties), and shall fully cooperate with Discloser to assist Discloser in regaining possession of its Confidential Information and to prevent further unauthorized use or disclosure of the same.

b.   *Limited Disclosure.* Recipient may disclose Confidential Information of Discloser if and to the extent required by any judicial or administrative governmental request, requirement, or order, provided that Recipient shall take reasonable steps to provide Discloser sufficient prior notice in order to enable Discloser to contest such request, requirement, or order. Recipient shall, except as otherwise expressly provided by the terms of this Agreement, return all tangible Discloser Confidential Information, including, without limitation, all computer programs, documentation, notes, plans, drawings, and copies thereof, to Discloser immediately upon Discloser's request.

c.   *Ownership.* All Discloser Confidential Information, including, without limitation, any and all adaptations, enhancements, improvements, modifications, revisions, or translations thereof created by Discloser or Recipient, shall be and remain the property of Discloser, and no license or other rights to such Confidential Information is granted or implied hereby. Except as otherwise expressly provided in this Agreement, all Discloser Confidential Information is provided "AS IS" and without any warranty, express, implied, or otherwise, regarding its accuracy or performance.

12. ***Intellectual Property Indemnity.***

a.   *Indemnification of Intellectual Property Infringement Claims.* In the event of any actual or threatened claims by a third party that the Licensor Deliverables infringe upon any Intellectual Property of such third party, Licensor will indemnify Customer with respect to such claims. Customer shall immediately notify Licensor of any such claim. The foregoing indemnity shall be ineffective if any of the Licensor Software has been modified, altered, or otherwise changed by Customer (or on behalf of Customer by any Person other than Licensor). Licensor will have no liability or obligation under this §11 if any claim of infringement is based upon: (i) the combination, operation, or use of the Software with any component other than Licensor Intellectual Property, if such claim would have been avoided but for such combination, operation, or use; and/or, (ii) any derivative of any Licensor Intellectual Property created by any person other than Licensor. Licensor shall have sole control over the selection of counsel and the defense and settlement of any legal proceeding or other claim and Customer shall provide Licensor with all reasonable assistance in the defense of the same.

b. *Remedy*. In the event of a third party claim that the Licensor Deliverables infringe the intellectual property rights of a third party, Licensor shall have the right, as Customer's sole and exclusive remedy against Licensor, at Licensor's sole election, to: (i) modify the allegedly infringing Licensor Deliverables to be non-infringing, provided that such modification does not adversely impact the functionality of the Software in any material respect; (ii) obtain a license or other rights to enable Customer to continue to use the applicable Software as contemplated in this Agreement, or (iii) to terminate this Agreement and return to Customer any unearned fees paid by Customer to Licensor.

13. *Rights in Software, Data and Materials*.

a. *Licensor Ownership*. As between Licensor and Customer, Licensor shall be the sole owner of all right, title, and interest in and to the Software, all Licensor Deliverables, documentation, and all copies or derivatives created by either Party, exclusive only of the Customer Materials. Customer hereby irrevocably grants, transfers, and assigns to Licensor, without reservation, all worldwide ownership rights, title, and interest, including, without limitation, any and all Intellectual Property which Customer may have or acquire, by operation of law or otherwise, in and to any or all of the Software, the Licensor Deliverables, documentation, and in and to any other Intellectual Property of Licensor, along with the good will of the business appurtenant to the use of any of the same . Customer further hereby irrevocably transfers and assigns to Licensor any and all moral rights Customer may have in and to such Software, the Licensor Deliverables, documentation, and in and to any other Intellectual Property of Licensor, and hereby forever waives and agrees never to assert any moral rights it may have during or after termination or expiration of this Agreement. Customer shall, at the request of Licensor, execute all documentation necessary to formally transfer such rights to Licensor. Customer shall promptly notify Licensor in writing if it becomes aware of any violation, infringement, or unfair competition related to the Licensor Intellectual Property.

b. *Customer Ownership*. As between Licensor and Customer, Customer shall be the sole owner of all right, title, and interest in and to all Customer Materials. Licensor hereby irrevocably grants, transfers, and assigns to Customer, without reservation, all worldwide ownership rights, title, and interest, including, without limitation, any and all Intellectual Property rights, which Licensor may have or acquire, by operation of law or otherwise, in and to any or all of the Customer Materials. Licensor further hereby irrevocably transfers and assigns to Customer any and all moral rights Licensor may have in such Customer Materials, and hereby forever waives and agrees never to assert any moral rights it may have or obtain, during or subsequent to the termination or expiration of this Agreement. Licensor shall, at the request of Customer, execute any and all documentation necessary to formally transfer such rights to Customer.

14. Support and Maintenance Services

a. Scope and Definitions. Licensor shall provide maintenance and support services necessary to ensure that the Software and Licensor Deliverables operate in conformity with Functional Specifications and the documentation. The following terms shall apply to this section.

(i) <u>Critical Defect</u> – an Error in the Software and Licensor Deliverables or documentation which renders the Software and Licensor Deliverables unable to perform a Functional Specification and for which a workaround is not available.

(ii) <u>Non-Critical Defect</u> – a defect in the Software and Licensor Deliverables or documentation that materially impacts the operation of the Software and for which a workaround is not available.

(iii) <u>Telephone Support</u> – the provision of general information and diagnostic advice and assistance concerning the use and operation of the Software and Licensor Deliverables via telephone. Telephone support is intended to be used by a limited number of people designated by Customer to communicate with Licensor about defects or problems. It is not a substitute for training of personnel by Customer.

(iv) <u>Basic Maintenance Period</u>. The Basic Maintenance Period commences on Monday and continues through Friday of each week (8 a.m. to 7 p.m., Eastern Time), except on the following recognized holidays ("Holidays"): New Year's Day, Martin Luther King Day, Presidents' Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, the day after Thanksgiving, Christmas Eve, and Christmas Day.

b. Covered Maintenance.

(i) <u>General.</u> Maintenance services and Telephone Support will be performed by Licensor during the Basic Maintenance Period. Maintenance Services do not include the costs of accessories and expendable supplies necessary to operate the Software and Licensor Deliverables.

(ii) <u>Upgrades</u>. Customer will receive all updated, patches and enhancements to the Software and Licensor Deliverables (except any New Product), including all related update releases and associated documentation.

(iii) <u>Online Support and Telephone</u>. Telephone Support includes: (i) remote diagnostics; (ii) service desk and dispatch; (iii) question and answer consulting; and, (iv) non-chargeable user error remedies. Remote diagnostics equipment is required at Customer locations for remote support, which equipment is to be obtained by Customer at its sole expense.

(iv) <u>Exclusions</u>. Maintenance Services do not include maintenance required by: (a) operator error or improper operation or use of the Software and Licensor Deliverables by Customer; (b) modifications, repairs, or additions to the Software and Licensor Deliverables performed by persons other than Licensor, or damage to Software and Licensor Deliverables by Customer's employees or third persons, training services. Any maintenance service or related service or training other than the maintenance services described above will be charged at Licensor's then current billable call maintenance rates in effect.

(v) <u>Response Times.</u> Licensor will use its commercially reasonable efforts to respond within four (4) hours (but only during the Basic Maintenance Period) of notice from Customer of the need for maintenance services or notice of a request for Online Support or Telephone Support. Any such notice from Customer shall, to the extent possible, identify all Critical Defects, and, in connection with the provision of any maintenance service, Online Support, and/or Telephone Support, Customer shall, at its own expense, provide its full good faith support and cooperation with Licensor's efforts at resolution. Non-Critical Defects will be corrected as soon as practicable or in a following update or release.

(vi) <u>Billable Call Maintenance.</u> Any maintenance service or related service or training other than Covered Maintenance Services will be charged at Licensor's then current billable call maintenance rates in effect. Such rates apply to time spent performing maintenance, including travel time. The minimum charge for billable call maintenance is one-half of one hour (1/2 hour). Should billable call maintenance services require travel to the Customer's site, Customer will also be invoiced for actual expenses of travel, including, without limitation, as applicable, mileage, air fare, meals, lodging, and similar expenses; provided, however, that, in the event Customer is a governmental agency or authority, travel expenses shall be limited in amount by applicable federal or state statutory requirements. All charges for billable call maintenance shall be due and payable within thirty (30) days following invoice by Licensor.

15. ***Subscription Termination or Expiration.***

a. The term of this Agreement will commence on January 1, 2022 and will continue through and including December 31, 2022. This renewal constitutes the final renewal options available per the original contract.

b. Licensor may terminate Customer's subscription to the Licensor Deliverables if Customer commits any material breach of the terms and conditions of this Agreement, including non-payment of any fees due to Licensor, if Customer does not cure any such default within ten (10) days after notice is given to Customer.

c. In addition to any other rights of termination specified herein, either Party may terminate this Agreement upon sixty (60) days prior written notice to the other in the event of the other's failure to cure a material breach within thirty (30) days after receipt of the terminating Party's written notice of default concerning the same.

d. Notwithstanding any other provisions specified herein, the Customer may terminate this Agreement for its convenience at any time by a written notice to Licensor. If the Agreement is terminated for convenience by the Customer, as provided in this section, Licensor will be paid compensation for those services actually performed. Partially completed tasks will be compensated for based on a signed statement of completion to be submitted by Licensor which shall itemize each task element and briefly state what work has been completed and what work remains to be done. If, after termination, it is determined that the Licensor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the government.

e. Upon termination under this clause or expiration of the Agreement term, Customer shall discontinue all use of the Software and Licensor Deliverables and shall immediately return to Licensor all copies of the Software and Licensor Deliverables and all other materials which contain any Confidential Information of Licensor in Customer's possession or control. Customer shall also permanently delete all copies of all such items residing in Customer's on or offline computer memory. Licensor shall be entitled to enter into any location controlled by Customer to repossess and remove all Software, Licensor Deliverables, documentation and any other Confidential Information of Licensor, and/or to deactivate and remove any Software from Customer's systems. Customer shall, within five (5) days following the effective date of termination or expiration of Customer's subscription, certify in writing to Licensor, by an executive officer of Customer, that all copies of the Software, Licensor Deliverables and all documentation and any other materials required to be returned to Licensor or to be deleted have been returned or deleted as appropriate.

f. *Customer Data Portability and Deletion*. Upon request by Customer made within 30 days after the effective date of termination of a Statement of Work, Licensor will make Customer Data available to Customer. After such 30 - day period, Licensor will have no obligation to maintain or provide any Customer Data and will thereafter delete or destroy all copies of Customer Data in Licensor systems or otherwise in Licensor possession or control, unless legally prohibited.

16.   *Excusable Delays*. Notwithstanding any other term or provision of this Agreement, Licensor shall not be liable for delays in delivery, failure to deliver, or otherwise to perform any obligation hereunder when such delay or failure arises from causes beyond the reasonable control of Licensor, including, without limitation, such causes as acts of God or public enemies, labor disputes, supplier or material shortages, embargoes, rationing, acts of local, state or national governments or public agencies, utility or communication failures, fire, flood, storms, earthquake, settling of walls or foundations, epidemics, riots, terrorism, civil commotion, strikes, or war.

17.   *Limitation of Liability.* IN NO EVENT SHALL LICENSOR'S AGGREGATE LIABILITY UNDER THIS AGREEMENT EXCEED THE SUBSCRIPTION FEES PAID BY CUSTOMER TO Licensor DURING THE TWELVE (12) MONTH PERIOD PRIOR TO THE ACCRUAL OF THE CLAIM.

18.   *Limitation on Damages.* Licensor SHALL NOT BE LIABLE IN ANY EVENT FOR DAMAGES RESULTING FROM LOSS OF DATA, LOSS OF PROFITS, AND/OR LOSS OF USE OF PRODUCT, OR FOR ANY INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION OF LICENSOR'S LIABILITY SHALL APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR TORT, INCLUDING NEGLIGENCE.

19.   *Allocation of Risks.* CUSTOMER UNDERSTANDS AND AGREEMENTS THAT THE FEES CHARGED BY Licensor SPECIFICALLY REFLECT THE ALLOCATION OF RISKS AND EXCLUSION OF DAMAGES PROVIDED FOR IN THIS AGREEMENT.

0. *Miscellaneous Provisions.*

a. *Binding upon Successors and Assigns*. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties hereto.

b. *Severability*. If any provision of this Agreement shall be invalid or unenforceable, such provision shall be deemed limited by construction in scope and effect to the minimum extent necessary to render the same valid and enforceable, and, in the event no such limiting construction is possible, such invalid or unenforceable provision shall be deemed severed from this Agreement without affecting the validity of any other term or provision hereof.

c. *Entire Agreement*. This Agreement, together with the schedules, constitutes the entire understanding and agreement of the Parties with respect to the subject matter of this Agreement, and supersedes all prior and contemporaneous agreements, understandings, inducements, and conditions, express or implied, written or oral, between the Parties with respect thereto. The express terms hereof control and supersede any course of performance or usage of trade inconsistent with any of the terms of this Agreement. This Agreement may be executed electronically and in any number of counterparts, which will constitute one and the same agreement.

d. *Amendment and Waivers*. Any term or provision of this Agreement may be amended, and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively) only by a writing signed by the Party to be bound thereby. The waiver by a Party of any breach or default shall not be deemed to constitute a waiver of any other breach or default. The failure of any Party to enforce any provision shall not be construed as or constitute a waiver of the right of such Party to subsequently enforce such provision.

e. *Notices*. Whenever any Party desires or is required to give any notice, demand, consent, approval, satisfaction, statement, or request with respect to this Agreement, each such communication shall be in writing and shall be effective only if it is delivered by delivery service, over-night delivery service or facsimile (followed by another permitted form of delivery) and addressed to the recipient Party at its notice address provided on the cover page of this Agreement. Such communications, when personally delivered, shall be effective upon receipt. Any Party may change its address for such communications to another address in the United States of America by giving notice of the change to the other Party in accordance with the requirements of this section.

f.   Choice of Law; Construction of Agreement. This Agreement will be construed under the laws of the State of Georgia, exclusive of its conflicts of laws, principles, and has been negotiated by the respective Parties and the language shall not be construed for or against any Party. The titles and headings are for reference purposes only and shall not in any manner limit the construction of this Agreement which shall be considered as a whole.

g.   Further Assurances; Cooperation.   Each Party shall execute such further instruments, documents, and agreements, and shall provide such further written assurances, as may be reasonably requested by the other Party to better evidence and reflect the transactions described in and contemplated by, and to carry into effect the intents and purposes of this Agreement.

h.   Non-Solicitation. For a period ending two (2) years following the date of termination or expiration of this Agreement, Customer shall not solicit the employment or services of, nor employ or otherwise retain, any employee or former employee of Licensor who has been directly or indirectly involved in the development, licensing, installation, or support of any Licensor software product.

i.   Independent Contractor Status. It is the intention of the Parties that their relationship is that of independent contractor and this Agreement shall not create any other relationship, whether partnership, joint venture, agency, or otherwise, between the respective Parties. Neither Party has any authority, whether actual, express, implied, or apparent, to bind or otherwise obligate the other Party in any capacity. Licensor shall be entitled to list Customer in any designation of its customers in advertising or other published materials of Licensor.

j.   No Third-Party Beneficiary Rights. No provision of this Agreement is intended or shall be construed to provide or create any third party beneficiary right or any other right of any kind in any Person other than the Parties and their proper successors and assigns, and all terms and provisions shall be personal solely between the Parties to this Agreement and such proper successors and assigns.

k.   Survival. The provisions of Sections 10, 11, 12 and 15 through 19 shall survive the expiration or termination of this Agreement.

l.   Fees and Costs. In the event of any litigation or arbitration between the Parties in connection with or arising out of this Agreement, or to enforce any right or obligation of either Party under this Agreement, or for a declaratory judgment, or for the construction or interpretation of this Agreement or any right or obligation under or impacted by this Agreement (in each case, a "Proceeding"), the Party which substantially prevails in any such Proceeding shall be entitled to recover from the other Party all of such prevailing Party's fees and costs, including, without limitation, attorneys' fees, court costs, and costs of expert witnesses and of investigation, incurred at or in connection with any level of the Proceeding, including all appeals.

m.   Cooperative Procurement: This agreement may be used as a cooperative procurement vehicle by any jurisdiction that is eligible. Licensor reserves the right to negotiate and customize the terms and conditions set forth herein, including but not limited to pricing, scope and circumstances of that cooperative procurement.

IN WITNESS WHEREOF, the Parties have executed this Agreement by their duly authorized representatives.

ICON SOFTWARE CORP

By: _Marty Hahn_____

Name: __Marty Hahn_____

Title: __President_____

Date: __01/26/2022_____

FULTON COUNTY, GEORGIA

By: _Robb Pitts_____ 01/27/2022
Robert L. Pitts, Chairman
Board of Commissioners

ATTEST:

By: _Tonya Grier_____ 01/28/2022
Tonya Grier
Clerk of the Commission

(Affix County Seal)

APPROVED AS TO FORM:

By: _Francesca Black_____ 01/27/2022
Office of the County Attorney

APPROVED AS TO CONTENT:

By: _David Summerlin_____ 01/26/2022
David Summerlin
Superior Court Administrator

The item was approved by the Fulton County Board of Commissioners:

BOC Agenda Date:1/19/2022   BOC Item #:2022-0050

Nikki Peterson 01/27/2022

Schedule A

Description of Software and Scope of Authorized Use

Authorized Field of Use By Customer: Fulton County Courts, Georgia.

Description of Software:

JURY360 is a browser-based jury management system with built in functionality designed to increase efficiency for court users and decrease reliance on manual paper workflows. The following functionality is included:

JURY360 Features:
- Maintenance and Revision of the Jury database
- Selection of Jury Pools
- Print Summons, Questionnaires, Notices, Letters, and other documents
- Dashboard technology for Jury managers
- Tabbed browsing allows a user to open multiple concurrent tasks.
- Role based security and detailed audit features.
- Process attendance, panels, no shows
- Defer, Transfer, Impanel, or Excuse Jurors
- Schedule events, Alerts and Workflows.
- Bar code and QR code processing of Jurors at check in, moving to and from courtroom and jury assembly room, mail processing, etc.
- Custom reports and queries.
- Courtroom event processing and visual voir dire
- Custom Jury Summons and Questionnaires
- Financial Accounting – receive payments, reconcile accounts, pay bills, print checks, detailed financial statements, audit reports, and pay jurors using various funding options.

eJuror Portal
- Update Juror Information
- Online requests for deferral or excusal
- Self-service jury service letter
- Submit electronic questionnaire
- Check service status
- Text, IVR, and email access and notifications

Hosted JURY:

Using hosted private cloud and hyperscale cloud connectivity, JURY360 is provided in a flexible and advanced VMware infrastructure. JURY360 can be scaled for any size court and customer needs without disruption of services.

Private Cloud features and benefits include:

- High performance flash storage
- Proactive monitoring
- Support of network 24/7/365
- Reduced hardware failure risks
- Eliminate security risks and provide regulatory compliance
- Hyperscale cloud connectivity options with AWS, Google cloud, Azure, and more

Backup Processes:

Application servers utilize load balancing algorithms of Round Robin where clients are distributed in rotation and IP Hash combines the source and destination IP to generate a hash key which can be regenerated if a session is broken and redirect the client to the same server session.

SQL servers are in a high-availability cluster so that your data is always available, and load balanced even during scheduled monthly server updates and patching. Additionally, production SQL servers utilize log shipping which occurs every hour off-site to create restore points and limit data loss.

MyVault – MyVault is an appliance that provides backup services. We have installed a MyVault appliance in the Flexential data center that is cross connected to our cloud. Your data, documents, and images are fully backed up using this appliance and copied off-site using this service. This also provides a near offline copy of all data daily.

Recovery Cloud – Disaster Recovery

Features of disaster recovery include:

- 24/7 support and guided disaster declaration
- Disaster Recovery centers strategically located
- Recovery Point Object is near real-time replication with average RPO of less than 9 seconds since the last checkpoint was written to the journal.
- Recovery Time Objective is less than 4 hours.
- Recovery journals provide point-in-time recovery up to 30 days
- Improves security and recovery capabilities against malicious attacks including ransomware
- Our co-location for disaster recovery failover is in Louisville, KY.

Schedule B
Statement of Work

Licensor will be renewing support and maintenance of the JURY360 Jury Management System as a hosted installation.

Schedule C
Pricing and Payment Schedule
Service Fees

JURY360 Software			
Description	**Units**	**Unit Rate**	**Amount**
JURY360 SaaS - Hosted By Icon	Monthly rate billed annually	$2,500	**$30,000**
Includes: High Availability Hosting and Replication Version Upgrades and enhancements Maintenance and Support Up to 50 GB's storage and database size* *(additional storage: **$100** per 50GB per month)*			

*Customer will be required to purchase additional storage as priced above once current data storage reaches eighty percent (80%) capacity.

Additional Services			
Description	**Units**	**Unit Rate**	**Amount**
IVR			
Interactive Voice Response system for access by summoned jurors	Included	$0	$0
Email			
Email notifications, communication between the court and jurors, and access by summonsed jurors. Receive Emails from jurors directly into Jury360	Included	$0	$0
Text			
Text notifications, communication between the court and jurors, and access by summonsed jurors	Included	$0	$0
Video (additional service feature)			
Video communication between the court and jurors, and access by summonsed jurors and court.	TBD	TBD	TBD
Custom Programming			
• Custom Programming outside of Scope of RFP	Hours TBD	$250	TBD
Summons Printing and Mailing Service			
• Summons printing and mailing services	Per Summons	$0.87	TBD

• Additional summons inserts Color	Per Summons	$0.06	TBD
• Additional summons inserts B & W	Per Summons	$0.05	TBD
Integrations			
• Integrated Payments	*Included*		*Included*
Reports, Forms, Custom Summons or Questionnaires			
• Additional Reports & Forms Development (8 hours each)	Hours TBD	$225	TBD
Total Estimated Services			**TBD**

**Travel Costs	
Meals and Incidental	Local GSA Per Diem Rates
Lodging	Actual Charges
Transportation- Rental Car	Actual Charges (*midsize vehicle*)
Transportation – Air Travel	Actual Charges (*Coach Fare*)
Transportation – mileage	Privately owned vehicle mileage reimbursement per GSA.
Transportation – Taxi, Parking, or other	Actual Charges

Payments	
Description	**Rate per transaction**

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Schedule D

Service Level Agreement

1. DESCRIPTION OF SERVICES

1.1. *Support Services*

1.1.1. During the term of this Agreement, Licensor will provide the services described herein so as to maintain the Software in good working order, keeping it free from material defects so that the Software shall function properly and in accordance with the accepted level of performance as set forth in the Schedule.

1.1.2. Licensor will make available to Customer a telephone number for Customer to call requesting service. The Support Center operates during business hours, 8:00am to 6:00pm EST, Monday through Friday, excluding legal holidays. This service telephone line can also be used to notify Licensor of problems associated with the Software and related documentation.

1.2. *Remedial Support*

Upon receipt by Licensor of notice from Customer through the Licensor Support Center of an error, defect, malfunction or nonconformity in the Software, Licensor shall respond as provided below:

1.2.1. **Critical Defect**:

Response: Licensor will provide a response by a qualified member of its staff to begin to diagnose and to correct a Critical Defect problem as soon as reasonably possible, but in any event a response via telephone will be provided within four (4) business hours and an emergency software fix or an acceptable work-around will be provided within eight (8) business hours. Licensor will continue to provide best efforts to resolve Critical Defects and will provide problem resolution within five (5) business days of the reported issue.

1.2.2. **Non-Critical Defect**:

Response: Licensor will provide a response by a qualified member of its staff to begin to diagnose and to correct a Non-Critical Defect problem as soon as reasonably possible, but in any event a response via telephone will be provided within four (4) business hours and an emergency software fix or an acceptable work-around will be provided within five (5) business days.

1.2.3. **Feature Request**:

Definition: Produces a noticeable situation in which the use is affected in some way which is reasonably correctable by a documentation change or by a future, regular release from Licensor.

Response: Licensor will provide, as agreed by the parties via Change Order, a resolution for Feature Requests in future software releases.

1.3. *Services*

During the term of this Agreement, Licensor will maintain the Software by providing software updates and enhancements to Customer as the same are offered by Licensor to its licensees of the Software ("Updates"). All software updates and enhancements provided to Customer by Licensor pursuant to the terms of this Agreement shall be subject to the terms and conditions of the Agreement between the parties. Updates will be provided on an as-available basis and include the items listed below:

1.3.1. Bug fixes;

1.3.2. Enhancements to market data service software provided by Licensor to keep current with changes in market data services or as Licensor makes enhancements;

1.3.3. Enhancements to keep current with the current hardware vendor's OS releases, as available from Licensor, provided that the current hardware vendor's OS release is both binary and source-compatible with the OS release currently supported by Licensor; and

1.3.4. Performance enhancements to Software.

1.3.5. Updates do not include:

    a. Platform extensions including product extensions to (i) different hardware platforms; (ii) different windowing system platforms; (iii) different operating system platforms; and

    b. New functions such as (i) new functionality in the market data delivery infrastructure; (ii) new market data feeds; (iii) new applications; and (iv) new presentation tools.

Updates will be provided in machine-readable format and updates to related documentation will be provided in soft copy form. All such deliveries shall be made available to Customer at a specific Licensor FTP location. Duplication, distribution and installation of Updates are the responsibility of Customer. If requested prior to 5:00pm on the current business day, Licensor will provide assistance for the installation of Updates on the next business day.

Licensor will provide support services for previous releases for a minimum period of six (6) months following the general availability of a new release or software update. After this time, Licensor shall have no further responsibility for supporting and maintaining the prior releases.

Licensor assumes no responsibility for the correctness of, performance of, or any resulting incompatibilities with, current or future releases of the Software if Customer has made changes to the system hardware/software configuration or modifications to any supplied source code which changes effect the performance of the Software and were made without prior notification and written approval by Licensor. Licensor assumes no responsibility for the operation or performance of any Customer-written or third-party application.

1.4. *Services Not Included*

Services do not include any of the following: (i) custom programming services; (ii) support of any software that is not Software; (iii) training; (iv) out-of-pocket and reasonable expenses, including hardware and related supplies.

2. SERVICE LEVEL AGREEMENT MANAGERS

2.1. Licensor and Customer will each appoint an appropriate person for ongoing development and management of the Agreement. SLA Manager responsibilities are as follows:

2.1.1. Serve as the point of contact for problems or concerns related to the SLA itself and the delivery of services described in the SLA.

2.1.2. Maintain ongoing contact with the other party's SLA Manager.

2.1.3. Serving as the primary point of contact in the escalation process.

2.1.4. Coordinating and implementing modifications to service delivery and to the SLA Schedule.

2.1.5. Periodically assessing the effectiveness of mechanisms selected for service tracking and reporting.

2.1.6. Planning and coordinating service reviews.

2.1.7. Facilitating and participating in conflict resolution processes regarding service effectiveness

2.1.8. Assessing and reporting on how the Licensor and Customer can further strengthen their working relationship.

3. LOCATIONS

3.1. *Customer Provided Network Location(s)*

Address: 185 Central Avenue, S.W.

Suite T-7000

Atlanta, Georgia 30303

Licensor Location

Primary hosting facility: Flexential – Atlanta, Georgia (Norcross)

Backup hosting facility: Flexential – Louisville, Kentucky (East)

Designated site, username, and password are provided separately for security.

4. RESPONSIBILITIES

4.1. *Customer Responsibilities*

4.1.1. Properly stage all Equipment in the Production and Testing environments at the Customer Provided Network Location(s) specified in Schedule D §3.1.

4.1.2. Arrange for all labor, tools, and test equipment necessary to completely install and test the Equipment at the Customer Provided Network Location(s) specified in Schedule D §3.1.

4.1.3. Provide Licensor with a Customer contact list including names, cell and office phone numbers and pager numbers if available of key contacts for the routine service and emergency repair of the Equipment at the Customer Provided Network Location(s) specified in Schedule D §3.1.

4.1.4. Make necessary arrangements to work cooperatively with Licensor in the isolation of troubles at the Customer Provided Network Location(s) specified in Schedule D §3.1.

4.1.5. Bear all costs associated with third party vendor efforts in disaster recovery of the Equipment and Covered Software at the Customer Provided Network Location(s) specified in Schedule D §3.1.

4.1.6. Provide Licensor with any necessary agency authorization, such as access badges, as may be required for Licensor to fulfill its obligations under this Service Level Agreement Schedule.

4.1.7. Report all troubles with the Software as outlined in Schedule D §1.

4.1.8. Request assistance from the Licensor with "First Level Services".

4.1.9. Customer will be responsible for all hardware, including but not limited to, workstations, servers, IVR equipment, printers, and scanners. Customer will run any Licensor supplied MSI to install any necessary files on a workstation or server that are required to use the Software.

4.2. *Licensor Responsibilities*

4.2.1. Licensor will provide a central telephone number and email address to be used by Customer to report all troubles, schedule visits, request service, and to request Licensor Technical Support as outlined in §1 and §2 of this Schedule.

4.2.2. Licensor will provide Customer with an MSI when necessary that will allow Customer the ability to install any necessary files on a workstation that are required to use the Software.

4.2.3. Licensor will provide Customer with updates and patches for any defect or enhancement made to the Covered Software even if the defect or enhancement was not reported by Customer.

4.2.4. Licensor will perform "First Level Services" on the {County} Test Environment and the {County} Production Environment for Covered Software for the Customer or the Customer's designated vendor at the Customer Provided Network Location(s) specified in Schedule D §3.1.

4.2.5. Licensor performed "First Level Services" on the Covered Software is defined as follows:

4.2.5.1. Execute approved SQL Scripts for updates and patches.

4.2.5.2. Install updates and patches to Software.

4.2.5.3. Modify IVR scripts if affected by updates and patches.

4.2.5.4. Support and diagnostic services as outlined in Schedule D §1. (Description of Services).

4.2.5.5. Report any Customer-side defects causing Software performance issues.