

AGREEMENT

THIS AGREEMENT ("Agreement") is made and entered into this 9th day of July, 2019 ("Effective Date"), by and between the COUNTY OF FRESNO, a political subdivision of the State of California, ("COUNTY"), and BlueDAG, LLC., a California limited liability company, whose corporate address is at 2999 Gold Canal Drive, Rancho Cordova, CA 95670, ("CONTRACTOR").

RECITALS

WHEREAS, COUNTY desires to purchase software as a service licenses, training, and software maintenance of BlueDAG Title II software from CONTRACTOR;

WHEREAS, CONTRACTOR represents to COUNTY that the software as a service licenses, training, and software maintenance of BlueDAG Title II software provided by CONTRACTOR, along with professional services from CONTRACTOR, would meet the stated needs of the COUNTY; and

WHEREAS, COUNTY and CONTRACTOR desire to execute this Agreement for the purchase of the right to use the software license, and maintenance and support of the BlueDAG Title II software.

NOW, THEREFORE, for and in consideration of the promises herein, and for other good and valuable consideration, the parties agree as follows:

WITNESSETH

1) OBLIGATIONS OF THE CONTRACTOR

A) SOFTWARE AS A SERVICE

CONTRACTOR grants to COUNTY, and COUNTY accepts a non-exclusive, non-transferable, annual license to use BlueDAG Title II software (System Software) that is subject to the terms and conditions set forth in the attached SAAS Subscription Agreement attached as Exhibit 3, including Sub-

Exhibits A and B, and incorporated by this reference. Change orders to the license or services defined in Exhibit 3 may be approved by the Director of Internal Services/Chief Information Officer or his/her designee.

1) DOCUMENTATION

CONTRACTOR shall provide to COUNTY BlueDAG System Documentation, which shall consist of electronic media files. The electronic media files must be printable using PC software normally available at COUNTY. CONTRACTOR shall provide new System Documentation corresponding to all new Software Upgrades. COUNTY may print additional copies of all documentation. All System Documentation is to be used by COUNTY only for the purposes identified within this Agreement.

2) OBLIGATIONS OF THE COUNTY

A) COUNTY CONTRACT ADMINISTRATOR

COUNTY appoints its Chief Information Officer (CIO), or his designee, as COUNTY's Contract Administrator with full authority to deal with CONTRACTOR in all matters concerning this Agreement.

B) SAFEGUARDING SYSTEM SOFTWARE

COUNTY will follow its present practices to safeguard System Software delivered to COUNTY by CONTRACTOR. A copy of COUNTY'S "Information Technology (IT) Standards and Preferences" will be made available upon request.

C) ACCEPTANCE TESTING

COUNTY shall approve Final System Acceptance when the BlueDAG system has been successfully tested, and satisfactorily performs all functions necessary pursuant to this Agreement, and all deliverables identified in this Agreement as required for acceptance have been received by COUNTY.

D) ACCEPTANCE TESTING PROCESS

Following delivery and installation, CONTRACTOR shall test the BlueDAG system, along with COUNTY staff.

1 E) COUNTY PROJECT MANAGER

2 Upon execution of this Agreement, COUNTY's Contract Administrator shall designate
3 one individual from ISD who will function as Project Manager with responsibility for day-to-
4 day management of the project for implementation of BlueDAG. The Project Manager and
5 COUNTY personnel shall have the necessary and appropriate training and experience to
6 implement the terms of this Agreement. COUNTY acknowledges CONTRACTOR'S
7 reliance on same.

8 F) OTHER COUNTY OBLIGATIONS

9 Technical assistance from COUNTY's ISD staff will be provided during the
10 performance of the installation of the System Software. In particular, COUNTY will
11 provide:

- 12 a. Network connectivity and troubleshooting assistance.
- 13 b. Ability to monitor network traffic and isolate bottlenecks.
- 14 c. Technical assistance concerning the integration with existing COUNTY
15 systems (if applicable).
- 16 d. Expertise to handle issues with PCs, printers, and cabling before, during,
17 and after rollout.

18
19 **3) TERM**

20 This Agreement shall become effective on the Effective Date, for a term of three (3) years,
21 with the option for two (2) one (1) year extensions, upon written authorization from the County's
22 Director of Internal Services or his/her designee, and payment of Annual SAAS Subscription
23 Fees.

24
25 **4) TERMINATION**

26 A) NON-ALLOCATION OF FUNDS

27 The terms of this Agreement, and the services to be provided thereunder, are
28 contingent on the approval of funds by the appropriating government agency. Should

1 sufficient funds not be allocated, the services provided may be modified, or this
2 Agreement terminated, at any time without penalty, by giving the CONTRACTOR thirty
3 (30) days advance written notice.

4 B) BREACH OF CONTRACT

5 Each party may, upon thirty (30) days prior written notice to the other party, terminate
6 this Agreement if the other party fails to comply with any material term or condition of this
7 Agreement unless that other party cures such failure within such thirty (30) day period, or
8 other such timeframe as may be mutually agreed upon in writing by the parties.

9 C) Without Cause

10 Under circumstances other than those set forth above, this Agreement may be
11 terminated by either party by giving sixty (60) days advance written notice of an intention
12 to terminate to the other party.

13 **5) COMPENSATION/INVOICING**

14 COUNTY agrees to pay CONTRACTOR, and CONTRACTOR agrees to receive compensation
15 as described in the SAAS Subscription Agreement and the Master Development Agreement.

16 A) TOTAL CONTRACT AMOUNT

17 In no event shall services performed under this Agreement exceed \$226,000.00 during
18 the initial three-year term of this Agreement. Upon execution of the first one-year
19 extension, this limit shall be increased to \$298,000.00. Upon the execution of the second
20 one-year extension, this limit shall be increased to **\$370,000.00** during the entire possible
21 five (5) year term of this Agreement. It is understood that all expenses incidental to
22 CONTRACTOR'S performance of services under this Agreement shall be borne by
23 CONTRACTOR.

24 B) INVOICING

25 CONTRACTOR shall submit invoices (which must reference the provided contract
26 number), either electronically or via mail (and must reference the provided contract
27 number on the invoice) to the County of Fresno ISD, Accounts Payable, 333 W. Pontiac
28 Way, Clovis, CA 93612 or Accounts Payable (ISDBusinessOffice@Co.Fresno.Ca.US).

COUNTY will pay CONTRACTOR within forty-five (45) days of receipt of an approved invoice, by mail addressed to CONTRACTOR's remittance address at 2999 Gold Canal Drive. Rancho Cordova, CA 95670.

6) INDEPENDENT CONTRACTOR

In performance of the work, duties and obligations assumed by CONTRACTOR under this Agreement, it is mutually understood and agreed that CONTRACTOR, including any and all of the CONTRACTOR'S officers, agents, and employees will at all times be acting and performing as an independent contractor, and shall act in an independent capacity and not as an officer, agent, servant, employee, joint venture, partner, or associate of the COUNTY. Furthermore, COUNTY shall have no right to control or supervise or direct the manner or method by which CONTRACTOR shall perform its work and function. However, COUNTY shall retain the right to administer this Agreement so as to verify that CONTRACTOR is performing its obligations in accordance with the terms and conditions thereof.

CONTRACTOR and COUNTY shall comply with all applicable provisions of law and the rules and regulations, if any, of governmental authorities having jurisdiction over matters the subject thereof.

Because of its status as an independent contractor, CONTRACTOR shall have absolutely no right to employment rights and benefits available to COUNTY employees. CONTRACTOR shall be solely liable and responsible for providing to, or on behalf of, its employees all legally-required employee benefits. In addition, CONTRACTOR shall be solely responsible and save COUNTY harmless from all matters relating to payment of CONTRACTOR'S employees, including compliance with Social Security withholding and all other regulations governing such matters. It is acknowledged that during the term of this Agreement, CONTRACTOR may be providing services to others unrelated to the COUNTY or to this Agreement.

7) CONFIDENTIALITY

1 A Party receiving Information (defined below) of the other will not disclose such
2 Information other than to persons in its organization who have a need to know and who will be
3 required to comply with this Section. The Party receiving Information will not use such
4 Information for a purpose inconsistent with the terms of this Agreement. "Information" means
5 the Software, Documentation and all information and intellectual property related thereto
6 (including, but not limited to all databases provided to COUNTY by CONTRACTOR whether
7 created by CONTRACTOR or its third party licensors such as, without limitation, the mapping
8 product databases) as well as information related to the business of CONTRACTOR or
9 COUNTY. Information will not include: (i) information publicly known prior to disclosure; (ii)
10 information coming into the lawful possession of the recipient without any confidentiality
11 obligation; and (iii) information required to be disclosed pursuant to regulatory action or court
12 order, provided adequate prior written notice of any request to disclose is given to the Party
13 whose information is to be disclosed. Each Party will exercise at least the same degree of care
14 to safeguard the confidentiality of the other's Information as it does to safeguard its own
15 proprietary confidential information, but not less than a reasonable degree of care.

16 17 **8) MODIFICATION**

18 Any matters of this Agreement may be modified from time to time by the written consent
19 of all the parties without, in any way, affecting the remainder.

20 21 **9) NON-ASSIGNMENT**

22 Neither party shall assign, transfer or sub-contract this Agreement nor their rights or
23 duties under this Agreement without the prior written consent of the other party.
24 Notwithstanding the foregoing, CONTRACTOR may assign this Agreement to any of its corporate
25 affiliates or pursuant to a merger, consolidation, reorganization, change-in-control or sale of all or
26 substantially all of the assets or business to which this Agreement relates. In the event of such an
27 assignment, CONTRACTOR shall promptly notify COUNTY, and execute an assignment with the
28 COUNTY. Any attempted or purported assignment in violation of this provision is null and void.

1
2 **10)HOLD HARMLESS**

3 CONTRACTOR agrees to indemnify, save, hold harmless, and at COUNTY'S request,
4 defend the COUNTY, its officers, agents, and employees from any and all costs and expenses
5 (including attorney's fees and costs), damages, liabilities, claims, and losses occurring or
6 resulting to COUNTY in connection with the performance, or failure to perform, by
7 CONTRACTOR, its officers, agents, or employees under this Agreement, and from any and all
8 costs and expenses including attorney's fees and court costs, damages, liabilities, claims, and
9 losses occurring or resulting to any person, firm, or corporation who may be injured or damaged
10 by the negligence, willful nonperformance, or misconduct of CONTRACTOR, its officers, agents,
11 or employees under this Agreement.

12
13 **11)INSURANCE**

14 Without limiting the COUNTY's right to obtain indemnification from CONTRACTOR or any
15 third parties, CONTRACTOR, at its sole expense, shall maintain in full force and effect, the
16 following insurance policies throughout the term of the Agreement:

17 A) COMMERCIAL GENERAL LIABILITY

18 Commercial General Liability Insurance with limits of not less than Two Million Dollars
19 (\$2,000,000.00) per occurrence and an annual aggregate of Four Million Dollars
20 (\$4,000,000.00). This policy shall be issued on a per occurrence basis. COUNTY may
21 require specific coverages including completed operations, products liability, contractual
22 liability, Explosion-Collapse-Underground, fire legal liability or any other liability insurance
23 deemed necessary because of the nature of this contract.

24 B) AUTOMOBILE LIABILITY

25 Comprehensive Automobile Liability Insurance with limits of not less than One Million
26 Dollars (\$1,000,000.00) per accident for bodily injury and for property damages. Coverage
27 should include any auto used in connection with this Agreement.

28 C) PROFESSIONAL LIABILITY

1 If CONTRACTOR employs licensed professional staff, (e.g., Ph.D., R.N., L.C.S.W.,
2 M.F.C.C.) in providing services, Professional Liability Insurance with limits of not less than
3 One Million Dollars (\$1,000,000.00) per occurrence, Three Million Dollars (\$3,000,000.00)
4 annual aggregate.

5 D) WORKER'S COMPENSATION

6 A policy of Worker's Compensation insurance as may be required by the California
7 Labor Code.

8 CONTRACTOR hereby waives its right to recover from COUNTY, its officers, agents,
9 and employees any amounts paid by the policy of worker's compensation insurance
10 required by this Agreement. CONTRACTOR is solely responsible to obtain any
11 endorsement to such policy that may be necessary to accomplish such waiver of
12 subrogation, but CONTRACTOR's waiver of subrogation under this paragraph is effective
13 whether or not CONTRACTOR obtains such an endorsement.

14 CONTRACTOR shall obtain endorsements to the Commercial General Liability
15 insurance naming the County of Fresno, its officers, agents, and employees, individually
16 and collectively, as additional insured, but only insofar as the operations under this
17 Agreement are concerned. Such coverage for additional insured shall apply as primary
18 insurance and any other insurance, or self-insurance, maintained by COUNTY, its officers,
19 agents and employees shall be excess only and not contributing with insurance provided
20 under CONTRACTOR's policies herein. This insurance shall not be cancelled or changed
21 without a minimum of thirty (30) days advance written notice given to COUNTY.

22 E. TECHNOLOGY PROFESSIONAL LIABILITY (ERRORS AND OMISSIONS)

23 Technology professional liability (errors and omissions) insurance with limits of not less
24 than Two Million Dollars (\$2,000,000.00) per occurrence. Coverage shall encompass all of
25 the CONTRACTOR's duties and obligations that are the subject of this Agreement.
26 Coverage shall include, but not be limited to, any and all claims, damages, costs, fees,
27 regulatory fines and penalties, or forms of legal action involving Cyber Risks.

28 F. CYBER LIABILITY

1 Cyber liability insurance with limits of not less than Two Million Dollars (\$2,000,000.00)
2 per occurrence. Coverage shall include, but not be limited to, any and all claims,
3 damages, costs, fees, regulatory fines and penalties, or forms of legal action involving
4 Cyber Risks. The cyber liability policy shall be endorsed to cover the full replacement
5 value of, damage to, alteration of, loss of, theft of, ransom of, or destruction of intangible
6 property (including but not limited to information or data) that is in the care, custody, or
7 control of CONTRACTOR.

8 For purposes of the technology professional liability insurance and the cyber liability
9 insurance required under this Agreement, Cyber Risks include, but are not limited to, (i)
10 security breaches, which include disclosure of, whether intentional or unintentional,
11 information provided by COUNTY, information provided by or obtained from any inmate, or
12 personal-identifying information relating to any inmate, to an unauthorized third party; (ii)
13 breach of any of CONTRACTOR's obligations under this Agreement relating to data
14 security, protection, preservation, usage, storage, transmission, and the like; (iii)
15 infringement of intellectual property including, but not limited to, infringement of copyright,
16 trademark, and trade dress; (iv) invasion of privacy, including any release of private
17 information; (v) information theft by any person or entity, whatsoever; (vi) damage to or
18 destruction or alteration of electronic information; (vii) extortion related to
19 CONTRACTOR's obligations under this Agreement regarding electronic information,
20 including information provided by COUNTY, information provided by or obtained from any
21 inmate, or personal-identifying information relating to any inmate; (viii) network security;
22 (ix) data breach response costs, including security breach response costs; (x) regulatory
23 fines and penalties related to CONTRACTOR's obligations under this Agreement
24 regarding electronic information, including information provided by COUNTY, information
25 provided by or obtained from an inmate, or personal-identifying information relating to any
26 inmate; and (xi) credit monitoring expenses.

27 Within Thirty (30) days from the date CONTRACTOR executes this Agreement,
28 CONTRACTOR shall provide certificates of insurance and endorsement as stated above

1 for all of the foregoing policies, as required herein, to the County of Fresno, Chief
2 Information Officer, 333 W. Pontiac Way, Clovis, CA 93612, stating that such insurance
3 coverages have been obtained and are in full force; that the County of Fresno, its officers,
4 agents and employees will not be responsible for any premiums on the policies; that for
5 such worker's compensation insurance the CONTRACTOR has waived its right to recover
6 from the COUNTY, its officers, agents, and employees any amounts paid under the
7 insurance policy and that waiver does not invalidate the insurance policy; that such
8 Commercial General Liability insurance names the County of Fresno, its officers, agents
9 and employees, individually and collectively, as additional insured, but only insofar as the
10 operations under this Agreement are concerned; that such coverage for additional insured
11 shall apply as primary insurance and any other insurance, or self-insurance, maintained
12 by COUNTY, its officers, agents and employees, shall be excess only and not contributing
13 with insurance provided under CONTRACTOR's policies herein; and that this insurance
14 shall not be cancelled or changed without a minimum of thirty (30) days advance, written
15 notice given to COUNTY.

16 In the event CONTRACTOR fails to keep in effect at all times insurance coverage as
17 herein provided, the COUNTY may, in addition to other remedies it may have, suspend or
18 terminate this Agreement upon the occurrence of such event.

19 All policies shall be with admitted insurers licensed to do business in the State of
20 California. Insurance purchased shall be purchased from companies possessing a current
21 A.M. Best, Inc. rating of A FSC VII or better.

22 23 **12)AUDITS AND INSPECTIONS**

24 CONTRACTOR shall at any time during CONTRACTOR'S normal business hours,
25 upon prior written notice, and only as necessary to confirm CONTRACTOR'S compliance with
26 the terms of this Agreement, make available to the COUNTY for examination the records and
27 data specifically and solely covered by this Agreement. CONTRACTOR shall, upon request by
28 the COUNTY, permit the COUNTY to audit and inspect such records and data necessary to

1 ensure CONTRACTOR'S compliance with the terms of this Agreement. Any such examinations
2 or audits shall be at the COUNTY'S expense.

3 If this Agreement exceeds ten thousand dollars (\$10,000.00), CONTRACTOR shall
4 be subject to the examination and audit of the California State Auditor for a period of three (3)
5 years after final payment under contract (Government Code Section 8546.7).
6

7 **13)NOTICES**

8 A) AUTHORITY TO GIVE AND RECEIVE NOTICES

9 The following persons (with addresses noted below) have authority to give and receive
10 notices under this Agreement:

11 COUNTY OF FRESNO

CONTRACTOR

12
13 Chief Information Officer

Chris James

Manager

14 333 W. Pontiac Way

2999 Gold Canal Drive

15 Clovis, CA 93612

Rancho Cordova, CA 95670

16 ISDBusinessOffice@FresnoCountyCA.gov
17

18 All notices between the COUNTY and the CONTRACTOR provided for or permitted
19 under this Agreement must be in writing and delivered either by personal service, by first-class
20 United States mail, by an overnight commercial courier service, or by email transmission. A notice
21 delivered by personal service is effective upon service to the recipient. A notice delivered by first-
22 class United States mail is effective three COUNTY business days after deposit in the United
23 States mail, postage prepaid, addressed to the recipient. A notice delivered by an overnight
24 commercial courier service is effective one COUNTY business day after deposit with the overnight
25 commercial courier service, delivery fees prepaid, with delivery instructions given for next day
26 delivery, addressed to the recipient. A notice delivered by email transmission is effective when
27 transmission to the recipient is completed (but, if such transmission is completed outside of
28 COUNTY business hours, then such delivery shall be deemed to be effective at the next

beginning of a COUNTY business day). For all claims arising out of or related to this Agreement, nothing in this section establishes, waives, or modifies any claims presentation requirements or procedures provided by law, including but not limited to the Government Claims Act (Division 3.6 of Title 1 of the Government Code, beginning with section 810).

B) PRIMARY ESCALATION CONTACT INFORMATION

The persons and their contact information that COUNTY or CONTRACTOR can use to escalate problems or situations are listed in Exhibit 2, which is attached and incorporated by this reference, and may be updated on an as-needed basis by either Party by notifying the other Party.

14) GOVERNING LAW

Venue for any action arising out of or related to this Agreement shall only be in Fresno County, California.

The rights and obligations of the parties and all interpretation and performance of this Agreement shall be governed in all respects by the laws of the State of California.

15) DISCLOSURE OF SELF-DEALING TRANSACTIONS

This provision is only applicable if the CONTRACTOR is operating as a corporation (a for-profit or non-profit corporation) or if during the term of this agreement, the CONTRACTOR changes its status to operate as a corporation.

Members of the CONTRACTOR's Board of Directors shall disclose any self-dealing transactions that they are a party to while CONTRACTOR is providing goods or performing services under this agreement. A self-dealing transaction shall mean a transaction to which the CONTRACTOR is a party and in which one or more of its directors has a material financial interest. Members of the Board of Directors shall disclose any self-dealing transactions that they are a party to by completing and signing a *Self-Dealing Transaction Disclosure Form* (Exhibit 1) and submitting it to the COUNTY prior to commencing with the self-dealing

transaction or immediately thereafter.

16)Counterparts; Electronic Transmission.


This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument. A signature delivered by facsimile, scan, photograph or other electronic transmission shall be as binding as delivery of an original signature hereto, provided, that the delivering party shall, if requested by any party for any reason, promptly deliver the original signature so transmitted or a separate, original signature, the delivery of which shall not in any way limit the effectiveness of the signature previously electronically delivered.

17)ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the CONTRACTOR and COUNTY with respect to the subject matter hereof and supersedes all previous Agreements negotiations, proposals, commitments, writings, advertisements, publications, and understandings of any nature whatsoever unless expressly included in this Agreement. In the event of any inconsistency in interpreting the documents comprising this Agreement, the inconsistency shall be resolved by giving precedence in the following order of priority (1) the text of this Agreement; (2) and the text of the SAAS Agreement, attached hereto as Exhibit 3, and including Sub-Exhibits A (Description of SAAS Services) and B (Service Level Agreement).

1 IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first
2 hereinabove written.

3
4 **CONTRACTOR**

5 
6 (Authorized Signature)

7 Chris James, Manager

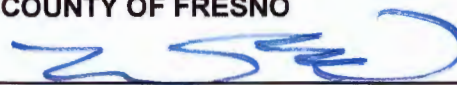
8 Print Name & Title

9 2999 Gold Canal Dr.

10 Rancho Cordova, CA 95670

11 Mailing Address

COUNTY OF FRESNO


Nathan Magsig, Chairman of the Board of
Supervisors of the County of Fresno

ATTEST:

Bernice E. Seidel
Clerk of the Board of Supervisors
County of Fresno, State of California

12
13
14
15 By:


Deputy

16 FOR ACCOUNTING USE ONLY:

17 ORG: 89050000

18 Account: 7309
19
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1 **Exhibit 1**

2 **SELF-DEALING TRANSACTION DISCLOSURE FORM**

3
4 In order to conduct business with the County of Fresno (hereinafter referred to as "County"),
5 members of a contractor's board of directors (hereinafter referred to as "County Contractor"),
6 must disclose any self-dealing transactions that they are a party to while providing goods,
7 performing services, or both for the County. A self-dealing transaction is defined below:

8 *"A self-dealing transaction means a transaction to which the corporation is a party and in*
9 *which one or more of its directors has a material financial interest"*

10 The definition above will be utilized for purposes of completing this disclosure form.

11 **INSTRUCTIONS**

12 (1) Enter board member's name, job title (if applicable), and date this disclosure is being
13 made.

14 (2) Enter the board member's company/agency name and address.

15 (3) Describe in detail the nature of the self-dealing transaction that is being disclosed to
16 the County. At a minimum, include a description of the following:

17 a. The name of the agency/company with which the corporation has the
18 transaction; and

19 b. The nature of the material financial interest in the Corporation's transaction that
20 the board member has.

21 (4) Describe in detail why the self-dealing transaction is appropriate based on applicable
22 provisions of the Corporations Code.

23 (5) Form must be signed by the board member that is involved in the self-dealing
24 transaction described in Sections (3) and (4).
25
26
27
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(1) Company Board Member Information:			
Name:		Date:	
Job Title:			
(2) Company/Agency Name and Address:			
(3) Disclosure (Please describe the nature of the self-dealing transaction you are a party to):			
(4) Explain why this self-dealing transaction is consistent with the requirements of Corporations Code 5233 (a):			
(5) Authorized Signature			
Signature:		Date:	

Exhibit 2

COUNTY

Contact # 1:

Americo Papaleo

Information Technology Manager

Office Phone: (559) 600-5800

Email: apapaleo@FresnoCountyCA.gov

CONTRACTOR

Contact # 1:

Name: Chris James

Title: Manager

Office Phone: 916-526-0721

Email: chris@bluedag.com

COUNTY

Contact # 2:

Sheri Walden

Information Technology Division Manager

Office Phone: (559) 600-5800

Email: swalden@FresnoCountyCA.gov

1 **Exhibit 3**

2 **BLUEDAG, LLC**

3 **Software As A Service (SAAS) Agreement**

4

5 **1. Services**

6 BlueDAG agrees to provide the SAAS Services, and COUNTY (also sometimes referred to as “you”
7 herein) agrees to pay for the SAAS Services, and comply with the terms and conditions set forth in this
8 Agreement.

9 **2. Users and Use**

10 The SAAS Services may be accessed and used only by the number of Users specified in the
11 Summary of Material Terms in exchange for payment of the fee corresponding to such Users. During the
12 Term of Service hereof, BlueDAG shall provide to COUNTY access to the SAAS Services if, and only to the
13 extent that, any license therefor is necessary, a limited revocable, non-transferable, non-assignable license
14 for authorized Users to use the SAAS Services during the Term of Service hereof, subject to the provisions
15 of this Agreement.

16 **3. COUNTY Representations and Obligations**

17 A. **Authority and Use.** You represent and warrant that (i) you have full power and
18 authority to enter into this Agreement, and to agree to all the terms and conditions
19 contained herein; (ii) only you and your Users shall be permitted to access the SAAS
20 Services and any related tools, applications, information and materials provided in
21 connection with the SAAS Services; (iii) you shall obtain and maintain in effect all
22 permits, licenses and authorizations necessary for the purchase and intended use of the
23 Products and the SAAS, and (iv) with respect to information and material you load into
24 the SAAS Services or provide to BlueDAG, you possess sufficient intellectual property
25 and proprietary rights to load and use such information and material in the SAAS
26 Services without violation of the rights of any third party.
27
28

1 B. **Viruses and Malicious Code**. You will neither insert nor permit the insertion or
2 introduction of any Malicious Code (defined below) into the SAAS Services or systems
3 and software (collectively "System") used to deliver the SAAS Services. In addition, you
4 will take all commercially reasonable actions and precautions to prevent the introduction
5 and proliferation of Malicious Code into the System. BlueDAG may immediately suspend
6 your access to the System and SAAS Services if BlueDAG detects Malicious Code or
7 reasonably suspects that Malicious Code was introduced or permitted to be introduced by
8 or through you or your account. For purposes of this provision, "Malicious Code" means
9 (i) any code, program, or sub-program the knowing or intended purpose or effect of which
10 is to damage or maliciously interfere with the operation of software or any system such as
11 the System or to halt, disable, or interfere with the operation of any software or system
12 such as the System, or (ii) any device, method, or token that permits any person to
13 circumvent without authorization the normal security of any software or system such as
14 the System.

15 C. **Service Level Agreement**. You acknowledge and accept the terms of the SLA
16 attached hereto as Sub-Exhibit B.

17 D. **Cooperation**. You will reasonably cooperate with any BlueDAG investigation of
18 SAAS Service outages, security problems, and any suspected breach of the Agreement.

19 E. **Consents**. You represent and warrant that you have sufficient right to transmit,
20 store, copy, and use all data, including personal information if applicable, provided by you
21 ("Your Materials") and used by you with the SAAS Services. You, and not BlueDAG, are
22 responsible for all of Your Materials and you hereby grant BlueDAG authorization to view,
23 store, copy, and delete any information sent to, from, or stored on the SAAS Services or
24 a BlueDAG as part of BlueDAG's provision of the SAAS Services.

25 F. **Minimum Standards**. You will provide and maintain all hardware, software and
26 network connectivity ("Environment") needed to access the Internet and the SAAS
27 Services that meets the minimum standards established by BlueDAG as they may be
28

revised by BlueDAG from time to time and communicated to you and/or provided on the BlueDAG website at www.BlueDAG.com.

4. **Support and Professional Services**

Basic support, as described in Sub-Exhibit B, is included with the subscription at no additional cost. Additional professional services from BlueDAG are available at an additional cost. Any such professional services, such as deployment, integration, and technical support in excess of that described in Sub-Exhibit 3(a), attached hereto and incorporated by reference herein, will be provided at additional cost pursuant to a separate Services Agreement between you and BlueDAG.

5. **Upgrades; Modifications of Terms**

BlueDAG shall have sole discretion as to whether to make updates, improvements, modifications or enhancements or add new features to the SAAS Services, and reserves the right to do so at any time, provided that you will be provided at least ten (10) days' advance notice for changes that materially and adversely affect any use by you of the SAAS Services. Any such updates, improvements, modifications, enhancements or new features are subject to this Agreement. All rights not expressly granted to you and your Users pursuant to this Agreement are reserved to BlueDAG.

6. **Limited Use, Unique Users**

You and your Users may access and use the SAAS Services solely to support and operate BlueDAG's platform as described in Exhibit 3(a). BlueDAG reserves the right, in its sole discretion, to limit your and/or your Users' use of the SAAS Services in the event that BlueDAG determines that your and/or your Users' use thereof to be inconsistent with such purposes, and/or otherwise inconsistent with this Agreement. Only the identified User may use the log-in credentials (name, password, etc.) assigned to them. Each impermissible use of the SAAS Services by any person that is not the User to whom such login credentials are assigned will result in payment for a User license for such person for the term of this Agreement to be immediately due and payable respect to prior payment periods and due as regularly scheduled for other Users for current and future payment periods. Any User added pursuant to this Section 6 may not be removed and shall increase the minimum number of Users required pursuant to this Agreement.

1 7. **Prohibited Uses**

2 All uses of the SAAS Service not expressly permitted hereunder are prohibited. Without limiting the
3 generality of the foregoing, you agree, for yourself and all your Users, as a condition of use of the SAAS
4 Services, not to use the SAAS Services for any purpose or in any manner that is unlawful or prohibited by
5 this Agreement or that BlueDAG informs you could damage, disable, overburden, or impair any BlueDAG
6 or COUNTY server, or the network(s) connected to any BlueDAG or COUNTY server, or interfere with any
7 other party's use and enjoyment of any of the SAAS Services. You and your Users may not attempt to gain
8 unauthorized access to any part of the SAAS Services, other accounts, computer systems or networks
9 connected to any BlueDAG or COUNTY server or to any part of the SAAS Services, through hacking,
10 password mining or any other means. You and your Users may not obtain or attempt to obtain any
11 materials or information through any means not intentionally made available through the SAAS Services.
12 You and your Users may not (i) copy, reproduce, alter, modify, transmit, perform, create derivative works of,
13 publish, sub-license, distribute, or circulate the SAAS Services, or any associated applications, tools or data
14 thereof; (ii) disassemble, decompile, or reverse engineer the software used to provide the SAAS Services,
15 or use a robot, spider, or any similar device to copy or catalog any materials or information made available
16 through the SAAS Services; or (iii) take any actions, whether intentional or unintentional, that may
17 circumvent, disable, damage or impair the SAAS Services' control or security systems, or allow or assist a
18 third party to do so.

19 8. **Suspension of Service**

20 BlueDAG may at any time suspend (or require that you suspend) the access of Users to the SAAS
21 Services in the event of violation of this Agreement. Grounds for suspension are not limited but may
22 include, for example, legal or regulatory reasons, investigation of suspicious activities, or action by
23 authorities, or if BlueDAG or you have reason to suspect any such User is engaged in activities that may
24 violate this Agreement, applicable laws, or COUNTY policies, or are otherwise deemed harmful to
25 BlueDAG, your organization, your and our respective network or facilities, or other SAAS Service users.
26 BlueDAG shall not be liable to any User for suspension of the SAAS Service, regardless of the grounds.

27 9. **Ownership: COUNTY and User Submissions**

1 As between you and your Users and BlueDAG, the SAAS Services, any material or information
2 provided to you or Users pursuant to the SAAS Services, and any associated applications, tools or data,
3 and, except as set forth in Section 11, below, all additions, modifications and improvements made or
4 specified by BlueDAG, its agents or contractors, are the property of BlueDAG, and are protected by United
5 States and international copyright, trademark and patent laws, and other laws or provisions for the
6 protection of intellectual property, trade secrets, or proprietary information, as applicable. By using the
7 SAAS Services, neither you nor your Users gain any ownership interest in such items. BlueDAG does not
8 claim ownership of the usage information you or your Users provide for the use and operation of the SAAS
9 Services. BlueDAG and its vendors and contractors may use such information to operate and administer
10 the SAAS Services. In addition, BlueDAG may retain, analyze, use and share such information in
11 anonymous, filtered, or aggregate form for general business purposes.

12 10. **COUNTY Work Product**

13 All materials including background and training materials, data, processes, tools, methodologies,
14 results, reports, presentations or any other information or material generated or developed by BlueDAG
15 specifically and uniquely for COUNTY pursuant to this Agreement that is based on any Confidential
16 Information of COUNTY ("Work Product") shall be and remain the property of BlueDAG, and COUNTY may
17 only use such Work Product pursuant to a valid SAAS Subscription Agreement. Work Product does not
18 include any work product that is independently (without regard to any Confidential Information of BlueDAG)
19 developed by COUNTY or COUNTY's Confidential Information. Compliance reports or other COUNTY-
20 specific information generated by the SAAS Services shall remain the property of COUNTY.

21 11. **Confidential Information**

22 The parties acknowledge that each may be exposed to certain information that is not generally
23 known to the public which would be considered confidential or proprietary by the other party ("Confidential
24 Information"). Confidential Information includes, without limitation, all competitively sensitive or secret
25 business, marketing, and technical information disclosed by one party to another and expressly marked as
26 "confidential". Each party agrees that, in the event a party is exposed to the other party's Confidential
27 Information, the receiving party: (i) will protect Confidential Information from unauthorized disclosure using
28

commercially reasonable care, (ii) will not disclose Confidential Information to any third party (provided that BlueDAG may disclose your Confidential Information to any of its affiliates or to any vendor as necessary to provide the SAAS Services, which disclosure will be subject to confidentiality obligations with such party consistent with this Agreement), and (iii) will not use Confidential Information (other than as authorized by this Agreement) without the prior written consent of the other party. Within five (5) business days after a request by either BlueDAG or you, or upon termination of this Agreement, all materials or media containing any Confidential Information will be either returned to the originating party or destroyed by the receiving party. The preceding destruction provision will not apply to back-up copies of your Confidential Information made by BlueDAG in the ordinary course of its rendition of the SAAS Services, provided that BlueDAG will remain bound by its confidentiality obligations hereunder for so long as it retains such back-up copies. Confidential Information does not include information which: (i) was already known to the receiving party prior to the time that it is disclosed to the receiving party as evidenced in writing and without a duty of confidentiality; (ii) is or has entered the public domain through no breach of this Agreement or other wrongful act of the receiving party; (iii) has been rightfully received from a third party without breach of any duty of confidentiality; (iv) has been approved for release by written authorization of the disclosing party; or (v) is required to be disclosed pursuant to the order of a court or governmental agency, or by state law, including the California Public Records Act, Cal. Govt. Code §6250 et seq., and if the disclosing party has, if permitted by law, been given reasonable notice of the order or request, and the opportunity to contest disclosure.

12. **Links to/from Third Party Sites**

The SAAS Service may provide links (or allow you or Users to provide links) that allow you or your Users to leave BlueDAG's site and/or access third party websites or access the BlueDAG site or services through third party websites. The linked sites are not under the control of BlueDAG, and BlueDAG is not responsible for the contents of any linked site or any link contained in a linked site, or any changes or updates to such sites or the performance or security of such other sites. BlueDAG is not responsible for any content of or transmission to or from any linked site. BlueDAG provides these links only as a convenience or feature of the SAAS Services, and the inclusion of any link does not imply endorsement by BlueDAG of

1 the site. Users access any such third-party websites or access the SAAS Service through any third party
2 websites at their sole risk and discretion.

3 13. **Security; Passwords; Internet**

4 You are responsible for administering usernames and passwords for all Users (the "Log-In
5 Information") and administering any User access granted to the SAAS Service through a User's account at
6 a third party site, such as but not limited to Facebook or LinkedIn or similar integration with a third party
7 website or product ("Single Source Log-In"). Each User must have a valid username and password for the
8 purpose of accessing the SAAS Services. You and your Users must keep all Log-In Information and Single-
9 Source Log-In information strictly confidential. Log-In Information and Single Source Log-In may be used
10 only by the assigned User and may not be shared or transferred to another person without our prior
11 consent. You are responsible for the use of the SAAS Services by any of your employees or any person
12 who gains access to your data or the SAAS Services, even if such use was not authorized by you or results
13 from your failure to use reasonable security precautions or the breach of such precautions.

14 You may not resell, license or otherwise provide access by any means to any part of the SAAS
15 Services other than to Users for whom a subscription is paid. You and your Users are responsible for
16 maintaining the confidentiality of that User's username and password. You and your Users are responsible
17 for any and all activities that occur under all your Users' accounts. You agree to notify BlueDAG
18 immediately of any unauthorized use of your Users' accounts or any other breach of security. BlueDAG will
19 not be liable for any loss that you or a User may incur as a result of someone else using your Users'
20 passwords or accounts, either with or without the applicable Users' knowledge. BlueDAG is not responsible
21 to you for unauthorized access to your data or the unauthorized use of the SAAS Services, unless such
22 unauthorized use or access results from failure by BlueDAG to meet its security obligations as provided
23 herein.

24 BlueDAG does not guarantee the security of any information transmitted to or from you or any User
25 over the Internet, including through the use of e-mail. Access to the Internet, if employed, is your and each
26 User's sole responsibility and the responsibility of Internet provider(s) you select. BlueDAG does not accept
27 any responsibility for failure of service due to Internet facilities, including related telecommunications
28

1 facilities or equipment that are not under BlueDAG direct control.

2 14. **Communications from BlueDAG**

3 BlueDAG may periodically contact you or Users for customer service purposes. By accessing the
4 SAAS Services, you and each User consent to receive such communications. You agree that BlueDAG
5 may reference its business relationship with you in its marketing or sales materials.

6 15. **Termination; Effect**

7 A. **Suspension or Accelerated Termination.** BlueDAG may immediately suspend the
8 SAAS Services or terminate this Agreement for its convenience if: (i) BlueDAG becomes
9 aware of what it, in its sole discretion, deems a credible claim that the SAAS Services
10 infringe upon the intellectual property rights of a third party or (ii) required to do so by law.
11 In each case, BlueDAG will give you advance notice of pending suspension or
12 termination of at least twelve (12) hours, unless BlueDAG determines, in its reasonable
13 discretion, that no notice or shorter notice is necessary to protect BlueDAG, its
14 customers, or others.

15 B. **Breach.** BlueDAG may, at its option, terminate this Agreement for cause or
16 temporarily or permanently suspend the SAAS Services if: (i) BlueDAG reasonably
17 believes that the SAAS Services are being used in violation of law or this Agreement; (ii)
18 your use of the SAAS Services interferes with the normal operations of the System or
19 other customer's use of the SAAS Services; (iii) there is an attack on the System or any
20 portion thereof or your account is accessed or manipulated by a third party without your
21 consent or in violation hereof, or there is another event for which BlueDAG reasonably
22 believes suspension of SAAS Services is necessary to protect the BlueDAG network or
23 BlueDAG's other customers; (iv) your payment of any amount due hereunder is overdue
24 and you fail to pay the overdue amount within fifteen (15) days of BlueDAG's written
25 notice (e-mail notice to your account representative shall suffice); (v) you breach any
26 obligation relating to BlueDAG's or any third party's intellectual property rights; or (vi) you
27 materially fail to comply with any other provision of the Agreement and do not remedy
28 that failure within fifteen (15) days after receipt of notice thereof from BlueDAG (e-mail

notice to your account representative shall suffice). COUNTY may, at its option, terminate this Agreement for material breach by BlueDAG of its obligations hereunder that are not cured within fifteen (15) days after COUNTY provides written notice to BlueDAG of such breach. COUNTY may terminate this Agreement (other than for uncured material breach as described in the prior sentence) upon sixty (60) days' advance notice.

C. **Effect of Termination.** Upon expiration or prior termination of this Agreement, all rights granted herein shall revert to BlueDAG. All access to and use of the SAAS Services by Users must then cease and BlueDAG shall make available to you any of your data or materials for thirty (30) days following such termination. Sections 10, 11, 12, 14, 16, 17, 18, and 19 and any remaining payment obligations shall survive any termination.

16. **Limited Warranty, Limitation of Liability**

BlueDAG warrants that it will provide the SAAS Services in conformity with the specifications for such SAAS Services as provided to COUNTY (as they may be updated from time to time by BlueDAG) by BlueDAG, and warrants that the SAAS Services will reasonably perform as intended and in conformity with the SLA. Except for the limited warranty expressly provided in the previous sentence, THE SAAS SERVICES AND ANY TOOLS, APPLICATIONS, INFORMATION OR MATERIALS PROVIDED TO YOU IN CONNECTION WITH THE SAAS SERVICES ARE PROVIDED "AS IS," AND ALL WARRANTIES OF ANY KIND, PAST OR PRESENT, WHETHER STATUTORY, COMMON-LAW OR FROM A COURSE OF DEALING OR USAGE OF TRADE, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, RESULTS OR OUTPUT, SECURITY AND, EXCEPT AS SPECIFICALLY PROVIDED IN SECTION 17, HEREIN, NON-INFRINGEMENT, ARE EXPRESSLY DISCLAIMED TO THE FULLEST EXTENT PERMITTED BY LAW.

IN NO EVENT SHALL BLUEDAG BE LIABLE FOR ANY LOST OR CORRUPTED DATA, DOWNTIME (OTHER THAN SPECIFICALLY AS PROVIDED IN THE SLA), LOST PROFITS, BUSINESS INTERRUPTION, REPLACEMENT SERVICE OR OTHER SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR INDIRECT DAMAGES, HOWEVER CAUSED AND REGARDLESS OF THEORY OF

1 LIABILITY, INCLUDING, WITHOUT LIMITATION, NEGLIGENCE.

2 A. **Notice; Cooperation.** The indemnitee will promptly notify indemnitor should it
3 become aware of any pending or threatened action that is covered by this Section and
4 will fully cooperate with the indemnitor in the defense of such action.

5 17. **Miscellaneous.**

6 A. Failure to perform by reason of any law, natural disaster, labor controversy,
7 encumbered intellectual property right, war, strikes, lockouts, hacking, acts of God,
8 governmental statutes, proclamations or regulations, riot, civil commotion, war, malicious
9 mischief, force majeure, or any similar event beyond a party's reasonable control shall
10 not be a breach hereof, and neither party shall be liable for any loss or damage resulting
11 therefrom.

12 B. You acknowledge and agree that the SAAS Services and the tools, applications,
13 information and materials provided in connection with the SAAS Services possess a
14 special, unique and extraordinary character that makes difficult the assessment of the
15 monetary damages that would be sustained as a result of unauthorized use or breach of
16 your obligations hereunder, and that unauthorized use may cause immediate and
17 irreparable damage to BlueDAG or other subscribers for which BlueDAG or such other
18 subscribers would not have an adequate remedy at law. Therefore, you agree that, in the
19 event of such unauthorized use or breach, in addition to such other legal and equitable
20 rights and remedies as may be available to BlueDAG, BlueDAG shall be entitled to
21 injunctive and other equitable relief without the necessity of proving damages or
22 furnishing a bond or other security.

23 C. This Agreement shall be construed and enforced under the laws of the State of
24 California, USA without reference to the choice of law principles thereof. COUNTY
25 hereby consents to and submits to the jurisdiction of the federal and state courts located
26 in the State of California, County of Fresno. COUNTY waives any defenses based upon
27 lack of personal jurisdiction or venue, or inconvenient forum. The parties expressly
28

1 exclude the United Nations Convention on Contracts for the International Sale of Goods
2 from application to this Agreement.

3 D. If any provision herein is unenforceable, then such provision shall be of no effect on
4 any other provision hereof.

5 E. Section headings are provided for convenience only, and shall not be used to
6 construe the meaning of any section hereof.

7 F. Except for revisions or updates to the SLA or SAAS Services specifications as
8 described herein, this Agreement may be amended only in a writing signed by both
9 parties.

10 G. This Agreement, together with the exhibits hereto, shall supersede in its entirety any
11 purchase order or other documentation issued by COUNTY. In no event will any
12 additional terms and conditions on a purchase order or other documentation be effective
13 unless expressly accepted by each party in writing. No provision of this Agreement or any
14 related document shall be construed against or interpreted to the disadvantage of any
15 party hereto by any court or other governmental or judicial authority by reason of such
16 party having or being deemed to have structured or drafted such provision.

17 H. The parties' relationship is that of independent contractors. Neither party is an agent
18 for the other, nor does either party have the right to bind the other to any agreement with
19 a third party.

20 I. This Agreement may be executed in counterparts, each of which shall be deemed to
21 be an original, but all of which shall constitute one and the same instrument. A signature
22 delivered by facsimile, scan, photograph or other electronic transmission shall be as
23 binding as delivery of an original signature hereto, provided, that the delivering party
24 shall, if requested by any party for any reason, promptly deliver the original signature so
25 transmitted or a separate, original signature, the delivery of which shall not in any way
26 limit the effectiveness of the signature previously electronically delivered.

Summary of Material Terms

COUNTY: Fresno County

COUNTY Address: 333 W. Pontiac Way
Clovis, CA 93612

Effective Date: July 1st, 2019

SAAS Services: Access to and use of the BlueDAG Title II Compliance platform, as more fully described in Sub-Exhibit A.

Term of Service: Three years, beginning on the Effective Date, with two successive optional one year extensions unless terminated as provided herein.

Users Authorized: 10 seat licenses ("Users"). Additional Users may be added, but a minimum of 6 Users (the "Base Subscription") shall be maintained at all times during the term of this Agreement.

Pricing/Fees/Payment: Base Setup/Deployment/Year 1 Licensing and Hosting of Title II Complete - 6-10 Active Users Services: \$72,000, due upon signing of MSA and SaaS Agreement, applied to first year of service (July 1st 2019 – June 30th 2020).

Year 2 Licensing and Hosting of Title II Complete - 6-10 Active Users Services: \$72,000, due July 1st, 2020.

Year 3 Licensing and Hosting of Title II Complete - 6-10 Active Users Services: \$72,000, due July 1st, 2021.

Year 4 Licensing and Hosting of Title II Complete - 6-10 Active Users Services: \$72,000, due July 1st, 2022.

Year 5 Licensing and Hosting of Title II Complete - 6-10 Active Users Services: \$72,000, due July 1st, 2023.

Additional services of up to \$10,000 that may be required over the potential 5 year term of the agreement for additional support hours or additional on-site training as described in the Service Level Agreement in Sub-Exhibit B.

Service Level Agreement: Provision of the SAAS Services shall be subject to the Service Level Agreement ("SLA") attached as Sub-Exhibit B to this Subscription Agreement. SLA is subject to revision by BlueDAG periodically upon thirty (30) day prior written notice to the COUNTY.

Professional Services: Except for the SAAS Services described in Sub-Exhibit A, no additional professional services are being provided at this time pursuant to this Agreement. Additional professional services may be provided if requested by COUNTY pursuant to a separate agreement.

SUB-EXHIBIT

Description of SAAS Services

BlueDAG Title II Complete - 6-10 Active Users with options for customization and importing of legacy data for the County of Fresno, CA Public Works and Planning, to include the following:

- Deployment of a BlueDAG Title II Complete - 6-10 Active Users server instance within Vendor datacenter
 - o Hosting of BlueDAG package
 - o Daily, Monthly, and Annual Backups of Entity BlueDAG data
 - o Network and power monitoring
- Creation of Entity-identified User accounts
- Training of Entity staff on included Features of the BlueDAG Title II Government SaaS package via webinar, teleconference, screen sharing events, and/or onsite training (optional) at Entity location in Oakland, CA for onboarding:
 - o Activity Training:
 - Grievances
 - Evaluations
 - Projects
 - Notices
 - Transition Plan
 - Self-Evaluations
 - Fast Finder
 - o Mobile Training
 - o Report Training
 - Grievance Report
 - Evaluation Report
 - Annual Grievance Report

- Table CSV Exports
- o Administration Training:
 - COUNTY Details
 - My Users
 - My Jurisdictions
 - My Requesters
 - My Departments
 - Facility Owners
 - Letters
 - Custom Standards (Post Implementation)
 - Custom Findings (Post Implementation)
 - Report Titles

Ongoing updates of Non-Custom ADA standards, Non-Custom Findings, and Non-Custom Default Checklists

1 SUB-EXHIBIT B

2 **Service Level Agreement**

3
4 **Effective Date: July 1, 2019**

5
6 This BlueDAG Service Level Agreement (“SLA”) is a statement of certain service levels to be provided
7 by BlueDAG, Inc. (“BlueDAG”, “us” or “we”), in connection with SAAS Services provided pursuant to the
8 BlueDAG SAAS Subscription Agreement (the “BlueDAG Agreement”) between BlueDAG and users of
9 BlueDAG’s SAAS Services (“you”). This SLA applies separately to each account using BlueDAG.
10 Unless otherwise provided herein, this SLA is subject to the terms of the BlueDAG Agreement, and
11 capitalized terms will have the meaning specified in the BlueDAG Agreement. We reserve the right to
12 change the terms of this SLA in accordance with the BlueDAG Agreement.

13
14 **Basic Support Services**

15
16 The following support services are included at no extra charge as part of your subscription for the SAAS
17 Services:

- 18
19 - Up to two (2) hours per paid User per month. Unused hours are not carried over to the next
20 month. Standard support windows are 9 AM – 4 PM, Monday – Friday, Pacific time zone,
21 excluding California State and Federal Holidays. Support is provided via email and phone.
22 A ticketing system is used internally within the Vendor’s support group to track and ensure
23 resolution of Entity’s support needs. If needed, additional Support options can be quoted to
24 better meet Entity’s needs.
25 - Daily, Monthly, and Annual Backups of Entity BlueDAG data
26 - BlueDAG University Webinars, Onboarding Webinars up to 2hrs/month per User
27

28 Additional Support (not included as part of subscription – available for additional fees):

- 1
- 2 - Onsite Training: \$100 per hour + \$200/day per diem. Additional hotel cost up to \$250/day
- 3 for sequential-day trainings or trainings beginning before 8 am or ending after 6 pm in a
- 4 given day.
- 5

6 **Uptime Service Commitment**

7

8 BlueDAG will use commercially reasonable efforts to make the SAAS Services each available with a

9 Monthly Uptime Percentage (defined below) of at least 98% (the "Service Commitment"). If the Monthly

10 Uptime Percentage falls below 98%, BlueDAG shall refund to you one prorated month of the annual

11 subscription cost. If the Monthly Uptime Percentage falls below 98% in two months of any 12 month

12 period, you may consider this a material breach by BlueDAG and terminate the contract in accordance

13 with Section 15.b of the SaaS Subscription Agreement. Monthly Uptime Percentage is calculated by

14 subtracting from 100% the percentage of hours during the month in which BlueDAG SAAS Services

15 were unavailable to you. "Unavailable" means the SAAS Services were not available to you in material

16 conformity with the specifications thereof and terms of the BlueDAG Agreement for a continuous period

17 of ten (10) minutes or longer. You are responsible for logging and reporting any and all incidents of

18 unavailability of the BlueDAG SaaS services to BlueDAG within forty-eight (48) hours of the occurrence

19 of said unavailability. Any reported unavailability is subject to verification by BlueDAG before credit will

20 be issued. THE CALCULATION OF MONTHLY UPTIME PERCENTAGE WILL EXCLUDE PERIODS

21 OF UNAVAILABILITY OF BLUEDAG SAAS SERVICES CAUSED BY THE FOLLOWING:

22

23 **Definitions**

24

- 25 • Subscriber breach of the BlueDAG Agreement;
- 26 • Suspension or termination provided in the BlueDAG Agreement;
- 27 • Factors outside of our reasonable control, including any force majeure event or Internet
- 28 access or related problems beyond the demarcation point of BlueDAG platform;

- 1 • Any actions or inactions of you or any third party, including failure to acknowledge a
2 recovery;
- 3 • Your equipment, software or other technology and/or third party equipment, software or
4 other technology (other than third party equipment within our direct control);
- 5 • Planned downtime, of which BlueDAG gives Subscriber at least twenty-four (24) hours'
6 prior notice (via e-mail to the account representative or via a conspicuous on-screen
7 message in the SAAS Service. BlueDAG will use commercially reasonable efforts to
8 schedule all planned downtime during the hours, U.S. Pacific Time 7:00p.m. Friday to
9 Saturday 8:00a.m. and 7:00 p.m. Saturday to Sunday 8:00a.m. and 7:00 p.m. Sunday to
10 3:00a.m. Monday, U.S. Pacific Time, and if not possible during the foregoing times,
11 planned downtime will be 11:00 p.m. to 5:00a.m. other days, except downtime for major
12 SAAS Service releases and maintenance, which BlueDAG will use commercially
13 reasonable efforts to schedule during the hours from 6:30 p.m. Friday to 3:00a.m.
14 Monday, U.S. Pacific Time. BlueDAG will use commercially reasonable efforts to limit the
15 number of major Service releases to twelve (12) annually. In no event shall planned
16 downtime exceed thirty-six (36) hours in any calendar quarter.