

CONTRACT REQUISITION FORM



CONTRACTOR/VENDOR NAME: SAP PUBLIC SERVICES

VENDOR # 1000004715

ADDRESS/CITY/ST/ZIP: 3999 WEST CHESTER PIKE NEWTON SQUARE, PA 19073

TYPE OF CONTRACT: New ☐ X Renewal ☐ Amendment ☐ Services ☐ Goods ☐ Consulting ☐ X Construction ☐ Lease ☐ Other ☐

DESCRIPTION/SCOPE OF WORK: SAP STAFF AUGMENTATION CONSULTING

CONTRACT AMT: \$88,160.00 CONTRACT PERIOD: 03/02/2020-12/31/2020 RFP/IFB/RFQ#:

FUNDING SOURCE: General ☐ X State ☐ Federal ☐ Grant ☐ Other ☐

ITEM LINE#	FUND	COST CENTER	G/L ACCOUNT	WBS ELEMENT (Grants/Projects Only)	GRANT NUMBER	TOTAL	I/D	ADDITIONAL INFO
1	1001010000	4200191000	5200160100			\$ 88,160.00		
2								
3								

COUNTY ATTORNEY

Contract requires Risk Management approval? YES ☐ X NO ☐

RISK MANAGER Signature: _____ Date: _____

Contract requires BOCC approval? YES ☐ X NO ☐ Date of BOCC Approval: _____

Reviewing Attorney: _____ Date: _____

COMMENTS:

INITIATING DEPARTMENT

By: _____ Date: _____

By: _____ Date: _____

BUDGET (Required only for Business Area 9800)

COUNTY MANAGER

By: _____ Date: _____

CHIEF FINANCIAL OFFICER Pre-audit Certification Completed: Yes ☐ No ☐
Signature: _____ Date: _____

CLERK TO THE BOARD

By: _____ Date: _____

By: _____ Date: _____

PURCHASING

IT DEPT (IT Related Contracts)

By: _____ Date: _____

Purchasing Comments:

FUNDS RES DOC ID# _____



CERTIFICATE OF LIABILITY INSURANCE

DATE(MM/DD/YYYY)
04/07/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Aon Risk Services Central, Inc. Philadelphia PA Office One Liberty Place 1650 Market Street Suite 1000 Philadelphia PA 19103 USA	CONTACT NAME:	
	PHONE (A/C, No. Ext): (866) 283-7122	FAX (A/C, No.): (800) 363-0105
INSURED SAP America Inc Attn: Kathleen O'Donnell 3999 West Chester Pike Newtown Square PA 19073 USA	E-MAIL ADDRESS:	
	INSURER(S) AFFORDING COVERAGE	
	NAIC #	
	INSURER A: National Union Fire Ins Co of Pittsburgh	19445
	INSURER B: New Hampshire Insurance Company	23841
	INSURER C: Illinois National Insurance Co	23817
	INSURER D: American Home Assurance Co.	19380
INSURER E: AIU Insurance Company	19399	
INSURER F: XL Insurance America Inc	24554	

COVERAGES**CERTIFICATE NUMBER:** 570081381979**REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

Limits shown are as requested

INSR LTR	TYPE OF INSURANCE	ADDITIONAL SUBROGATION WAIVED	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
F	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:		US00099181LI20A SIR applies per policy terms & conditions	04/01/2020	04/01/2021	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$100,000 MED EXP (Any one person) \$5,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$3,000,000
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS ONLY		CA 1722333	09/30/2019	09/30/2020	COMBINED SINGLE LIMIT (Ea accident) \$2,000,000 BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)
F	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$10,000		US00099182LI20A	04/01/2020	04/01/2021	EACH OCCURRENCE \$5,000,000 AGGREGATE \$5,000,000
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR / PARTNER / EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input checked="" type="checkbox"/> N	WC014022258 AOS WC014022260 CA	09/30/2019	09/30/2020	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.I. EACH ACCIDENT \$1,000,000 E.I. DISEASE-EA EMPLOYEE \$1,000,000 E.I. DISEASE-POLICY LIMIT \$1,000,000
D		N/A		09/30/2019	09/30/2020	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

See Addendum

CERTIFICATE HOLDER**CANCELLATION**

SAP America Inc. Attn: Kathleen O'Donnell 3999 West Chester Pike Newtown Square PA 19073 USA	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE <i>Aon Risk Services Central Inc</i>

Holder Identifier :

Certificate No : 570081381979



AGENCY Aon Risk Services Central, Inc.		NAMED INSURED SAP America Inc
POLICY NUMBER See Certificate Number: 570081381979		
CARRIER See Certificate Number: 570081381979	NAIC CODE	EFFECTIVE DATE:

**THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
FORM NUMBER: ACORD 25 FORM TITLE: Certificate of Liability Insurance**

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER	
INSURER	
INSURER	
INSURER	

If a policy below does not include limit information, refer to the corresponding policy on the ACORD certificate form for policy limits.

[illegible]



ADDITIONAL REMARKS SCHEDULE

Page _ of _

AGENCY Aon Risk Services Central, Inc.		NAMED INSURED SAP America Inc	
POLICY NUMBER See Certificate Number: 570081381979			
CARRIER See Certificate Number: 570081381979	NAIC CODE	EFFECTIVE DATE:	

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
FORM NUMBER: ACORD 25 FORM TITLE: Certificate of Liability Insurance

Description

The Named Insured includes SAP America, Inc. and its subsidiaries and affiliates including, but is not limited to the following:

SAP America, Inc.
 SAP Global Marketing Inc.
 SAP National Security Services, Inc.
 SAP Industries, Inc.
 SAP International, Inc.
 SAP Labs, LLC
 SAP Public Services, Inc.
 TomorrowNow, Inc.
 iAnywhere Solutions, Inc.
 Sybase 365, LLC
 Sybase, Inc.
 Ariba, Inc.
 SmartOps, Inc.
 KXEN, Inc.
 SuccessFactors, Inc.
 hybris (US) Corporation
 Plateau Systems, Inc.
 Fieldglass, Inc.
 Seewhy, Inc.
 Concur Technologies, Inc.
 TRX, Inc.
 Altiscale, Inc.
 Hipmunk, Inc.
 Gigya, Inc.
 Callidus Software, Inc.
 Technology Management Associates, Inc.
 Apex Expert Solutions, LLC
 Qualtrics International, Inc.
 Qualtrics LLC, Wilmington, DE, United States
 Delighted LLC, Wilmington, Delaware, United States
 Volume Integration, Inc., VA, United States

Commercial General Liability:

Additional Insured is included when required by written contract and in accordance with the policy provisions of the Commercial General Liability policy.

Waiver of Subrogation is granted when required by written contract (except where not permitted by law), in accordance with the policy provisions of the Commercial General Liability.

Primary and non contributing status shall apply when required by written contract and in accordance with the policy provisions of the Commercial General Liability policy.

Automobile Liability:

Additional Insured is included when required by written contract and in accordance with the policy provisions of the Automobile Liability policy.

Waiver of Subrogation is granted when required by written contract (except where not permitted by law), in accordance with the policy provisions of the Automobile Liability policy.

Auto Liability Coverage is primary for any liability assumed when required by written contract.



AGENCY CUSTOMER ID: 10194755

LOC #:

ADDITIONAL REMARKS SCHEDULE

Page _ of _

AGENCY Aon Risk Services Central, Inc.		NAMED INSURED SAP America Inc	
POLICY NUMBER See Certificate Number: 570081381979			
CARRIER See Certificate Number: 570081381979	NAIC CODE	EFFECTIVE DATE:	

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
FORM NUMBER: ACORD 25 **FORM TITLE:** Certificate of Liability Insurance

Description

Workers' Compensation:

Workers' Compensation Policy #WC014022259 includes employer's liability for monopolistic states of Washington, Wyoming, Ohio.

Waiver of subrogation is granted when required by written contract (except where not permitted by law), in accordance with the policy provisions of the Workers' Compensation policy.

Umbrella/Excess Liability:

Please note that because the Umbrella/Excess policy terms follow the underlying policies, there are no separate additional insured, waiver of subrogation and primary and non-contributory endorsements applicable to this policy.

SAP SERVICES AGREEMENT Order Form No. 303661259("Order Form")
CMS 3061359012
Effective March 2, 2020 ("Effective Date")

between **SAP Public Services, Inc.**
3999 West Chester Pike
Newtown Square, PA 19073
(hereinafter “SAP”)

and **Durham County**
200 East Main St, Floor 5
Durham, NC 27701
(hereinafter “Licensee” or “Customer”)

Contact Person SAP Ed Rivera	Ed.rivera@sap.com 215-498-4823
Contact Person Licensee Greg Marrow	Greg.marrow@dconc.gov 919-560-7003

SAP and Licensee agree that this Order Form is a binding agreement for Services governed by the Professional Services Agreement as entered into between SAP and Licensee with effective date February 27, 2018, as Amended, between SAP and North Carolina – Department of Information Technology and the Service Descriptions (the pre-defined descriptions of services found at <http://www.sap.com/serviceDescriptions>) in effect as of this Order Form Effective Date. Together this Order Form, the PSA, the Service Descriptions, and, to the extent the Services involve the processing of personal data, the Personal Data Processing Agreement for SAP Support and Professional Services (“DPA”) made available on <http://sap.com/agreement-services-support-professional-services-dpa> form the Agreement. In the event of any inconsistencies between the PSA and any documents referred to therein or attachments thereto, this Order Form and the Service Descriptions prevail.

Capitalized terms in this Order Form but not defined will have the meaning defined in the General Terms and Conditions or applicable Service Description. Some versions of SAP agreements use the term "Customer" in place of "Licensee". For purposes of this Agreement including Order Form, references to "Customer" shall mean "Licensee".

1. SAP Services

The Services to be delivered to Licensee under this Order Form consist of the following Services. For purposes of this Order Form, "Service Description" means the Services as described in section 1.1. of this Order Form.

1.1 SAP will assist Licensee with their Cloud Platform Portal Project.

The following table provides a summary of the Service Descriptions for the Services to be delivered under this Order Form:

Service Description
Please refer to this document, SAP Consulting Assistance – English v10-2015, at the link above

Scope activities include assistance with:

- Cloud system configuration support, if any issues arise in the development, quality, or production cloud environments
- Single sign on configuration for the on-premise and cloud using SAP Identification and Authentication Service (IAS) as the central authentication system for all county applications
- Assistance with APPS that may be beneficial



- Assistance with issues above and beyond OSS support (as needed)

There are no Deliverables. The Consultants work at the directions of the Licensee.

1.2 Licensee Responsibilities

Licensee agrees to provide appropriate project resources, including but not limited to equipment, data, information, workspace and appropriate and cooperative personnel, to facilitate the performance of the

1.3 Project Assumptions

The following assumptions apply:

- Licensee is owner of the Project and is responsible for and controls the implementation, scope, costs, resources and targeted solutions.
- It is mutually understood that business requirements, resources and dates may change. Licensee is responsible for revising the estimated project plans and requesting changes to the requirements for SAP services.
- SAP's sole responsibility is to provide SAP Consultants to perform the Services on a time and expense basis. Such Services may be performed at Licensee's location or remotely.
- All supporting documentation and Work Products will be developed using industry standard personal computers/laptops using Microsoft Office applications (Word, Excel, MS Project, Visio and PowerPoint) or other mutually agreeable documentation tools.
- To facilitate effective communication between SAP and Licensee, an SAP and Licensee status meeting to clarify open issues and questions will occur weekly unless a different periodic interval is mutually agreed to.
- The Service will have sponsorship from Licensee's senior management, who will be available on a timely and regular basis to monitor the progress and to act as a decision maker for policy decisions.
- Licensee will assign all necessary IT and business resources including systems access as needed by SAP to perform the Service.

2. Invoicing

SAP will mail invoices to the following Licensee billing address:

**Durham County
200 East Main St, Floor 5
Durham, NC 27701**

Unless otherwise stated herein, payment shall be made net thirty (30) days from the date of SAP's invoice.

Notwithstanding anything to the contrary, Licensee acknowledges and agrees that: i) it must provide SAP with a valid purchase order for the Services to be delivered under this Order Form, and SAP shall have no obligation to commence delivery of Services hereunder until it receives such purchase order; ii) such purchase order shall be governed by the terms of the Agreement and this Order Form; and iii) should SAP, in its sole discretion, elect to commence delivery of Services hereunder in advance of its receipt of a purchase order, the same shall not operate as a waiver of any of SAP's rights (including, without limitation, SAP's right to stop its performance of Services at any time during the period where the purchase order remains outstanding).

SAP contact for invoice questions: Ed Rivera, Ed.rivera@sap.com, 215-498-4823

Licensee contact for payment questions: Greg Marrow, Greg.marrow@dconc.gov, 919-560-7003

3. Fees and Payment Terms



Service Fees, excluding taxes and *Including* travel and living expenses unless stated otherwise related to the performance of Services under this Order Form, are:

3.1 Services Fees

The Service Elements and the associated Services Fees are as follows:

Service Element	DailyRate USD	Estimated # of days
G3 Execution Services	\$2,320	38

The estimated Services Fees are **USD \$88,160 including** travel and expenses. This estimate is for Licensee's budgetary and SAP's resource scheduling purposes only and is non-binding. The estimate is based on the information provided by Licensee to SAP and SAP's understanding of the Project scope, based on Licensee information. The estimated fees, timeline and scope may be subject to change and the total actual amount of Services provided will be invoiced based on time and material. Services Fees shall be payable monthly in arrears.

SAP reserves the right to change the rates to SAP's then current rates with thirty (30) days' notice. Any increased rate(s) shall not exceed the prior rate(s) plus an adjustment made for increases in the consumer price index plus 3%. CPI as used herein means U.S. Consumer Price Index for all Urban Consumers, U.S. City Average - All Items 1982-1984 = 100 Base for the applicable twelve (12) month period as published by the Bureau of Labor Statistics.

The Services will be provided between the Expected Start Date: June 1, 2020 and the Expected End Date: December 31, 2020 and are estimated dates. This Order Form will remain in effect until the Services agreed have been concluded, unless otherwise agreed to between the parties in writing.

The daily rate is based on [eight] hours of work daily. Overtime is compensated on a proportional basis in fractions of an [eight] hour day. In general, SAP calculates time-and-a-half for deployments in the USA on weekends and holidays (public holidays in the state of NC or at the project location where works and services are being provided), as well as for night shifts (8:00 p.m. to 8:00 a.m.). SAP also calculates a minimum of four working hours per day for deployments.

3.2 Service Location

Unless otherwise identified for a particular Service, the Licensee location identified above will be considered the location of Licensee's receipt of Services provided hereunder. Licensee understands that the calculation of Taxes may be affected by this receipt of Service Location.

Fees and other charges described in this Order Form do not include federal, state or local sales, foreign withholding, use, property, excise, service, or similar transaction taxes ("Tax(es)") now or hereafter levied, all of which shall be for Licensee's account. With respect to province/local sales tax, direct pay permits or valid tax-exempt certificates must be provided to SAP at the execution of this Order Form. If SAP is required to pay Taxes, Licensee shall reimburse SAP for such amounts. Licensee hereby agrees to indemnify SAP for any Taxes and related costs, interest and penalties paid or payable by SAP. When applicable, Licensee also agrees to pay SAP for additional personal income tax amounts, if any, created by the taxability of Consultants reimbursed travel and living expenses resulting from long term assignments at Licensee's locations.

4. Regulatory matters

SAP will not provide any advisory services regarding any Licensee's compliance matters. SAP Services will be limited to technical assistance based on requirements as specified by Licensee. Licensee is solely responsible for validating its compliance with legal and regulatory matters.

5. Term

The term of this Order Form shall on the Effective Date and shall continue until all Services under this Order Form are completed or terminated ("Term").



6. Validity of Offer

The validity of this offer will expire on May 31, 2020, unless sooner executed by Licensee and SAP, or extended in writing by SAP.

Accepted by:

SAP Public Services, Inc.
(SAP)

By: Dave Venonsky

Title: Vice President

Date: April 28, 2020

Accepted by:

Durham County
(Licensee)

By: _____

Title: _____

Date: _____

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement ("Agreement") is effective as of date of last signature. ("Effective Date") and is entered into by and between SAP Public Services, Inc., with offices at 3999 West Chester Pike, Newtown Square, PA 19073, (hereinafter "SAP") and North Carolina – Department of Information Technology, with offices at 3700 Wake Forest Road, Raleigh, NC 27609 ("hereinafter "Agency").

RECITALS

WHEREAS, Agency licensed from SAP (or an SAP AG Affiliate, or an authorized reseller of the SAP Software), the right to use SAP Software pursuant to a License Agreement. For purposes of this Agreement, Agency may alternately mean a legal entity that has a right under such License Agreement to use the SAP Software as an Authorized Agency.

WHEREAS, SAP provides certain Services in the United States which Agency desires to obtain on the basis of certain Statements of Work executed by the parties which reference and incorporate this Agreement (each a "SOW"). The SOWs more fully describe the scope, duration, and fees for the Services.

NOW, THEREFORE, in consideration of the mutual promises and obligations in this Agreement, the sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, agree as follows:

1. Definitions

- 1.1. "Proprietary Information" shall have the same meaning as set forth in Section 1.27 of the License Agreement. For SAP, "Proprietary information" shall include, but is not limited to, Work Product.
- 1.2. "Consultants" means employees and third party contractors which SAP utilizes to provide Services to Agency.
- 1.3. "Deliverables" mean such Work Products, if applicable, which are specific outputs that SAP provides to Agency, provided such output must be clearly and expressly labeled as a "Deliverable" in the applicable SOW.
- 1.4. "Intellectual Property Rights" means patents of any type, design rights, utility models or other similar invention rights, copyrights, mask work rights, trade secret, know-how or confidentiality rights, trademarks, trade names and service marks and any other intangible property rights, including applications and registrations for any of the foregoing, in any country, arising under statutory or common law or by contract and whether or not perfected, now existing or hereafter filed, issued, or acquired.
- 1.5. "License Agreement" means the Statewide Software End User License Agreement September 30, 2005, together with Amendments 1 and 2, between SAP and the State of North Carolina, Office of the State Controller under which Agency procured the license rights to use SAP software.
- 1.6. "SAP Software" means (i) any and all software products licensed to Agency under the License Agreement as specified in Software Order Forms (or other order forms, schedules or appendices as applicable) thereto; (ii) any new releases thereof made available through unrestricted shipment pursuant to the respective support agreement and (iii) any complete or partial copies of any of the foregoing.
- 1.7. "Services" means professional services, provided by SAP to Agency under a SOW that references this Agreement.
- 1.8. "Taxes" means federal, state or local sales, VAT, GST, foreign withholding, use, property, excise, service or similar taxes now or hereafter levied all of which shall be for Agency's account.
- 1.9. "Work Product" means any work product or tangible results produced by or with SAP pursuant to this Agreement or any SOW, including, but not limited to, works created for or in cooperation with Agency.

2. Provision of Services.

- 2.1. SAP will provide the Services in accordance with the SOW.
- 2.2. SAP may utilize third party contractors to perform SAP's duties. SAP shall be responsible for the performance of the Services of such third party contractors to the same extent as SAP is liable for its own Consultants.
- 2.3. If any Service, in whole or in part, cannot be provided by SAP due to an Agency issue and Agency fails to provide SAP with reasonable advance notice, the time agreed to be spent by SAP resources on such Service will be billed to Agency.

- 2.4. Notwithstanding the foregoing, any services and work products provided by SAP to Agency prior to the execution of this Agreement or a specific SOW or a Change Request are the sole property and Proprietary Information of SAP and shall be governed by the terms of this Agreement, in particular Secs. 9 (Confidentiality) and 11 (Limitation of Liability). If no agreement is completed, all services, work products and deliverables must be returned or deleted and must not be used.

3. Agency's General Responsibilities.

- 3.1. Agency is responsible for making the necessary arrangements to allow SAP to perform the Services.
- 3.2. Agency shall provide and make available all Agency personnel that SAP reasonably requires in connection with performance of the Services and as may be further addressed in an applicable SOW.
- 3.3. If the Services are performed at Agency's site, Agency agrees to provide necessary access to its site including, but not limited to, appropriate access to Agency premises, computer systems and other facilities.
- 3.4. Agency shall appoint a contact person to supply SAP with any necessary or relevant information and who shall have the authority to make decisions or obtain decisions from others expeditiously.

4. Change Request Procedures.

- 4.1. During the term of a SOW, either party can request changes to a SOW in accordance with the change request form attached to the applicable SOW ("Change Request"). Both parties agree to act in good faith to address and mutually agree to any requested Change Requests within a reasonable period of time.
- 4.2. SAP will not perform under a Change Request until agreed to and signed by the parties.

5. **Satisfaction with Personnel.** If at any time Agency or SAP is dissatisfied with the material performance of an assigned Consultant or an Agency project team member, the dissatisfied party shall promptly report such dissatisfaction to the other party in writing and may request a replacement. The other party shall use its reasonable discretion in accomplishing any such change (which also, in the case of SAP, shall be subject to staffing availability).

6. Compensation of SAP.

- 6.1. All Services will be provided by SAP on a time and materials (plus expenses) basis unless otherwise agreed by the parties in the SOW.
- 6.2. Unless otherwise agreed in writing, the Services will be invoiced in accordance with the fees or rates listed in or referenced in the SOW, or Schedules and Exhibits thereto, as applicable.
- 6.3. SAP is entitled to require payment in advance if there are any grounds to doubt that Agency will render payment punctually including Agency's filing for bankruptcy or similar proceeding
- 6.4. Fees and other charges described in this Agreement do not include federal, state or local sales, foreign withholding, use, property, excise, service, or similar transaction taxes ("Tax(es)") now or hereafter levied, all of which shall be for Agency's account. With respect to state/local sales tax, direct pay permits or valid tax-exempt certificates must be provided to SAP at the execution of this SOW. If SAP is required to pay Taxes, Agency shall reimburse SAP for such amounts. Agency hereby agrees to indemnify SAP for any Taxes and related costs, interest and penalties paid or payable by SAP. This Section shall not apply to taxes based on SAP's income. Agency also agrees to pay SAP for additional tax amounts, if any, created by the taxability of Consultants reimbursed travel and living expenses resulting from long term assignments at Agency's locations.

7. Term and Termination.

- 7.1. **Term of the Agreement.** This Agreement shall be effective as of the Effective Date, specified above, and shall remain in effect unless terminated earlier by either party in accordance with this Section 7.
- 7.2. **Termination of the Agreement for Convenience.** Either party may terminate this Agreement for convenience upon thirty (30) days' prior written notice to the other party. If this Agreement is terminated for convenience prior to the completion of one or more SOWs, such termination will not affect the continuation of any such SOW or the applicability of the provisions of this Agreement to any such SOW for the remaining term of that SOW.
- 7.3. **Term of a SOW.** Each SOW shall be effective on the effective date set forth in that SOW, and shall remain in effect until

completion of the Services or terminated earlier by either party in accordance with this Section 0.

- 7.4. Termination of a SOW for Convenience.** Except as otherwise agreed in a SOW, each SOW may be terminated by either party upon thirty (30) days' prior written notice to the other party or as otherwise stated in an SOW. If there is more than one SOW referencing this Agreement, a SOW may be terminated for convenience in accordance with the terms of this section without terminating this Agreement or the other SOWs.
- 7.5. Termination of Agreement and/or a SOW for Cause.** Either party may terminate this Agreement and/or a SOW for cause:
- 7.5.1.** upon thirty (30) days' prior written notice of the other party's material breach of any provision of the Agreement or SOW, as applicable, including more than thirty (30) days delinquency in Agency's payment of any money due hereunder or any SOW, unless Agency has cured such breach during such thirty day period; or
 - 7.5.2.** immediately if the other party files for bankruptcy, becomes insolvent, or makes an assignment for the benefit of creditors, or otherwise breaches materially its obligations in Proprietary Information or Assignment.
- 7.6. Effect of Termination.** Agency shall be liable for all payments to SAP, including fees for all Services, including expenses, incurred in the performance of such Services up to the date on which any termination of a SOW or the Agreement takes effect. In the event of termination of a SOW or the Agreement, all Proprietary Information of either party provided in connection with this Agreement or SOW, as applicable, in the possession of either party shall be returned to the other party or destroyed with certification of such destruction from an individual of authority to bind the respective party.
- 8. Work Product.**
- 8.1.** All title to and rights in the Services, Deliverables and Work Products, and all Intellectual Property Rights embodied therein, including techniques, knowledge or processes of the Services and/or Deliverables (whether or not developed for Agency), shall be the sole and exclusively property of SAP and SAP AG. Agency agrees to execute and to ensure its third parties execute such documentation as reasonably necessary to secure SAP's or SAP AG's title over such rights.
 - 8.2.** Once all amounts due under a SOW are paid in full and all claims have been satisfied, Agency is granted a non-exclusive, non-transferable license for the duration of the license granted under the License Agreement, so long as Agency complies with the terms of the License Agreement and this Agreement) to use any Deliverables and Work Products provided to it by SAP under a relevant SOW under this Agreement in order to run Agency's and its Affiliates' internal business operations, and otherwise to the same extent as Agency is granted a license to use the SAP Software, documentation and SAP Proprietary Information in the License Agreement.
 - 8.3.** Agency must immediately notify SAP in writing if any third party gains unauthorized access to the property or information to or in which SAP retains title or rights and shall take all reasonable steps to stop such unauthorized access and also inform the third party of SAP's rights.
- 9. Confidentiality.**
- 9.1. Use of Proprietary Information.** Proprietary Information shall not be reproduced in any form except as required by the receiving party to perform its obligations under this Agreement and/or a SOW. Any reproduction of any Proprietary Information of the other shall remain the property of the disclosing party and shall contain any and all confidential or proprietary notices or legends which appear on the original. Each party shall observe the non-disclosure and confidentiality obligations set forth in Section 2.30.2, Protection of Proprietary information, of the License Agreement with respect to the other party's Proprietary information disclosed to it in connection with this Agreement. Proprietary Information of either party disclosed prior to execution of this Agreement shall be subject to the protections afforded hereunder.
 - 9.2. Advertising.** Under this Agreement, SAP agrees not to use the existence of this Agreement or the results from the implementation of this Agreement as a part of any news release or commercial advertising or similar activity. Agency hereby consents to SAP's inclusion of Agency's name in customer listings which may be provided to potential clients. Agency will upon reasonable request, be a reference for SAP and serve as a host for site visits of potential SAP customers. Such site visits shall require advance approval by Agency. Under this Agreement, Agency agrees not to use the existence of this Agreement or the results from the implementation of this Agreement as a part of any news release or similar activity without consultation with SAP.
 - 9.3. Confidentiality.** In accordance with 9 NCAC 06B.0207 and 06B.1001, the Agency may maintain the confidentiality of certain types of information described in N.C. Gen. Stat. §132-1 et. seq. Such information may include trade secrets defined by N.C. Gen. Stat. §66-152 and other information exempted from the Public Records Act pursuant to N.C. Gen. Stat. §132-1.2. SAP may designate information as confidential, consistent with and to the extent permitted under the Statutes and Rules set forth

above, and the non-disclosure obligations set forth in this Agreement. The Agency may serve as custodian of SAP's confidential information and not as an arbiter of claims against SAP's assertion of confidentiality. If an action is brought pursuant to N.C. Gen. Stat. §132-9 to compel the Agency to disclose information marked confidential, SAP agrees that it will intervene in the action through its counsel and participate in defending the Agency, including any public official(s) or public employee(s). SAP agrees that it shall hold the Agency and any official(s) and individual(s) harmless from any and all damages, costs, and attorneys' fees awarded against the Agency in the action. The Agency agrees to promptly notify SAP in writing of any action seeking to compel the disclosure of SAP's confidential information. The Agency shall have the right, at its option and expense, to participate in the defense of the action through its counsel. The Agency shall have no liability to SAP with respect to the disclosure of SAP's confidential information ordered by a court of competent jurisdiction pursuant to N.C. Gen. Stat. §132-9 or other applicable law.

10. Warranty.

10.1. Warranty. SAP warrants that its Services shall be performed in a professional workman-like manner and with the skills reasonably required for ninety (90) days following completion of the Service. Unless it is expressly confirmed in writing by SAP, no communication of any kind can be construed as imposing on SAP any other or more onerous duty or liability than is set forth in this Agreement.

10.2. Provided Agency notifies SAP in writing with a specific description of the Services warranty breach within the warranty period and SAP validates the existence of such warranty breach, SAP will, at its option:

10.2.1. re-perform the applicable Services ; or

10.2.2. refund the fee paid for the applicable Services

This is Agency's sole and exclusive remedy for a warranty breach.

10.3. SAP AND ITS LICENSORS DISCLAIM ALL WARRANTIES EXPRESS OR IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE EXCEPT TO THE EXTENT THAT ANY WARRANTIES IMPLIED BY LAW CANNOT BE VALIDLY WAIVED.

11. Limitation of Liabilities.

a) For purposes of the exclusive remedies and limitations of liability set forth in this Paragraph, Vendor shall be deemed to include the Vendor and its employees, agents, representatives, subcontractors, and suppliers and damages shall be deemed to refer collectively to all injuries, damages, losses, liabilities, expenses or costs incurred.

b) The Vendor's liability for damages to the State arising under a Statement of Work (SOW) shall be limited to the fees paid for the applicable Services under the relevant Order Form or in the case of subscription based Services including managed services, the fees paid in the twelve (12) month period preceding the date of the incident giving rise to the liability

c) Claims for injury to persons or damage to tangible personal property caused by Vendor's gross negligence or willful or wanton conduct shall not be subject to the foregoing limitation of liability. This limitation of liability does not apply to contributions among joint tortfeasors under N.C.G.S. 1B-1 *et seq.*, the receipt of court costs or attorney's fees that might be awarded by a court in addition to damages after litigation based on this Contract.

d) Reserved

e) Vendor shall have no liability unless the default in delivery of Services is occasioned by causes not attributable either to the State or to Force Majeure conditions or if the Software is not used in accordance with the Documentation; or (ii) if the defect or liability is caused by Licensee; or (iii) if the Software is used in conjunction with any third party software; or (iv) for any activities not permitted under this Agreement.

12. Assignment. Without SAP's prior written consent, Customer may not assign or transfer the Agreement (or any of its rights or obligations) to any party unless pursuant to GS § 143A-6 or reorganization within the Executive Branch Agencies under authority of the Governor. Vendor may not assign the Agreement or its obligations hereunder except as permitted by 09 NCAC 06B.1003 and this Paragraph. Vendor shall provide reasonable notice prior to any consolidation, acquisition, or merger. An assignment may be made, if at all, in writing by the Vendor, Assignee and the State setting forth the foregoing obligation of Vendor and Assignee.

13. General Provisions.

13.1. Severability. It is the intent of the parties that in case any one or more of the provisions contained in this Agreement shall

be held to be invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect the other provisions of this Agreement, and this Agreement shall be construed as if such invalid or unenforceable provision had never been contained herein.

- 13.2. No Waiver.** If either party should waive any breach of any provision of this Agreement, it shall not thereby be deemed to have waived any preceding or succeeding breach of the same or any other provision hereof.
- 13.3. Notice.** All notices or reports which are required or may be given pursuant to this Agreement shall be in writing and shall be deemed to be duly given when delivered to the respective executive offices of SAP and Agency at the addresses first set forth above or in the applicable SOW. Where in this Section 0 or elsewhere in this Agreement written form is required, that requirement can be met by facsimile transmission, exchange of letters or other written form.
- 13.4. Independent Contractor.** The relationship of SAP and Agency established by this Agreement is that of an independent contractor and no employment, agency, trust, partnership or fiduciary relationship is created by this Agreement.
- 13.5. Force Majeure.** Any delay or nonperformance of any provision of this Agreement (other than for the payment of amounts due hereunder) caused by conditions beyond the reasonable control of the performing party shall not constitute a breach of this Agreement, and the time for performance of such provision, if any, shall be deemed to be extended for a period equal to the duration of the conditions preventing performance.

13.6 Governing Law.

- a) The Agreement is made under and shall be governed and construed in accordance with the laws of the State of North Carolina and applicable Administrative Rules. The place of the Agreement or purchase order, its situs and forum, shall be Wake County, North Carolina, where all matters, whether sounding in Contract or in tort, relating to its validity, construction, interpretation and enforcement shall be determined. Vendor agrees and submits, solely for matters relating to the Agreement, to the jurisdiction of the courts of the State of North Carolina, and stipulates that Wake County shall be the proper venue for all matters.
- b) Except to the extent the provisions of the Contract are clearly inconsistent therewith, the applicable provisions of the Uniform Commercial Code as modified and adopted in North Carolina shall govern the Agreement. To the extent the Contract entails both the supply of "goods" and "Services," such shall be deemed "goods" within the meaning of the Uniform Commercial Code, except when deeming such Services as "goods" would result in a clearly unreasonable interpretation.

- 13.7. Non-Solicitation.** Neither party shall knowingly solicit or hire, any of the other party's employees involved in a SOW during the term of the applicable SOW and for a period of six (6) months from the termination thereof, without the express written consent of the other party. This provision shall not restrict the right of either party to solicit or recruit generally in the media.

- 13.8. Time.** Reserved

13.9. Entire Agreement; Written Form; Hierarchy.

- 13.9.1.** This Agreement, including all applicable SOWs and Schedules thereto, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements between the parties, whether written or oral, relating to the same subject matter.
- 13.9.2.** No modifications, amendments, or supplements to this Agreement shall be effective for any purpose unless in writing and signed by the authorized signatories of the parties. The foregoing provision also applies to any waiver of the written-form requirement. Where in this Section and elsewhere in this Agreement or a SOW written form is required, that requirement can be met by facsimile transmission, exchange of letters, or other written form (excluding emails).
- 13.9.3.** In the event of any inconsistencies between the Agreement and a SOW, the SOW shall take precedence over the Agreement. However, the SOW must explicitly reference the provision of the Agreement that it amends and state that it supersedes such provision.
- 13.9.4.** No conflicting or other conditions, including Agency's general terms and conditions, form any part of the Agreement or SOW, even where SAP has performed Services without expressly rejecting such conditions. Any purchase order or other document issued by Agency is for administrative convenience only. If, for reasons related

to Agency's internal arrangements or otherwise, Agency's conditions of purchase or other standard terms are included by insertion, reference, enclosure, attachment or otherwise in Agency's acceptance of SAP's offer (for example, in Agency's purchase order), Agency cannot rely on those conditions or terms and they are not incorporated in and do not form any part of the Agreement or SOW, and failure to expressly exclude them does not imply their acceptance.

13.10. Regulatory Matters. The SAP Proprietary Information inclusive of all Work Product and Deliverables are subject to the export control laws of various countries, including without limit the laws of the United States. Agency agrees that it will not submit the SAP Proprietary Information to any government agency for licensing consideration or other regulatory approval without the prior written consent of SAP, and will not export the Proprietary Information to countries, persons or entities prohibited by such laws. Agency shall also be responsible for complying with all applicable governmental regulations of the country where Agency is registered, and any foreign countries with respect to the use of the Proprietary Information by Agency and/or its subsidiaries

13.11. Survival. Sections 7 (Term), 8 (Work Product), 9 (Confidentiality), 11 (Limitation of Liabilities), 13.6 (Governing Law), and 13.7 (Non-Solicitation) shall survive any termination of this Agreement.

14. System Security and Data Safeguards. When SAP is given access to Agency's systems and data, SAP shall comply with Agency's reasonable administrative, technical, and physical safeguards to protect such data and guard against unauthorized access. In connection with such access, Agency shall be responsible for providing SAP Consultants with user authorizations and passwords to access its systems and revoking such authorizations and terminating such access, as Agency deems appropriate from time to time. Agency shall not grant SAP access to Agency systems or personal information (of Agency or any third party) unless such access is essential for the performance of Services under the Agreement.

Additional terms required by SAP.

"Cloud Materials" means any materials related to SAP Cloud Services produced by or with SAP, which SAP shall own, pursuant to pursuant to this Agreement or any SOW".

Additional terms required by the State.

TRAVEL EXPENSES: All travel expenses should be included in SAP's proposed costs. Separately stated travel expenses will not be reimbursed. In the event that the SAP may be eligible to be reimbursed for travel expenses arising under the performance of this Contract, reimbursement will be at the out-of-state rates set forth in N.C.G.S. §138-6; as amended from time to time. SAP agrees to use the lowest available airfare not requiring a weekend stay and to use the lowest available rate for rental vehicles. Travel expenses exceeding the foregoing rates shall not be paid by the State. The State will reimburse travel allowances only for days on which SAP is required to be in North Carolina performing Services under this Contract.

GOVERNMENTAL RESTRICTIONS: In the event any restrictions are imposed by governmental requirements that necessitate alteration of the material, quality, workmanship, or performance of the Deliverables offered prior to delivery thereof, the Vendor shall provide written notification of the necessary alteration(s) to the Agency Contract Administrator. The State reserves the right to accept any such alterations, including any price adjustments occasioned thereby, or to cancel the Contract. The State may advise Vendor of any restrictions or changes in specifications required by North Carolina legislation, rule or regulatory authority that require compliance by the State. In such event, Vendor shall use its reasonable efforts to comply with the required restrictions or changes. If compliance cannot be achieved by the date specified by the State, either party may terminate this Contract and the state shall compensate Vendor for sums due under the Contract.

PROHIBITION AGAINST CONTINGENT FEES AND GRATUITIES: SAP warrants that it has not paid, and agrees not to pay, any bonus, commission, fee, or gratuity to any employee or official of the State for the purpose of obtaining any contract or award issued by the State. Subsequent discovery by the State of non-compliance with these provisions shall constitute sufficient cause for immediate termination of all outstanding Agreements with SAP. Violations of this provision may result in debarment of SAP as permitted by 9 NCAC 06B.1207, or other provision of law.

AVAILABILITY OF FUNDS: Any and all payments by the State are expressly contingent upon and subject to the appropriation, allocation and availability of funds to the State for the purposes set forth in this Agreement. If this Agreement or any Purchase Order issued hereunder is funded in whole or in part by federal funds, the State's performance and payment shall be subject to and contingent upon the continuing availability of said federal funds for the purposes of the Agreement or Purchase Order. If the term of this Agreement extends into fiscal years subsequent to that in which it is approved such continuation of the Agreement is expressly contingent upon the appropriation, allocation, and availability of funds by the N.C. Legislature for the

purposes set forth in the Agreement. If funds to effect payment are not available, the State will provide written notification to SAP. If the Agreement is terminated under this paragraph, SAP agrees to terminate any Services supplied to the State under this Agreement, and relieve the State of any further obligation thereof. The State shall remit payment for Services accepted on or prior to the date of the aforesaid notice in conformance with the payment terms.

PAYMENT TERMS: Monthly Payment terms are Net 30 days after receipt of correct invoice (with completed timesheets for SAP personnel). The Agency is responsible for all payments under the Contract. Upon SAP's written request of not less than thirty (30) days and approval by the State or Agency, the Agency may:

Forward SAP's payment check(s) directly to any person or entity designated by SAP, or

Include any person or entity designated in writing by SAP as a joint payee on SAP's payment check(s), however, In no event shall such approval and action obligate the State to anyone other than SAP and SAP shall remain responsible for fulfillment of all Contract obligations.

ACCESS TO PERSONS AND RECORDS: Pursuant to N.C.G.S. §147-64.7, the Agency, the State Auditor, appropriate federal officials, and their respective authorized employees or agents are authorized to examine all books, records, and accounts of SAP insofar as they relate to transactions with any department, board, officer, commission, institution, or other agency of the State of North Carolina pursuant to the performance of this Contract or to costs charged to this Contract. SAP shall retain any such books, records, and accounts for a minimum of three (3) years after the completion of this Contract. Additional audit or reporting requirements may be required by any Agency, if in the Agency's opinion, such requirement is imposed by federal or state law or regulation.

TAXES: The State of North Carolina is exempt from Federal excise taxes and no payment will be made for any personal property taxes levied on the Vendor or for any taxes levied on employee wages. Agencies of the State may have additional exemptions or exclusions for federal or state taxes. Evidence of such additional exemptions or exclusions shall be provided to Vendor by Agencies during the term of the Agreement prior to signing an Order Form. Applicable State or local sales taxes shall be invoiced as a separate item.

ELECTRONIC PROCUREMENT: (Applies to all contracts that include E-Procurement and are identified as such in the body of the solicitation document): Purchasing shall be conducted through the Statewide E-Procurement Service. The State's third party agent shall serve as the Supplier Manager for this E-Procurement Service. SAP shall register for the Statewide E-Procurement Service within two (2) business days of notification of award in order to receive an electronic purchase order resulting from award of this contract. The E-Procurement fee does not normally apply to services.

a) Reserved.

b) Reserved.

c) The Supplier Manager will capture the order from the State approved user, including the shipping and payment information, and submit the order in accordance with the E-Procurement Service. Subsequently, the Supplier Manager will send those orders to SAP on State Agreement. The State or State approved user, not the Supplier Manager, shall be responsible for the solicitation, bids received, evaluation of bids received, award of contract, and the payment for goods delivered.

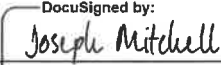
d) SAP agrees at all times to maintain the confidentiality of its user name and password for the Statewide E-Procurement Services. As SAP is a corporation, SAP may authorize its employees to use its password. SAP shall be responsible for all activity and all charges for such employees. SAP agrees not to permit a third party to use the Statewide E-Procurement Services through its account. If there is a breach of security through SAP's account, SAP shall immediately change its password and notify the Supplier Manager of the security breach by e-mail. SAP shall cooperate with the state and the Supplier Manager to mitigate and correct any security breach.

E-VERIFY Pursuant to N.C.G.S. § 143B-1350(k), the State shall not enter into a contract unless SAP and each of its subcontractors comply with the E-Verify requirements of N.C.G.S. Chapter 64, Article 2. SAP are directed to review the foregoing laws. SAP must submit a certification of compliance with E-Verify to the awarding agency, and on a periodic basis thereafter as may be required by the State.

IN WITNESS WHEREOF, the parties have so agreed.

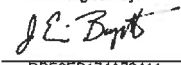
Accepted By:

SAP Public Services, Inc.
(SAP)

By: 
Print name: Joseph Mitchell
Title: Assistant GC
Date: February 26, 2018

Accepted by:

North Carolina - Department of Information Technology
(Agency)

By: 
Print name: Eric Boyette
Title: SCIO
Date: 2/27/2018 | 11:37 AM EST



MWBE UTILIZATION FORM

This MWBE Utilization Form is an integral part of the contract between the County of Durham and SAP PUBLIC SERVICES (Contractor), which contract is dated 02/27/18. The purpose of this form is to assist in identifying minority participation associated with County contracts.

Note: If Purchasing has already performed MWBE pre-award compliance during a bid process and/or BOCC contract approval, please attach the pre-award compliance form to this form and submit with the contract. Completing the remainder of this form will not be required.

Description of Services/Goods SAP STAFF AUGMENTATION CONSULTING SUPPORT

Contract Amt \$ 88,160.00 Contract Term 03/02/2020-12/31/2020 (STATE OF NC PSA)

Please check one:

☒ Contractor will provide 100% of the services/goods for this contract.

☐ Contractor will **subcontract** a percentage of the services/goods for this contract to a non-minority business enterprise or a non-profit.

☐ Contractor will **subcontract** a percentage of the services/goods for this contract to the minority-owned business enterprise(s) identified below.

Minority Business Enterprise Name, Address & E-Mail	Minority Category*	Description of Work	Percentage %	Dollar Value

***Minority Categories: Black/African American (B), Female (F), Hispanic (H), Asian American (A), American Indian (I)**

Durham County Goals for M/WBE Participation in the Procurement of Goods, Services and Construction

Categories	Construction	Architect/ Engineer	Services	Goods	MWBE % Availability (Median Availability)
Black American	14.6	9.8	10.9	2.8	10.4%
Asian American	1.3	3.0	1.1	.43	1.3%
Hispanic American	4.2	1.8	1.1	.43	1.5%
American Indian	.65	.75	1.0	.5	.70%
White Female	13.8	11.0	9.5	7.1	10.3%
Overall MWBE Participation Goal					25.0%

This form shall accompany all contracts submitted to Purchasing.