

WORKFORCE MANAGEMENT SERVICE AGREEMENT

I. INTRODUCTION

THIS WORKFORCE MANAGEMENT SERVICE AGREEMENT (the "Agreement") is entered into as of July 1, 2017, between the COUNTY OF TULARE, referred to as COUNTY, and SCHEDULESOFT CORPORATION, referred to as CONTRACTOR, with reference to the following:

ACCORDINGLY, IT IS AGREED:

II. SPECIFIC TERMS

1. **TERM:** This Agreement shall become effective as of July 1, 2017 and shall expire at 11:59 PM on June 30, 2022, unless otherwise terminated as provided in this Agreement.
 - a) CONTRACTOR shall provide WorkLoud Software Services as described in Exhibit A.
 - b) Additionally, CONTRACTOR may be reimbursed for travel related expenditures as indicated in Exhibit A.
2. **PAYMENT FOR SERVICES:** COUNTY shall pay CONTRACTOR annually at the start of each Contract Year as follows:

Contract Year	Service/Software	Amount
Year One	WorkLoud Workforce Management Service	\$10,530
Year Two	WorkLoud Workforce Management Service	\$16,560
Year Three	WorkLoud Workforce Management Service	\$16,560
Year Four	WorkLoud Workforce Management Service	\$16,560
Year Five	WorkLoud Workforce Management Service	\$16,560
	Total Software Cost – Not to Exceed	\$76,770

On-Site Training Costs – Not To Exceed	\$5000
Payable no later than 30 days of invoice	
Payable only if training occurs	
Additional trainings required will require an amendment to this agreement.	

IV. GENERAL TERMS

3. **INDEPENDENT CONTRACTOR STATUS:**
 - a. This Agreement is entered into by both parties with the express understanding that CONTRACTOR will perform all services required under this Agreement as an independent contractor. Nothing in this Agreement shall be construed to constitute the CONTRACTOR or any of its agents, employees or officers as an agent, employee or officer of COUNTY.

- b. CONTRACTOR agrees to advise everyone it assigns or hires to perform any duty under this agreement that they are not employees of COUNTY. Subject to any performance criteria contained in this Agreement, CONTRACTOR shall be solely responsible for determining the means and methods of performing the specified services and COUNTY shall have no right to control or exercise any supervision over CONTRACTOR as to how the services will be performed. As CONTRACTOR is not COUNTY'S employee, CONTRACTOR is responsible for paying all required state and federal taxes. In particular, COUNTY will not:
- a) Withhold FICA (Social Security) from CONTRACTOR's payments.
 - b) Make state or federal unemployment insurance contributions on CONTRACTOR's behalf.
 - c) Withhold state or federal income tax from payments to CONTRACTOR.
 - d) Make disability insurance contributions on behalf of CONTRACTOR.
 - e) Obtain unemployment compensation insurance on behalf of CONTRACTOR.
- c. Notwithstanding this independent contractor relationship, COUNTY shall have the right to monitor and evaluate the performance of CONTRACTOR to assure compliance with this Agreement.
4. **COMPLIANCE WITH LAW:** CONTRACTOR shall provide services in accordance with applicable Federal, State, and local laws, regulations and directives. With respect to CONTRACTOR's employees, CONTRACTOR shall comply with all laws and regulations pertaining to wages and hours, state and federal income tax, unemployment insurance, Social Security, disability insurance, workers' compensation insurance, and discrimination in employment.
5. **GENERAL LAW:** This Agreement shall be interpreted and governed under the laws of the State of California without reference to California conflicts of law principles. The parties agree that this contract is made in and for legal purposes shall be deemed to be performed in Tulare County, California.
6. **INTERPRETATION:** In the event of a conflict between the terms outlined in Exhibit A to this Agreement (comprised of the Initial Order Form and the Workload Terms of Service) and any other part of this Agreement, the non-Exhibit A terms (i.e. the terms in this primary contract or Exhibit B) control.
7. **RECORDS AND AUDIT:** CONTRACTOR shall maintain complete and accurate records with respect to the services rendered and the costs incurred under this Agreement. In addition, CONTRACTOR shall maintain complete and accurate records with respect to any payments to employees or subcontractors. All such records shall be prepared in accordance with generally accepted accounting procedures, shall be clearly identified, and shall be kept readily accessible. Upon reasonable notice, CONTRACTOR shall make such records available within Tulare County to the Auditor of Tulare County and to his or her agents and representatives, for the purpose of auditing and/or copying such records for a period of five (5) years from the date of final payment under this Agreement.
8. **CONFLICT OF INTEREST:**
- (a) CONTRACTOR agrees to, at all times during the performance of this Agreement, comply with

the law of the State of California regarding conflicts of interests and appearance of conflicts of interests, including, but not limited to Government Code Section 1090 et seq., and the Political Reform Act, Government Code Section 81000 et seq. and regulations promulgated pursuant thereto by the California Fair Political Practices Commission. The statutes, regulations and laws previously referenced include, but are not limited to, prohibitions against any public officer or employee, including CONTRACTOR for this purpose, from making any decision on behalf of COUNTY in which such officer, employee or consultant/contractor has a direct or indirect financial interest. A violation can occur if the public officer, employee or consultant/contractor participates in or influences any COUNTY decision which has the potential to confer any pecuniary benefit on CONTRACTOR or any business firm in which CONTRACTOR has an interest, with certain narrow exceptions.

(b) CONTRACTOR agrees that if any facts come to its attention which raise any questions as to the applicability of conflicts of interest laws, it will immediately inform the COUNTY designated representative and provide all information needed for resolution of this question.

9. **INSURANCE:** Prior to approval of this Agreement by COUNTY, CONTRACTOR shall file with the submitting department evidence of required insurance as set forth in **EXHIBIT B** attached. Insurance policies shall not be used to limit CONTRACTOR's liability or to limit the indemnification provisions and requirements of this contract or act in any way to reduce the policy coverage and limits available from the insurer(s).

10. **INDEMNIFICATION:** CONTRACTOR shall hold harmless, defend and indemnify COUNTY, its agents, officers and employees from and against any liability, claims, actions, costs, damages or losses of any kind, including death or injury to any person and/or damage to property, including COUNTY property, arising from, or in connection with, the performance by CONTRACTOR or its agents, officers and employees under this Agreement. This indemnification specifically includes any claims that may be made against COUNTY by any taxing authority asserting that an employer-employee relationship exists by reason of this Agreement, and any claims made against COUNTY alleging civil rights violations by CONTRACTOR under Government Code sections 12920 et seq. (California Fair Employment and Housing Act), and any fines or penalties imposed on COUNTY for CONTRACTOR's failure to provide form DE-542, when applicable. This indemnification obligation shall continue beyond the term of this Agreement as to any acts or omissions occurring under this Agreement or any extension of this Agreement.

11. **TERMINATION:**

(a) With Cause: This Agreement may be terminated by either party should the other party:

- (1) be adjudged a bankrupt, or
- (2) become insolvent or have a receiver appointed, or
- (3) make a general assignment for the benefit of creditors, or
- (4) suffer any judgment which remains unsatisfied for 30 days, and which would substantively impair the ability of the judgment debtor to perform under the Agreement, or
- (5) materially breach this Agreement.

In addition, COUNTY may terminate this Agreement based on:

- (6) Material misrepresentation, either by CONTRACTOR or anyone acting on CONTRACTOR's behalf, as to any matter related in any way to COUNTY's retention of CONTRACTOR, or
- (7) other misconduct or circumstances which, in the sole discretion of the COUNTY, either impair the ability of CONTRACTOR to competently provide the services under this Agreement, or expose the COUNTY to an unreasonable risk of liability.

COUNTY will pay the CONTRACTOR the compensation earned for work performed and not previously paid for to the date of termination. The payment of such compensation is subject to the restrictions on payment of compensation otherwise provided in this Agreement, and is conditioned upon receipt from CONTRACTOR of any and all plans, specifications and estimates, and other files, data and documents prepared by CONTRACTOR by the date of termination in accordance with this Agreement. COUNTY will not pay lost anticipated profits or other economic loss, nor will the COUNTY pay compensation or make reimbursement to cure a breach arising out of or resulting from such termination. If this Agreement is terminated and the expense of finishing the CONTRACTOR's scope of work exceeds the unpaid balance of the agreement, the CONTRACTOR must pay the difference to the COUNTY. Sanctions taken will be possible rejection of future proposals based on specific causes of non-performance.

(b) Effects of Termination: Expiration or termination of this Agreement shall not terminate any obligations to indemnify, to maintain and make available any records pertaining to the Agreement, to cooperate with any audit, to be subject to offset, or to make any reports of pre-termination contract activities. Where CONTRACTOR's services have been terminated by the COUNTY, said termination will not affect any rights of the COUNTY to recover damages against the CONTRACTOR.

(c) Suspension of Performance: Independent of any right to terminate this Agreement, the Tulare County Fire Chief (or his or her designee) may immediately suspend performance by CONTRACTOR, in whole or in part, in response to health, safety, or a failure or refusal by CONTRACTOR to comply with the provisions of this Agreement, until such time as the cause for suspension is resolved, or a notice of termination becomes effective.

12. LOSS OF FUNDING: It is understood and agreed that if the funding is either discontinued or reduced for this project for the COUNTY, that the COUNTY shall have the right to terminate this Agreement. In such event, the COUNTY shall provide CONTRACTOR with at least thirty (30) days' prior written notice of such termination.

13. NOTICES:

(a) Except as may be otherwise required by law, any notice to be given shall be written and shall be either personally delivered, sent by facsimile transmission or sent by first class mail, postage prepaid and addressed as follows:

COUNTY:

Tulare County Fire Department
Attn: Steven Murch
PO Box 7030
Visalia Ca 93292
Telephone: 559-622-7604

CONTRACTOR:

ScheduleSoft Corporation
WorkLoud
Attn: Legal
301 S Blount Street, Suite 302
Madison WI 53703
Telephone: 608-807-4582

(b) Notice personally delivered is effective when delivered. Notice sent by facsimile transmission is deemed to be received upon successful transmission. Notice sent by first class mail shall be deemed received on the fifth day after the date of mailing. Either party may change the above address by giving written notice pursuant to this paragraph.

14. ASSIGNMENT/SUBCONTRACTING: Unless otherwise provided in this Agreement, COUNTY is relying on the personal skill, expertise, training and experience of CONTRACTOR and CONTRACTOR's employees and no part of this Agreement may be assigned or subcontracted by CONTRACTOR without the prior written consent of COUNTY.

15. DISPUTE RESOLUTION: If a dispute arises out of or relating to this Agreement, or the breach thereof, and if said dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by non-binding mediation before resorting to litigation or some other dispute resolution procedure, unless the parties mutually agree otherwise. The mediator shall be mutually selected by the parties, but in case of disagreement, the mediator shall be selected by lot from among two nominations provided by each party. All costs and fees required by the mediator shall be split equally by the parties, otherwise each party shall bear its own costs of mediation. If mediation fails to resolve the dispute within 30 days, either party may pursue litigation to resolve the dispute.

16. FURTHER ASSURANCES: Each party will execute any additional documents and perform any further acts that may be reasonably required to effect the purposes of this Agreement.

17. HEADINGS: Section headings are provided for organizational purposes only and do not in any manner affect the scope, meaning or intent of the provisions under the headings.

18. NO THIRD-PARTY BENEFICIARIES INTENDED: Unless specifically set forth, the parties to this Agreement do not intend to provide any other party with any benefit or enforceable legal or equitable right or remedy.

19. WAIVERS: The failure of either party to insist on strict compliance with any provision of this

Agreement shall not be considered a waiver of any right to do so, whether for that breach or any subsequent breach. The acceptance by either party of either performance or payment shall not be considered to be a waiver of any preceding breach of the Agreement by the other party.

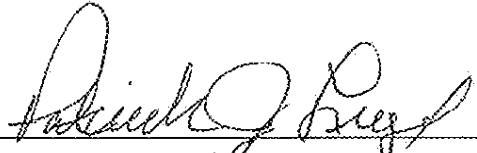
- 20. **EXHIBITS AND RECITALS:** The recitals and the exhibits to this Agreement are fully incorporated into and are integral parts of this Agreement.
- 21. **CONFLICT WITH LAWS OR REGULATIONS/SEVERABILITY:** This Agreement is subject to all applicable laws and regulations. If any provision of this Agreement is found by any court or other legal authority, or is agreed by the parties to be, in conflict with any code or regulation governing its subject matter, only the conflicting provision shall be considered null and void. If the effect of nullifying any conflicting provision is such that a material benefit of the Agreement to either party is lost, the Agreement may be terminated at the option of the affected party. In all other cases the remainder of the Agreement shall continue in full force and effect.
- 22. **ENTIRE AGREEMENT REPRESENTED:** This Agreement represents the entire agreement between CONTRACTOR and COUNTY as to its subject matter and no prior oral or written understanding shall be of any force or effect. No part of this Agreement may be modified without the written consent of both parties.
- 23. **ASSURANCES OF NON-DISCRIMINATION:** CONTRACTOR shall not discriminate in employment or in the provision of services on the basis of any characteristic or condition upon which discrimination is prohibited by state or federal law or regulation.

It is recognized that both the CONTRACTOR and the COUNTY have the responsibility to protect COUNTY employees and clients from unlawful activities, including discrimination and sexual harassment in the workplace. Accordingly, CONTRACTOR agrees to provide appropriate training to its employees regarding discrimination and sexual harassment issues, and to promptly and appropriately investigate any allegations that any of its employees may have engaged in improper discrimination or harassment activities. The COUNTY, in its sole discretion, has the right to require CONTRACTOR to replace any employee who provides services of any kind to COUNTY pursuant to this Agreement with other employees where COUNTY is concerned that its employees or clients may have been or may be the subjects of discrimination or harassment by such employees.

THE PARTIES, have read and considered the above provisions, indicate their agreement by their authorized signatures below.

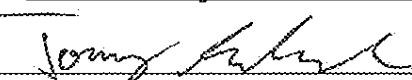
CONTRACTOR

Date: MAY 24, 2017

By: 

TITLE: COO / CFO

Date: May 24, 2017

By: 

TITLE: VP Business Development

Unless this contract is accompanied by a certified copy of the corporation's Board of Director's resolution authorizing the execution of the contract, the County requires that, pursuant to Corporations Code section 313, contracts with a corporation be signed by two individuals, one from each of the following lists of officers: (1) chairman of the Board of Directors, the president, or any vice-president; and (2) the secretary, any assistant secretary, the chief financial officer, or any assistant treasurer.

COUNTY OF TULARE

Date: _____

By: _____
Chairman, Board of Supervisors

ATTEST:

County Administrative Officer/Clerk of the Board
Of Supervisors of the County of Tulare

By: _____
Deputy Clerk

Tulare County Fire Department

By: 
Fire Chief

Date: 6-5-17

Approved as to Form
County Counsel

By: 
Deputy

Date: 6/11/17
Matter # 2017602

Exhibit A

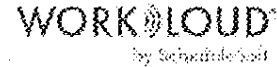


EXHIBIT A: WORKLOUD[®] TERMS OF SERVICE

1. Use of Service and Content.

1.1 Access. These Terms of Service are attached to the initial order form (the "Initial Order Form"). Subject to the terms set forth in the "Workforce Management Service Agreement," the Initial Order Form and these Terms of Service (collectively, referred to in the Terms of Service as this "Agreement"), ScheduleSoft hereby provides Subscriber (as defined on the Initial Order Form) and its authorized employees and agents identified in writing by Subscriber ("Users") access to a web-based solution that provides certain workforce management and related solutions and any use of any related hardware provided by ScheduleSoft (collectively, the "Service") through the internet via a WORKLOUD[®] website or mobile device application (in either case, the "Website") during the term of this Agreement, solely for the internal business purposes of Subscriber and subject to the terms of this Agreement. The Service shall be made available to Subscriber and may be accessed and used by Subscriber solely in connection with the number of employees identified on the Initial Order Form or any subsequent order form (collectively, each an "Order Form"). Subscriber and ScheduleSoft may be referred to hereunder each as a "Party" and collectively as the "Parties."

1.2 Subscriptions. Unless otherwise stated in an Order Form, (a) the Service is purchased as a Subscription; (b) Subscriptions that are added during the Term, as defined in Section 5.1, below are added at the price set forth in the Order Form, prorated for the portion of the Term remaining at the time the Subscriptions are added; and (c) any added Subscriptions will terminate on the same date as the existing Subscriptions.

1.3 Installation and Use. Subscriber may install and use the Service on the personal computer, tablet, phone, and/or other supported device for each User as authorized in this Agreement.

1.4 Restrictions on Use. Subscriber shall not be entitled to gain access to, or to receive a source code or object code version of, any of the software used by ScheduleSoft to provide the Service ("Software"), and Subscriber shall not, either directly or indirectly (a) make the Service available to any third party or affiliate not specifically identified on an Order Form, whether by the sharing of access credentials with such third parties or otherwise; (b) modify or make derivative works of the Service or any Software; (c) create internet "links" to the Website, or "frame" or "mirror" the Service or any related content on any other server or wireless or internet-based device; (d) reverse engineer the Service or any Software for any purpose; (e) knowingly send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs in or to the Service; (f) interfere with or disrupt the integrity or performance of the Service; or (g) attempt to gain unauthorized access to the Service. Subscriber understands and agrees that it may elect to purchase third-party software, products, hardware or services to use in connection with the Service, and that it may elect to have ScheduleSoft integrate the same into the Service. Subscriber agrees to be solely responsible for ensuring that it is properly licensed to use such third party software, products, hardware or services, and that ScheduleSoft makes no representations, warranties or other covenants or agreements regarding the functionality thereof.

2. Fees.

2.1 Terms of Payment. Except as otherwise specified herein or in an Order Form, (a) fees are based on Services purchased pursuant to the terms of this Agreement and not actual usage; (b) payment obligations are mandatory and Subscriber shall have no right of set off; (c) actual fees paid are non-refundable; and (d) quantities purchased cannot be decreased during the Term (as defined in section 5.1 hereof).

2.2 Currency of Payment. Subscriber shall pay all fees and expenses payable hereunder in U.S. dollars to ScheduleSoft.

2.3 Failure to Pay. Subscriber's failure to pay any fees or expenses when due shall give ScheduleSoft the right and option to immediately terminate this Agreement and Subscriber's access to the Service; provided, however, Subscriber shall have 30 days from such termination to transfer Subscriber's data from the Service in an industry standard format as set forth in Section 5.2 (Termination for Cause).

2.4 Fee Increases. ScheduleSoft may implement an increase in Subscription fees upon a renewal of this Agreement with at least sixty (60) days' written notice to Subscriber.

2.5 Overdue Charges. Intentionally left blank.

2.6 Invoice Disputes. Any invoice question or dispute must be submitted prior to the due date of said invoice.

3. Taxes. In addition to subscription fees, where legally required, ScheduleSoft will invoice Subscriber for any sales, use, or other applicable taxes, and payment for such charges and taxes shall be due 30 days after date of ScheduleSoft's invoice. In all cases, Subscriber shall be responsible for the payment of any such charges or taxes (whether directly to the applicable governmental authority, or to ScheduleSoft if it is required to collect).

4. Service Levels and Support Services.

4.1 Online. ScheduleSoft shall provide support for the Service on its standard terms and conditions as set forth at <http://workloud.com/support-policy/> which may be updated by ScheduleSoft at any time and from time to time.

4.2 99% Server Uptime Target. ScheduleSoft shall use commercially reasonable means to ensure that the server used to provide the Service will be available 99% of the time in a given month, excluding (a) scheduled downtime attributable to routine maintenance or upgrades and; (b) downtime caused by circumstances beyond ScheduleSoft's reasonable control.

4.2.1 Downtime. Regularly scheduled maintenance time does not constitute downtime. Maintenance time is considered regularly scheduled if it is communicated in writing at least forty-eight (48) hours in advance of the maintenance time. ScheduleSoft hereby provides notice that, on a weekly basis, 1:00AM – 5:00am Saturday, Central Time, is reserved for routine scheduled maintenance for Analytics, for use as needed. In emergency conditions, ScheduleSoft may take the Services down for unscheduled maintenance and, in that event, will attempt to notify Subscriber in advance. Such unscheduled maintenance will not be counted against the Service Level Commitment.

4.3 Response Commitment Times.

4.3.1 Classifications. ScheduleSoft will respond to issues and problems with the Service in a manner that corresponds to the severity of the problem. There are separate response commitments for URGENT, HIGH, NORMAL, and LOW severity issues.

- (a) An Urgent severity issue is one that causes the ScheduleSoft product to be completely inoperable.
- (b) A High severity issue is one in which there is a loss of core application functionality or performance resulting in inability to use core functionality, i.e. Job Bidding, Time and Attendance, Scheduling
- (c) A Normal severity issue is one where you have limited core functionality or performance, and/or issues with non-core features, such as reports or other functions.
- (d) A Low severity issue is either cosmetic in nature or one that can be readily avoided.

4.3.2 Response. Following ScheduleSoft's determination of the severity level of the issue, ScheduleSoft will respond as follows:

Priority	Description
Urgent	ScheduleSoft will provide an initial response within two (2) hours of receipt of notification during business hours. ScheduleSoft will diligently address the issue until the problem is resolved. If the issue is due to a bug or defect of ScheduleSoft, ScheduleSoft will endeavor to develop, test, and apply an appropriate work-around, fix, or patch within two (2) business days, at no cost to the Subscriber.
High	ScheduleSoft will provide an initial response within two (2) business days of receipt of notification. ScheduleSoft will provide a fix in the next planned release or patch if available sooner based on severity.
Normal	ScheduleSoft will provide an initial response within five (5) business days of receipt of notification. ScheduleSoft will attempt to apply an appropriate work-around, or provide a fix in the next planned release.
Low	ScheduleSoft will provide an initial response within five (5) business days of receipt of notification. ScheduleSoft will then provide assistance and direction in how to avoid this type of problem.

Subscriber Remedy. Subscriber's sole remedy in the case of ScheduleSoft's failure to meet the target identified in Section

4.2, above, or in the case of any issue or problem identified in connection with Section 4.3.1, above, shall be that ScheduleSoft shall (a) take the actions described in Sections 4.3.1 and 4.3.2, respectively, (b) perform a root-cause analysis to identify the cause of such issue and (c) provide subscriber with a report identifying the cause of, and procedure for correcting, such issue within a reasonable time.

5. Term; Termination.

5.1 Term. Unless terminated earlier in accordance with this Agreement, the term of this Agreement shall be as set forth on the initial Order Form (the "Term").

5.2 Termination for Cause. Either Party may terminate this Agreement, effective immediately, by giving the other Party notice if the other Party has breached a material provision of this Agreement and that breach (a) is incurable, or (b) if curable, the breach remains uncured 30 days after the breaching Party receives written notice of that breach. For purposes of this Section 5.2, a breach of Section 7 (Confidentiality) and Section 1 (Use of Service and Content) of these Terms of Service shall constitute an incurable, material breach.

5.3 Effect of Termination. Upon expiration or termination of this Agreement for any reason all rights of Subscriber to access and use the Service shall immediately terminate and Subscriber shall return all hardware provided by ScheduleSoft in the same condition in which it was provided, reasonable wear and tear excepted. Subscriber will remain obligated to pay fees attributable to the entire service period up to the termination date.

5.4 Suspension. In addition to its right to terminate this Agreement, ScheduleSoft may suspend Subscriber's access to the Services if Subscriber violates this Agreement, misuses or abuses the Services, or if any other circumstance arises that ScheduleSoft determines necessitates such action.

6. Proprietary Rights

6.1 Ownership. ScheduleSoft shall retain exclusive title and all rights in and to the Website and the Service and all intellectual property rights therein. ScheduleSoft may, in its sole discretion, incorporate in the Service any recommendations, ideas, contributions, corrections, enhancements or other information submitted by Subscriber to ScheduleSoft concerning the Service (but excluding Subscriber Data, as defined in Section 3.1, below, or other Confidential Information, as defined in Section 7, below, of Subscriber). Any such information incorporated into the Service shall be the sole and exclusive property of ScheduleSoft and Subscriber shall not derive any ownership rights as a result thereof, and Subscriber hereby assigns and agrees to assign to ScheduleSoft any rights, if any, Subscriber may have in the same.

6.2 Display of Brand Features. ScheduleSoft may include Subscriber's name or logo ("Brand Features") in a list of ScheduleSoft customers, orally or in writing, on ScheduleSoft's website, in press releases, and in promotional materials with Subscriber's prior written consent, which shall not be unreasonably withheld. Neither Party may display or use the other Party's Brand Features outside the scope of what is permitted in this Agreement without the other Party's prior written consent.

7. Confidentiality Obligations. Neither Party shall use or disclose any Confidential Information of the other except to fulfill rights or obligations under this Agreement. Each Party's confidentiality obligations survive termination or expiration of this Agreement for 1 year, except that information regarding the Website, Software and the Service will survive indefinitely. "Confidential Information" means, (a) with respect to ScheduleSoft: the design, architecture, functionality and other characteristics of the Website, Software, and the Service; the Documentation (as defined below); and the terms of this Agreement; (b) with respect to Subscriber: the Subscriber Data (as defined below); and (c) with respect to both Parties: any other confidential or proprietary information of the other Party, whether in tangible or intangible form, that is disclosed or made available to the other as a result of this Agreement, including inventions, drawings, ideas, sketches, specifications, techniques, documentation, customer and vendor information, and non-public financial information. Confidential Information does not include, as to either Party, information that: (i) is or becomes generally known to the public through no act or failure to act on the part of the receiving Party; (ii) has been independently developed by the receiving Party, without use of or reference to the other Party's Confidential Information; or (iii) is furnished or made known to the receiving Party on a non-confidential basis by a third party who has a lawful right to disclose such information. Notwithstanding the foregoing, in the event the receiving Party is required to disclose Confidential Information by a governmental authority (or order thereof) or pursuant to any law, regulation or order, such Party may disclose such Confidential Information as

necessary in connection therewith, provided that such Party shall (to the extent practicable under the circumstances) provide prior notice to the other Party of such requirement and shall reasonably cooperate in any attempt by such other Party to prevent disclosure of its Confidential Information through legal means.

8. Subscriber Data.

8.1 Ownership. Subscriber has sole and exclusive ownership of all data, information or other content, in any form, that is loaded, stored or processed by Subscriber and its Users using the Service ("Subscriber Data"). Subscriber has sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership of, or right to use, all Subscriber Data. ScheduleSoft is not responsible for any security breach occurring in or through third party systems or facilities, including without limitation a third party data center utilized by ScheduleSoft to host the Software (such as Amazon Web Services). ScheduleSoft is under no obligation to retain or store any Subscriber Data following termination of this Agreement; provided, however, Subscriber shall have 30 days from the date of termination of this Agreement to transfer Subscriber Data from the Service in an industry standard format.

8.2 Processing and Utilization. Users shall load Subscriber Data into the Service via the Website. Subscriber shall require Users to utilize user identification and passwords in order to gain access to the Service, and shall control and track User access to the Service. Subscriber is solely responsible for ensuring the security of Users' access credentials.

8.3 Unauthorized Access. Upon becoming aware of unauthorized access to Subscriber Data, as its sole obligation, ScheduleSoft shall report the incident to Subscriber and take commercially reasonable measures to address the incident so as to mitigate the possibility of a recurrence.

8.4 Former Users. Any person who is no longer an authorized User (through termination of employment, relocation to a different location, or any other reason) must immediately stop using the Service and must completely and permanently remove the Service from all computers to which such former authorized User has access.

8.5 Auditing. ScheduleSoft may conduct periodic audits of Subscriber's facilities and records to assure compliance by Subscriber with this Agreement. Subscriber shall make all relevant records available to ScheduleSoft and otherwise cooperate fully with ScheduleSoft in connection with such audits.

9. Warranty Disclaimers.

9.1 General Disclaimer. SCHEDULESOFT DOES NOT WARRANT OR GUARANTEE (a) THAT SUBSCRIBER'S ACCESS TO THE WEBSITE OR THE SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE; (b) THAT THE WEBSITE, SOFTWARE OR THE SERVICE WILL OPERATE IN COMBINATION WITH HARDWARE, SOFTWARE, OR DATA OTHER THAN THAT DESIGNATED BY SCHEDULESOFT; OR (c) THAT THE QUALITY OF THE SERVICE AND ANY PROFESSIONAL SERVICES PERFORMED IN CONNECTION HERewith WILL MEET SUBSCRIBER'S REQUIREMENTS OR EXPECTATIONS. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 9.1 HEREOF, ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY DISCLAIMED BY SCHEDULESOFT AND ITS LICENSORS.

9.2 Internet Disclaimer. THE SERVICE MAY BE SUBJECT TO LIMITATIONS, DELAYS, DELIVERY FAILURES, AND SIMILAR PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS AND SCHEDULESOFT IS NOT RESPONSIBLE FOR, AND SHALL NOT HAVE ANY LIABILITY IN CONNECTION WITH, ANY DAMAGES THAT ARISE AS A RESULT OF SUCH PROBLEMS.

9.3 Future Functionality Disclaimer. The Subscription is purchased without contingency upon delivery of any functionality or feature that does not currently exist, and without dependence on any oral or written comment by or on behalf of ScheduleSoft regarding future functionality.

9.4 Relationship of the Parties to this Agreement. ScheduleSoft and Subscriber are independent contractors, and this Agreement does not create a partnership, franchise, joint venture, fiduciary, or employment relationship between the parties.

10. Indemnification.

10.1 By ScheduleSoft. ScheduleSoft shall indemnify and hold Subscriber harmless from and against any third party claim that the Service infringes a U.S. patent or copyright (an "IP Claim"). In the event of an IP Claim, Subscriber shall promptly notify ScheduleSoft in writing thereof. ScheduleSoft shall have sole control of the defense and settlement thereof, and Subscriber shall reasonably cooperate in connection therewith. ScheduleSoft shall have no liability for any IP Claim: (i) based upon the combination, operation or use of the Service by Subscriber, or any component thereof, with hardware or software not supplied or otherwise approved in writing by ScheduleSoft; (ii) arising from Subscriber's misuse of the Service or use of the Service in violation of this Agreement or not in accordance with the written documentation provided by ScheduleSoft for use of the Website and Service (the "Documentation"); or (iii) based upon alteration or modification of the Service by anyone other than ScheduleSoft. If use of the Service is enjoined or threatened to be enjoined due to an alleged infringement, ScheduleSoft shall have the option to, at its sole discretion and expense, (a) procure the right for Subscriber to continue using the Service; (b) modify or replace the affected items with functionally equivalent or better items; or (c) terminate this Agreement and all Order Forms and refund any unused, prepaid Subscription fees to Subscriber. The indemnity set forth in this Section 10.1 states ScheduleSoft's entire obligation, and Subscriber's sole and exclusive remedy, for any IP Claim.

10.2 By Subscriber. Subscriber shall indemnify and hold ScheduleSoft, its licensors, parent organizations, subsidiaries, officers, directors, and employees harmless from and against any and all claims arising out of: (a) allegations that the Subscriber Data infringes the rights of, or has caused harm to, a third party; (b) Subscriber's use of the Website or the Service; or (c) Subscriber's breach of Section 1 (Use of Service and Content) or Section 7 of these Terms of Service.

11. Limitation of Liability.

11.1 Amount of Damages. SCHEDULESOFT'S CUMULATIVE LIABILITY UNDER THIS AGREEMENT SHALL NOT EXCEED AN AMOUNT EQUAL TO THE AMOUNT OF SUBSCRIPTION FEES PAID BY SUBSCRIBER TO SCHEDULESOFT HEREUNDER DURING THE 12-MONTH PERIOD PRIOR TO THE APPLICABLE CLAIM.

11.2 Types of Damages. SCHEDULESOFT SHALL NOT BE LIABLE TO SUBSCRIBER FOR INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL, STATUTORY OR CONSEQUENTIAL DAMAGES (INCLUDING REPLACEMENT COSTS, LOST PROFITS, REVENUES OR SAVINGS) ARISING OUT OF OR RELATING TO THIS AGREEMENT, WHETHER BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR ANY OTHER LEGAL OR EQUITABLE THEORY, EVEN IF SCHEDULESOFT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF A REMEDY SET FORTH IN THIS AGREEMENT IS FOUND TO HAVE FAILED ITS ESSENTIAL PURPOSE.

12. General Terms and Conditions.

12.1 Amendments. This Agreement may only be amended by the written agreement of ScheduleSoft and Subscriber.

12.2 Assignment. Neither Subscriber or ScheduleSoft may assign or transfer, by operation of law or otherwise, this Agreement or its rights or obligations to any third party, without prior written permission from the other Party, which shall not be unreasonably withheld.

12.3 Attorney Fees. Intentionally left blank.

12.4 Compliance with Laws. Subscriber will comply with all applicable laws in its use of the Service and Website. Subscriber shall not export the Service or Documentation outside of the U.S. without first obtaining all necessary approval and licenses from appropriate local and federal government agencies.

12.5 Controlling Law; Jurisdiction. This Agreement is governed by the laws of California, without regard to conflict of laws principles. Any action arising from or relating to this Agreement shall be brought exclusively in the federal or state courts situated in Tulare County, California.

12.6 Force Majeure. ScheduleSoft is not responsible for any delay, suspension, interruption or failure caused, directly or indirectly, by any circumstance beyond ScheduleSoft's reasonable control.

12.7 Injunctive Relief. In the case of any breach with respect to Sections 1 (Use Service and Content), 6 (Proprietary Rights), or 7 (Confidentiality Obligations) of these Terms of Service, ScheduleSoft may obtain an injunction or other equitable relief

to prevent such breach without the necessity of posting a bond or other security, in addition to recovering money damages and other remedies available at law or equity.

12.8 No Third-Party Beneficiaries. This Agreement is made solely for the benefit of ScheduSoft and Subscriber, their successors and assigns, and no other person shall have any right, benefit or interest under or because of this Agreement except as otherwise specifically provided in an Order Form.

12.9 Notices. All notices to the Parties shall be in writing and shall be sent by email, prepaid courier service, or by certified mail, postage prepaid, to the address set forth on the Order Form, or such other address as a Party may designate by notice duly given. Routine communications may be by e-mail or any other reasonable means.

12.10 No Waiver. Any waiver or failure to insist upon strict performance on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

12.11 Severability. The provisions of this Agreement will be deemed severable, and the invalidity or unenforceability of any one or more of its provisions shall not affect the validity or enforceability of any other provisions.

12.12 Survival. The terms of this Agreement that by their nature survive the termination of this Agreement, including, without limitation, Sections 1 (Use of Service and Content), 6 (Proprietary rights), 7 (Confidentiality Obligations), 8.1 (Subscriber Data), 9.1 (General Disclaimer), 9.2 (Internet Disclaimer), 9.3 (Future Functionality Disclaimer), 10 (Indemnification), 11 (Limitation of Liability), and 12 (General Terms and Conditions) of these Terms of Service shall so survive termination or expiration of this Agreement.



Quote/Order Form

Term: 5 years, payment due annually in advance
 Subscriber: Tulare County Fire Department
 Quote/Order #: 1 Initial Order

Quote's Date: 5/22/2017
 Quote Expires: 8/30/2017
 Contract Commencement Date: 7/1/2017

Monthly Charges:	Units/Users	Unit Price/Mo.	Service Charge/Mo.
Workloud® Workforce Management Service Year 1 R * 420 first 6 months, 400 last 6 months	125,480	\$ 3.00	\$ 377.50
Workloud® Workforce Management Service Years 2-5 R	460	\$ 3.00	\$ 1,388.00
DELL® Email Integration Platform as a Service	0	\$ -	\$ -
Bioradical® Proximity Time Clock as a Service	0	\$ 43.00	\$ -
Twilio® Voice & Text Messaging Bundle	0	\$ 1.00	\$ -
Workloud® Sandbox	0	\$ -	\$ -
Total Monthly Charges Year 1			\$ 377.50
Total Monthly Charges Years 2 - 5			\$ 1,388.00

Initial Charges:	Units/Users	Unit Price/Mo.	1-Time Charge
300 Professional Service Hours	0	\$ 50,000.00	\$ -
Custom SOW		\$ -	\$ -
Generic Proximity Cards	0	\$ 1.00	\$ -
Total Initial Charges			\$ -

Due at order signing (year 1 in advance)	\$ 10,538.00
Due annually in advance thereafter for order term	\$ 16,560.00
Total Contract Value	\$ 76,770.00

Average monthly WFM service cost per employee \$ 3.00

Primary Contact Steven Murch	Billing Contact Steven Murch
Title Administrative Officer	Title Administrative Officer
Phone 559-622-7634	Phone 559-622-7634
Fax	Fax
Email smurch@tulare.ca.us	Email smurch@tulare.ca.us
Address 1 PO Box 7636	Address 1 PO Box 7636
Address 2	Address 2
City Visalia	City Visalia
State CA	State CA
Zip 93282	Zip 93282
Account Representative Tommy Schroeder	Partner Representative
Phone 415-702-1228	Phone
Email tschroeder@workloud.com	Email
Notice Email: legal@workloud.com	

Complete & Return to Place Order:

Signature _____

Name _____

Title _____

Date _____

COPY

Exhibit B

**PROFESSIONAL SERVICES CONTRACTS
INSURANCE REQUIREMENTS**

CONTRACTOR shall provide and maintain insurance for the duration of this Agreement against claims for injuries to persons and damage to property which may arise from, or in connection with, performance under the Agreement by the CONTRACTOR, his agents, representatives, employees and subcontractors, if applicable.

A. Minimum Scope & Limits of Insurance

- a) Insurance Services Office Commercial General Liability coverage of \$1,000,000 combined single Limit per occurrence (occurrence Form CG 00 01). If an annual aggregate applies it must be no less than \$2,000,000.
- b) Insurance Services Office Form Number CA 00 01 covering Automobile Liability, (any auto) of \$1,000,000 per occurrence. If an annual aggregate applies it must be no less than \$2,000,000.
- c) Workers' Compensation insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
- d) Professional Liability (Errors and Omissions) insurance appropriate to the CONTRACTOR's profession, with limit no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.
- e) Cyber Liability with limit no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.

B. Specific Provisions of the Certificate

- a) If the required insurance is written on a claims made form, the retroactive date must be before the date of the contract or the beginning of the contract work and must be maintained and evidence of insurance must be provided for at least three (3) years after completion of the contract work.
- b) CONTRACTOR must submit endorsements to the General Liability and Auto Liability reflecting the following provisions:
 - i. The COUNTY, its officers, agents, officials, employees and volunteers are to be covered as additional insured's as respects: liability arising out of work or operations performed by or on behalf of the CONTRACTOR; or automobiles owned, leased, hired or borrowed by the CONTRACTOR.
 - ii. For any claims related to this project, the CONTRACTOR's insurance coverage shall be primary insurance as respects the COUNTY, its officers, agents, officials, employees and volunteers. Any insurance or self-insurance maintained by the COUNTY, its officers, agents, officials, employees or volunteers shall be excess of the CONTRACTOR's insurance and shall not contribute with it.
 - iii. Each insurance policy required by this agreement shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days prior written notice has been provided to the COUNTY.
- c) The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the COUNTY for all work performed by the CONTRACTOR, its employees, agents and subcontractors.
 - i. Waiver of Subrogation. The workers' compensation policy shall be endorsed with a waiver of subrogation in favor of the COUNTY for all work performed by the contractor, its employees, agents and subcontractors. CONTRACTOR waives all rights against the COUNTY and its officers, agents, official, employees and volunteers for recovery of damages to the extent these damages are covered by the workers compensation and employers liability.

d) Deductibles and Self-Insured Retentions

The COUNTY Risk Manager must approve any deductible or self-insured retention that exceeds \$100,000.

C. Verification of Coverage

Prior to approval of this Agreement by the COUNTY, the CONTRACTOR shall file with the Tulare County Board of Supervisors, certificates of insurance with original endorsements effecting coverage in a form acceptable to the COUNTY. Endorsements must be signed by persons authorized to bind coverage on behalf of the insurer. The COUNTY reserves the right to require certified copies of all required insurance policies at any time.