



APEX
NORTH CAROLINA

Infor Government Essentials
Software Order Form and
SaaS Agreement
Town of Apex, NC

Prepared for:

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April 7, 2023

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Software as a Service Agreement

This Software as a Service End User Agreement (the “Agreement”) is between **RPI Consultants (“RPI”)** and **Town of Apex (“End User” or “Customer”)** and entered as of the Effective Date. The parties agree as follows:

1. **Definitions.**

“**Affiliate**” means (i) in the case of RPI, any entity controlled by RPI, and (ii) in the case of Customer, any entity controlled by Customer. For purposes of the preceding sentence, “control” means the direct or indirect ownership of more than 50% of the voting interests of an entity.

“**Annual Period**” means each successive 12-month period following the Effective Date.

“**Authorized Users**” means employees and individual contractors of Customer or its Affiliates authorized by Customer or its Affiliates to access the Subscription Software.

“**Confidential Information**” means non-public information that is identified as or would be reasonably understood to be confidential and/or proprietary. Confidential Information of Infor includes, without limitation, the Documentation and the Subscription Software, including any software code and all algorithms, methods, techniques, and processes revealed or utilized therein. Confidential Information does not include information that: (i) is or becomes known to the public without fault or breach of the Recipient; (ii) the Discloser regularly discloses to third parties without restriction on disclosure; (iii) the Recipient obtains from a third party without restriction on disclosure and without breach of a non-disclosure obligation known to Recipient; (iv) is a public record as defined in Chapter 132 of the North Carolina General Statutes; or (v) is independently developed by the Recipient without use of Confidential Information.

“**Customer Data**” means information provided, entered or uploaded for use by or with the Subscription Software by the Customer or its Authorized Users. Customer owns all proprietary rights in Customer Data.

“**Discloser**” means the party providing Confidential Information to the Recipient.

“**Documentation**” means the then-current documentation made generally available by Infor relating to the features, functions, and use of the Subscription Software.

“**Documented Defect**” means a material deviation between the then-current, general release version of the Subscription Software and its Documentation.

“**Effective Date**” means the last signature date below unless a different date is specified in the Effective Date field on the signature page.

“**Initial Subscription Term**” means the initial subscription period set forth on the applicable Order Form.

“**Intellectual Property Rights**” means any and all rights in patents, copyrights, trademarks and service marks.

“**Order Form**” means each order form between the parties incorporating the terms of this Agreement which shall contain, without limitation, a list of the Subscription Software and associated quantities and Use Restrictions, a description of the Subscription Services, Subscription Fees, and payment terms.

“**Personal Information**” means Customer Data that (i) identifies or can be used to identify an individual (including, without limitation, names, signatures, addresses, telephone numbers, e-mail addresses and other unique identifiers); or (ii) can be used to authenticate an individual (including, without limitation, employee identification numbers, government-issued identification numbers, passwords or PINs, financial account numbers, credit report information, biometric or health data, answers to security questions and other personal identifiers). Personal Information shall include any non-public personal information regarding any individual that is subject to applicable national, state, regional, and/or local laws and regulations governing the privacy, security, confidentiality and protection of non-public personal information.

“**Recipient**” means the party receiving Confidential Information of the Discloser.

“**Renewal Term**” means any renewal or extension of Customer’s right to access and use the Subscription Software and Subscription Services following the expiration of the Initial Subscription Term.

“**Residual Knowledge**” shall mean ideas, concepts, know-how or techniques related to the Discloser’s technology and Confidential Information that are retained in the unaided memories of the Recipient who had rightful access to Confidential Information.

“Service Level Agreement” means the Service Level Agreement applicable to the Subscription Software and Subscription Services and attached as an exhibit to an Order Form.

“Subscription Fees” means the fees for the Subscription Services set forth on the applicable Order Form.

“Subscription Services” means the Subscription Software-related application hosting services and Support (as defined in Section 3(b)) that Infor provides Customer under this Agreement. At its sole discretion, RPI may subcontract to a Third Party Licensor the obligation to provide the Subscription Services to Licensee; provided however, that RPI will remain fully responsible for the provision of such Subscription Services in accordance with this Agreement.

“Subscription Software” means collectively or individually the computer software programs identified in the applicable Order Form for which Infor is providing access via the Subscription Services.

“Subscription Term” means the Initial Subscription Term or any Renewal Term, as applicable.

“Third Party Licensor” means a third party whose software products or services have been made available to Infor for distribution under the terms of its agreement with Infor.

“Third Party Licensor” means a third party whose software products (**“Third Party Products”**) have been made available to RPI for distribution and licensing under the terms of its agreement with such Third Party Licensor (**a “Third Party Agreement”**). Customer acknowledges and agrees that any such Third Party Licensor is a third party beneficiary to this Agreement with respect to enforcing Customer’s obligations related to the Subscription Software.

“Updates” means generally available updates, enhancements, or modifications to the then-current, general release version of the Subscription Software that are not separately priced as new products.

“Use Restriction” means any limitation on the use of the Subscription Software identified in an Order Form (e.g., number of Authorized Users, locations, connections).

“UserID” means a unique user identification credential used in combination with a unique password to access the Subscription Software and Subscription Services.

2. Use Rights and Restrictions.

a. **Access Rights.** Subject to the terms and conditions of this Agreement and the applicable Order Form, Customer is permitted to allow its Authorized Users to access and use the Subscription Software and the Subscription Services, during the Subscription Term, in an operating environment hosted by RPI or Third Party Licensor(s), solely for the internal use of Customer and its Affiliates (for so long as they remain Affiliates). Any rights not expressly granted in this Agreement are expressly reserved. Customer shall ensure that its Affiliates and Authorized Users comply with the terms of this Agreement and shall be liable for any noncompliance by its Affiliates and Authorized Users.

b. **Documentation.** Customer may make a reasonable number of copies of the Documentation for the Subscription Software for its internal use in accordance with the terms of this Agreement. Customer must reproduce the unaltered Intellectual Property Rights notice(s) in any full or partial copies that Customer makes of the Documentation.

c. **Additional Restrictions on Use of the Subscription Software and Subscription Services.** Use of the Subscription Software and Subscription Services is subject to any Use Restriction specified in the applicable Order Form. Customer is prohibited from causing or permitting the reverse engineering, disassembly or de-compilation of the Subscription Software. Customer is prohibited from using the Subscription Software and Subscription Services to provide service bureau services to third parties. Customer will not allow the Subscription Software to be used by, or disclose all or any part of the Subscription Software to, any person except Authorized Users. Customer acknowledges that the Subscription Software and Subscription Services are U.S.-origin and supported from the U.S. in whole or part, and subject to U.S. export control laws and regulations and other applicable export and import laws and regulations. Customer agrees that neither it nor its Affiliates will export, reexport, transfer, or use the Subscription Software in violation of applicable export or import laws or regulations, economic sanctions laws or regulations, or other applicable laws or regulations; any violation of the foregoing may result in immediate suspension or termination of the Subscription Services.

3. Subscription Services.

a. **Hosted Environment.** RPI or Third Party Licensor(s) will provide the application hosting environment, including the hardware, equipment, and systems software configuration on which RPI or Third Party Licensor(s) supports use of the Subscription Software and Subscription Services, on servers located at facilities selected by RPI or Third Party Licensor(s). Customer is not permitted to access the Subscription Software on any environment outside the hosted environments selected by RPI or Third Party Licensor(s) as part of the Subscription Services.

b. **Support.** RPI or Third Party Licensor(s) shall (a) provide Customer with access (via the internet, telephone or other means established by RPI or Third Party Licensor(s)) to RPI or Third Party Licensor(s)’s support helpline, (b) install, when and if generally available, Updates; and (c) use reasonable efforts to correct or circumvent any material deviation between the then-current,

general release version of the Subscription Software and its Documentation (the foregoing referred to collectively as "Support"). Support is included in the Subscription Fee. The terms of Support are set forth in the Order Form and Service Level Agreement.

c. User Accounts. Customer shall ensure that a unique UserID and password is assigned to each Authorized User accessing the Subscription Software and Customer shall be responsible for managing such UserIDs and passwords through the Subscription Software interface. Customer shall maintain the confidentiality of Customer's UserIDs and passwords and shall cause its Authorized Users to maintain the confidentiality of their UserIDs and passwords. Customer is responsible for all uses of and activities undertaken with UserIDs registered on Customer's account. Customer agrees to immediately notify RPI or Third Party Licensor(s) of any unauthorized use of Customer's UserIDs of which Customer becomes aware.

d. Connectivity. RPI or Third Party Licensor(s) will be responsible for maintaining connectivity from its network to the Internet which is capable of servicing the relevant Internet traffic to and from the hosted environment. Customer is responsible for providing connectivity to the Internet for itself and its Authorized Users. Customer shall also be responsible for ensuring that latency and available bandwidth from the device of the Authorized User to RPI or Third Party Licensor(s)'s hosted routers are adequate to meet Customer's desired level of performance. Customer is responsible for all costs associated with any specialized network connectivity required by Customer. If Customer purchases Subscription Services in a single tenant environment, Customer will be responsible for securing VPN connectivity to such environment.

e. Customizations. Customizations (as defined below) are not permitted in a multi-tenant hosted environment. Customizations may only be permitted in a single-tenant hosted environment if authorized in writing by RPI or Third Party Licensor(s) and documented in a separate written agreement between the parties. Support or other services for Customizations are not included as part of the Subscription Services and may only be purchased pursuant to a separate written agreement between the parties. As used herein, "Customizations" means any components deployed in the hosted environment other than the generally available Subscription Software or components that Customer may deploy via the standard user interface or tools included in the generally available Subscription Software.

4. Payment and Taxes.

a. Payment of Subscription Fees. Customer shall pay RPI the Subscription Fees set forth on the Order Form. Subscription Fees are payable in advance and RPI will invoice Customer for Subscription Fees prior to the commencement of the portion of the Subscription Term to which such fees apply. Unless otherwise specified in the Order Form, invoices are due within 30 days of invoice date. After the Initial Subscription Term, the Subscription Fees shall be subject to annual adjustment. Except as otherwise set forth in this Agreement, Subscription Fees are non-refundable. Late payments are subject to a late charge equal to the lesser of: (i) one percent (1%) per month; and (ii) the highest rate permitted by applicable law. Notwithstanding anything to the contrary in this Agreement, following 10 business days' prior written notice, RPI reserves the right to suspend access to the Subscription Services in the event of any past due Subscription Fees.

b. Taxes. Customer is responsible for paying all taxes relating to this Agreement. Applicable tax amounts (if any) are not included in the Subscription Fees set forth on any Order Form. RPI will invoice Customer for applicable tax amounts and such invoices are payable in accordance with Section 4.a. and the Order Form as related to Subscription Fees.

5. Limited Warranties, Disclaimer of Warranties, and Remedies.

a. Limited Subscription Software Warranty by RPI and Remedy For Breach. RPI and Third Party Licensor(s) warrants that the Subscription Software will operate without a Documented Defect during the Initial Subscription Term. RPI's sole obligation with respect to a breach of the foregoing warranty shall be to repair or replace the Subscription Software giving rise to the breach of warranty. If RPI is unable to repair or replace such Subscription Software within a reasonable period of time then, subject to the limitations set forth in Section 9 of this Agreement, Customer may pursue its remedies at law to recover damages resulting from the breach of this warranty. The remedies in this Section 5(a) are exclusive and in lieu of all other remedies, and represent RPI's sole obligations, for a breach of the foregoing warranty. Customer must provide notice to RPI of any warranty claim within the warranty period. For clarity, Customer's entitlement to Support (as defined in Section 3(b)) in connection with any Documented Defect shall continue throughout the Subscription Term.

b. Malicious Code. RPI and Third Party Licensor(s) warrants that it will use generally accepted industry tools and practices, to provide Subscription Software and Subscription Services that do not contain any "time bombs," "worms," "viruses," "Trojan horses," "protect codes," "data destruct keys," or other programming devices that are intended to access, modify, delete, damage, deactivate or disable Customer Data ("Malicious Code"). Upon discovery, RPI Third Party Licensor(s) shall investigate, identify and remove such Malicious Code from the Subscription Software and Subscription Services.

c. **DISCLAIMER OF WARRANTIES. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 5 OR EXHIBIT A (IF APPLICABLE), RPI MAKES NO OTHER WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, WITH REGARD TO THE SUBSCRIPTION SOFTWARE PROVIDED UNDER THIS AGREEMENT AND/OR ANY ORDER FORM. RPI EXPLICITLY DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE. RPI EXPRESSLY DOES NOT WARRANT THAT THE SUBSCRIPTION SOFTWARE OR SUBSCRIPTION SERVICES, IN WHOLE OR IN PART, WILL BE ERROR FREE, OPERATE WITHOUT INTERRUPTION OR MEET CUSTOMER'S REQUIREMENTS.**

d. **FAILURE OF ESSENTIAL PURPOSE.** THE PARTIES HAVE AGREED THAT THE LIMITATIONS SPECIFIED IN SECTIONS 5 AND 9 WILL SURVIVE AND APPLY EVEN IF ANY REMEDY SPECIFIED IN THIS AGREEMENT IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

e. **HIGH RISK ACTIVITIES.** THE SUBSCRIPTION SOFTWARE IS NOT FAULT-TOLERANT AND IS NOT DESIGNED, MANUFACTURED OR INTENDED FOR USE AS ON-LINE CONTROL EQUIPMENT IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE, SUCH AS IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR AIRCRAFT COMMUNICATION SYSTEMS, MASS TRANSIT, AIR TRAFFIC CONTROL, DIRECT LIFE SUPPORT MACHINES, OR WEAPONS SYSTEMS, IN WHICH THE FAILURE OF THE SUBSCRIPTION SOFTWARE COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE ("HIGH RISK ACTIVITIES"). ACCORDINGLY, RPI DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR HIGH RISK ACTIVITIES. CUSTOMER AGREES THAT RPI SHALL NOT BE LIABLE FOR ANY CLAIMS OR DAMAGES ARISING FROM OR RELATED TO THE USE OF THE SUBSCRIPTION SOFTWARE IN SUCH APPLICATIONS.

6. Confidential Information.

a. **Confidentiality.** Recipient will take reasonable measures designed to prevent the unauthorized use or disclosure of Discloser's Confidential Information, including, at a minimum, those measures Recipient takes to protect its own Confidential Information of a similar nature. Recipient will use and disclose the Confidential Information disclosed to it under this Agreement only to the extent necessary to further and fulfill the purposes of this Agreement. The non-disclosure and non-use obligations of this Agreement will remain in full force with respect to each item of Confidential Information for a period of ten (10) years after termination of this Agreement. Recipient shall be responsible for any breach of the confidentiality terms contained in this Section 6 by any of its directors, officers, employees, Authorized Users (in the case of Customer), Affiliates, contractors and agents. Nothing herein shall limit Recipient's use of Residual Knowledge, subject to any Intellectual Property Rights of the Discloser, or RPI's use of aggregated anonymous data related to Customer's use of the Subscription Software and Subscription Services. If the Recipient should receive any legal request or process in any form seeking disclosure of Discloser's Confidential Information, or if the Recipient should be advised by counsel of any obligation to disclose such Confidential Information, the Recipient shall (if allowed by law) provide the Discloser with prompt notice of such request or advice so that the Discloser may seek a protective order or pursue other appropriate assurance of the confidential treatment of the Confidential Information. Regardless of whether or not a protective order or other assurance is obtained, the Recipient shall provide only that portion of the Discloser's Confidential Information which is legally required to be provided and to use reasonable efforts to assure that the information is maintained in confidence by the party to whom it is furnished. Customer shall ensure that Authorized Users are bound by confidentiality obligations consistent with those above.

b. **Security Policies and Safeguards for Subscription Services.** Applicable Information Security Plan from Third Party Licensor(s), setting forth the security measures with respect to the Subscription Software and Subscription Services, is incorporated into the Order Form.

7. Indemnity by RPI. RPI will defend, indemnify and hold Customer harmless from and against any loss, cost and expense to the extent arising from a third party claim against Customer that the Subscription Software infringes any Intellectual Property Rights of others. RPI's obligations under this indemnification are expressly conditioned on the following: (i) Customer must promptly notify RPI of any such claim; (ii) Customer must, in writing, grant RPI sole control of the defense of any such claim and of all negotiations for its settlement or compromise so long as such settlement or compromise does not result in payment of money by Customer or an admission of guilt by Customer (if Customer chooses to represent its own interests in any such action, Customer may do so at its own expense, but such representation must not prejudice RPI's right to control the defense of the claim and negotiate its settlement or compromise); (iii) Customer must reasonably cooperate with RPI to facilitate the settlement or defense of the claim. RPI will not have any liability hereunder to the extent the claim arises from (a) any modification of the Subscription Software by, on behalf of, or at the request of Customer; or (b) the use or combination of the Subscription Software with any computer, computer platform, operating system and/or data base management system other than as specified in the Documentation or otherwise authorized by RPI in writing. If any Subscription Software is, or in RPI's opinion is likely to become, the subject of an Intellectual Property Rights infringement claim, then RPI, at its sole option and expense, will either: (A) obtain for Customer the right to continue using the Subscription Software under the terms of this Agreement; (B) replace the Subscription Software with products that are substantially equivalent in function, or modify the Subscription Software so that it becomes non-infringing and substantially equivalent in function; or (C) refund to Customer the un-used portion of the Subscription Fee, if any, paid to RPI for the Subscription Software giving rise to the infringement claim, and discontinue Customer's use of such Subscription Software. **THE FOREGOING SETS FORTH RPI'S EXCLUSIVE OBLIGATION AND LIABILITY WITH RESPECT TO INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS.**

8. Term and Termination.

a. **Term.** The Initial Subscription Term will be specified in the applicable Order Form. Except as set forth in Sections 2(c), 8(b) or 11, the Subscription Term cannot be terminated prior to its expiration date.

b. **Right of Termination.** If either party breaches any material obligation in an Order Form and fails to remedy such breach within thirty (30) days of receipt of written notice of such breach, the other party may terminate the Order Form. Notice of an alleged breach of warranty does not constitute notice of material breach for purposes of this Section.

c. **Effect of Termination.** Upon termination of an Order Form by either party, Customer's access and use of the Subscription Software and Subscription Services under such Order Form shall immediately terminate as of the effective date of such termination. Termination of an Order Form will not release either party from making payments which may be owing to the other party through the effective date of such termination. Termination of an Order Form will be without prejudice to the terminating party's other rights and remedies pursuant to this Agreement, unless otherwise expressly stated herein. In the event of Customer's termination of an Order Form under Section 8(b), Customer shall be entitled to a refund, on a pro rata basis, of any prepaid Subscription Fees under such Order Form applicable to the unused portion of the then-current Subscription Term following the effective date of termination.

d. **Survival of Obligations.** All obligations relating to non-use and non-disclosure of Confidential Information, limitation of liability, and such other terms which by their nature survive termination, will survive termination or expiration of this Agreement.

9. **LIMITATIONS OF LIABILITY.**

a. **LIMITED LIABILITY.** EXCEPT WITH RESPECT TO (I) RPI'S INTELLECTUAL PROPERTY INDEMNIFICATION OBLIGATIONS UNDER SECTION 7; (II) UNAUTHORIZED DISCLOSURE OF CONFIDENTIAL INFORMATION RESULTING FROM A PARTY'S ACTIONS, WHICH LIABILITY SHALL BE SUBJECT TO SECTION 9(c) BELOW; (III) CUSTOMER'S INFRINGEMENT OR MISAPPROPRIATION OF RPI'S INTELLECTUAL PROPERTY RIGHTS; OR (IV) CUSTOMER'S OBLIGATION TO PAY FEES, THE TOTAL LIABILITY OF EITHER PARTY, ITS AFFILIATES AND THIRD PARTY LICENSORS (IN THE CASE OF RPI), WHATEVER THE BASIS OF LIABILITY, (i) IN CONNECTION WITH OR RELATED TO THE SUBSCRIPTION SOFTWARE, THE SUBSCRIPTION SERVICES OR ANY OTHER MATTER RELATING TO THIS AGREEMENT (OTHER THAN PROFESSIONAL SERVICES PROVIDED UNDER THIS AGREEMENT, WHICH IS ADDRESSED IN (ii) BELOW) WILL NOT EXCEED THE SUBSCRIPTION FEES PAID OR PAYABLE TO RPI HEREUNDER FOR THE ANNUAL PERIOD IN WHICH SUCH LIABILITY FIRST AROSE.

b. **EXCLUSION OF DAMAGES.** EXCEPT WITH RESPECT TO (I) RPI'S INTELLECTUAL PROPERTY INDEMNIFICATION OBLIGATIONS UNDER SECTION 7; OR (II) CUSTOMER'S INFRINGEMENT OR MISAPPROPRIATION OF RPI'S INTELLECTUAL PROPERTY RIGHTS, IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES OR THIRD PARTY LICENSORS (IN THE CASE OF RPI) BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES OR DAMAGES FOR LOST PROFITS, WHETHER BASED ON BREACH OF CONTRACT, TORT (EXCLUDING NEGLIGENCE), PRODUCT LIABILITY, OR OTHERWISE, AND REGARDLESS OF WHETHER SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR WHETHER ANY REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE. UNDER NO CIRCUMSTANCES SHALL EITHER PARTY SEEK OR BE LIABLE FOR PUNITIVE DAMAGES.

c. **UNAUTHORIZED DISCLOSURE OF CONFIDENTIAL INFORMATION.** WITH RESPECT TO UNAUTHORIZED DISCLOSURE OF CONFIDENTIAL INFORMATION RESULTING FROM A PARTY'S ACTIONS, THE TOTAL LIABILITY OF THE BREACHING PARTY, ITS AFFILIATES AND THIRD PARTY LICENSORS (IN THE CASE OF RPI), SHALL NOT EXCEED THREE (3) TIMES THE SUBSCRIPTION FEES PAID OR PAYABLE TO RPI HEREUNDER FOR THE ANNUAL PERIOD IN WHICH SUCH LIABILITY FIRST AROSE. TO THE EXTENT SUCH BREACH RESULTS IN THE UNAUTHORIZED DISCLOSURE OF PERSONAL INFORMATION, DIRECT DAMAGES SHALL INCLUDE (1) THE COSTS OF PROVIDING NOTICE TO AFFECTED PERSONS, (2) THE COST OF ESTABLISHING AND OPERATING A CALL CENTER TO FIELD INQUIRIES RELATED TO SUCH UNAUTHORIZED DISCLOSURE FOR UP TO 12 MONTHS; AND (3) THE COST OF PROVIDING CREDIT MONITORING SERVICES TO AFFECTED PERSONS, IN EACH CASE TO THE EXTENT REQUIRED BY APPLICABLE LAW AND ACTUALLY INCURRED.

10. **Notices.** All notices and other communications required or permitted under this Agreement must be in writing and will be deemed given when: delivered personally; sent by overnight courier; or transmitted by facsimile and confirmed by first class mail. Notices must be sent to a party at its address shown on the signature page of this Agreement, or to such other place as the party may subsequently designate for its receipt of notices in accordance with this Section. Customer must promptly send copies of any notice of material breach and/or termination of the Agreement to RPI Consultants, LLC, Attention: General Counsel, 1 North Haven Street, Suite 201, Baltimore, MD 21224 and rpi@rpc.com, or to such other place as RPI may subsequently designate for its receipt of notices.

11. **Force Majeure.** Except with respect to the payment of fees hereunder, neither party will be liable to the other for any failure or delay in performance under this Agreement due to circumstances beyond its reasonable control, including, without limitation, war, terrorist acts, accident, labor disruption, acts, omissions and defaults of third parties and official, governmental and judicial action not the fault of the party failing or delaying in performance, or the threat of any of the foregoing (a "Force Majeure Event"). A party seeking to excuse its non-performance as a result of a Force Majeure Event shall have the burden of proof to demonstrate that the Force Majeure Event prevents its performance and must, upon becoming aware of a Force Majeure Event that prevents its performance, provide written notice to the other party specifying the details in such regard (a "Force Majeure Notice"). If, within thirty (30) days following a party's provision of a Force Majeure Notice, such party is unable to provide written assurances of its ability to perform in accordance with the Agreement, the other party shall be entitled to terminate the Agreement or suspend its performance thereunder upon providing written notice.

12. **Assignment.** Customer may not assign or transfer any of its rights or obligations under this Agreement, whether by operation of law or otherwise, without the prior written consent of RPI. Notwithstanding the foregoing, the named Customer

specified above may, upon written notice to RPI, but without requirement of RPI's consent, assign or transfer this Agreement in its entirety (including all Order Forms) to a successor of Customer in connection with a merger, acquisition, or sale of all or substantially all of its assets, provided Customer is not in breach of this Agreement and such successor has agreed, in writing, to assume all of the obligations of Customer hereunder. Any attempted assignment or transfer in violation of the foregoing will be void.

13. No Waiver. A party's failure to enforce its rights with respect to any single or continuing breach of this Agreement will not act as a waiver of the right of that party to later enforce any such rights or to enforce any other or any subsequent breach.

14. Choice of Law; Severability. This Agreement shall be governed by and interpreted in accordance with the laws of the State of North Carolina, without application of any conflict of laws provisions thereof, and all claims relating to or arising out of this Agreement, or the breach thereof, whether sounding in contract, tort or otherwise, shall likewise be governed by the laws of the State of North Carolina, without application of any conflict of laws provisions thereof. This Agreement is originally written in the English language and the English language version shall control over any translations. If any provision of this Agreement is illegal or unenforceable, it will be deemed stricken from the Agreement and the remaining provisions of the Agreement will remain in full force and effect. The United Nations Convention on the International Sale of Goods (CISG) shall not apply to the interpretation or enforcement of this Agreement.

15. Audit. RPI may audit Customer's compliance with the terms of this Agreement and applicable Order Forms. If an audit reveals that Customer has exceeded the permitted scope of use, then, in addition to any other remedies available to RPI, Customer will promptly pay RPI any underpaid Subscription Fees associated with such overuse based on RPI's then-current list rates.

16. Miscellaneous. RPI and Customer are independent contractors under this Agreement, and nothing herein will be construed to create a partnership, joint venture or agency relationship between them. This Agreement shall be construed as if drafted by both parties and shall not be strictly construed against either party.

17. Entire Agreement. This Agreement contains the entire understanding of the parties with respect to its subject matter, and supersedes and extinguishes all prior oral and written communications, representations and understandings between the parties about its subject matter. Each party acknowledges that, in entering into this Agreement, it does not rely upon, and shall have no remedy in respect of, any statement or representation of any person other than as expressly set out in this Agreement. Any purchase order or similar document that may be issued by Customer in connection with this Agreement does not modify, supplement or add terms to this Agreement. No modification of this Agreement will be effective unless it is in writing, is signed by each party, and expressly provides that it amends this Agreement. This Agreement and any signed agreement entered into in connection herewith or contemplated hereby may be executed in counterparts. An executed document that has been delivered via fax, electronic or digital means shall be treated as an original.

18. E-Verify. RPI shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (E-Verify). RPI shall require all of RPI's subcontractors to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (E-Verify).

19. Anti-Human Trafficking. RPI warrants and agrees that no labor supplied by RPI or RPI's subcontractors in the performance of this Agreement shall be obtained by means of deception, coercion, intimidation or force, or otherwise in violation of North Carolina law, specifically Article 10A, Subchapter 3 of Chapter 14 of the North Carolina General Statutes, Human Trafficking.

20. Nondiscrimination. Pursuant to Section 3-2 of the Town of Apex Code of Ordinances, RPI hereby warrants and agrees that RPI will not discriminate against a protected class in employment, subcontracting practices, or the solicitation or hiring of vendors, suppliers, or commercial customers in connection with this Agreement. For the purposes of this Agreement "protected class" includes age, race, religious belief or non-belief, ethnicity, color, national origin, creed, sex, sexual orientation, gender identity, marital status, natural hair style, genetic information, pregnancy, familial status, disability, veteran or military status, or disabled veteran status.

21. Nonappropriation. Notwithstanding any other provisions of this Agreement, the parties agree that payments due hereunder from the Customer are from appropriations and monies from the Town of Apex Town Council and any other governmental entities. In the event sufficient appropriations or monies are not made available to the Customer to pay the terms of this Agreement for any fiscal year, this Agreement shall terminate immediately without further obligation of the Customer.

[Signature Page Follows]

THE PARTIES have executed this Agreement through the signatures of their respective authorized representatives.

RPI Consultants, LLC

Town of Apex

Signature:


651F2EEGED3DA486...

Signature:

Printed Name:

Greg Pollard

Printed Name:

Title:

Partner

Title:

Address:

1 North Haven St, Suite 201

Address: PO Box 250

Address:

Baltimore, MD 21224

Address: Apex, NC 27502

Date: 4/12/2023

Date:

Effective Date: _____ (only complete if different than the last signature date above)

This instrument has been preaudited in the manner required by the Local Government Fiscal Control Act.

Software Order Form

This Order Form is subject to the terms of the Software as a Service Agreement between RPI Consultants, LLC ("RPI") and Town of Apex ("Customer" or "Licensee" or "End User") with an effective date of _____ (the "Agreement"). All terms of the Agreement are incorporated herein by reference. In the event of a conflict, the terms of this Order Form control over the terms of the Agreement.

Capitalized terms not defined in this Order Form are defined in the Agreement. In the event the capitalized terms in this Order Form differ from the terminology used in the Agreement, references herein to: "Subscription Software" and "Component Systems" shall have the same meaning, refer to the computer software programs identified this Order Form and may be referred to in the Agreement as Component Systems, Products, Software Products, Subscription Software, Software, Programs or Licensed Programs; "Support" may be referred to in the Agreement as Support, Maintenance and Support, Annual Support, Support Services, On-Going Support or One Point Support; and "License Restriction" means any limitation on the use of the Subscription Software and may be referred to in the Agreement as License Restriction or User Restriction.

Subscription Software- PROD: Apex

	Part # (if applicable)	Subscription Software	License Restriction*		Support Level**
			Quantity	Type	
1	S3F-S-CSPFSM-MT	Infor CloudSuite Public Sector Financials & Supply Management - SaaS MT	60,000	POP	CPRE
2	S3F-S-GRA-MT	Grant Accounting - SaaS MT	60,000	POP	CPRE
3	S3F-S-SRM-MT	Strategic Sourcing/Supplier Portal - SaaS MT	60,000	POP	CPRE
4	S3O-S-CSFUS-MT	Infor Financials & Supply Management US Country Pack - SaaS MT	1	ET	CPRE
5	TAM-S-CSHCMCORE-MT	Infor HR Talent GHR TM Core - SaaS MT	60,000	POP	CPRE
6	TAM-S-GHRPAYROLL-MT	HR Payroll - SaaS MT	500	EM	CPRE
7	HRM-S-BSIF	BSI TF US - SaaS MT	500	EM	CXT
8	WFM-S-MVS-MT	Workforce Management MVS Bundle - SaaS MT	500	EM	CPRE
9	WFM-S-TA-MT	Workforce Management Time & Attendance - SaaS Bundle - SaaS MT	500	EM	CPRE
10	HAN-S-H8CDREB-MT	Infor Public Sector Suite - CDR Enhanced Bundle - SaaS MT	25	NU	CPRE
11	HAN-S-H8CDRB-MT	Infor Public Sector Suite - CDR Billing - SaaS MT	25,000	ATRA N	CPRE
12	HAN-S-MOBILE-CDR-MT	Infor Field Inspector CDR - SaaS MT	10	NU	CPRE
13	HAN-S-H8GIS-MT	Infor Public Sector Suite - GIS Data Integration - SaaS MT	60,000	POP	CPRE
14	HAN-S-H8GGS-MT	Infor Public Sector Suite - GeoAdministrator - SaaS MT	10	NU	CXTP
15	RFG-S-CIVICS-S	Infor Rhythm for Civics - SaaS	30,000	AASTX	CXTP
16	BBI-S-DENT-PLS-ENH	Infor Birst Enterprise Platform Enhanced	1	BBIEN H	CPRE
17	BBI-S-DHSTBUDR	Birst Cloud Hosting, Back-up, Data Recovery (Direct)	1,000	1.0GB	NAX
18	ION-S-ESSENTLS-CE	Infor OS Essentials - SaaS MT	1	TECH	CXTP
19	ION-S-STORAGE	Infor Storage	2,000	1.0GB	NAX
20	EDU-S-NOP-CPM	Infor Campus Plus Membership - All Campus Plus Content	1	ET	CXTP
21		Questica Budget Suite and Openbook for Infor Essentials	60,000	POP	NAX

For the purpose of the definitions below, "Software" is used to refer to the Subscription Software and/or Component Systems, as the context logically dictates, and may be used interchangeably.

* If specified in the User/License Restriction field:

- "1.0GB" = 1.0GB - Represents the number of Storage capacity in Giga Byte

- **“AASTX” = Annual Active Searchable Transactions** - Quantity represents the number of entries within a single year which are active and searchable by the Software, including but not limited to permits, service requests, business licenses and utility billing accounts, regardless of whether such entries are entered manually or electronically via the Software or any other means.
- **“ATRAN” = Annual Transactions** - Quantity represents the number of entries processed annually by the Software, including but not limited to such sources as bank account summaries, bank account statements, accounting reports from any interface software, excel import templates, purchase orders, sales orders and invoices, regardless of whether such entries are entered manually or electronically.
- **“BBIENH” = Birst Enhancement** - Customer’s subscription to an Infor CloudSuite offering is upgraded so that users permitted to access such offering are also permitted to access Birst Enterprise.
- **“EM” = Employee** - The total number of individuals who are or have been employees of Customer (whether employed on a full-time, part-time, seasonal or other basis) or independent contractors of Customer (whether engaged directly or through a third party as contract workers, consultants, freelancers or other capacity). For licensing purposes, former employees and independent contractors of Customer shall only count as Employees if their data is maintained or processed by the Software for administrative, pension or payroll purposes. Within thirty days following each anniversary of the Order Form Date (each an “Anniversary”), Customer will provide detail regarding the total number of Employees as of such Anniversary. If the actual number of Employees as of an Anniversary is in excess of the specified authorized quantity of Employees as of such Anniversary, Customer will purchase additional authorizations corresponding to such excess amount.
- **“ET” = Enterprise** - Allows unlimited use of the Software by the Customer or by Customer and other permitted subsidiaries to the extent expressly authorized in the Agreement
- **“POP” = Population** - Quantity represents the maximum number of persons who reside within the jurisdiction of Customer and an increase in population which exceeds the Quantity specified will carry additional Authorization and Support Fees.
- **“TECH” = Tech Platform** - Allows use of the Infor OS platform technology up to the usage limits for the corresponding service tier (Essentials, Professional, Enterprise) as set forth in the Infor OS Service Limits at <https://docs.infor.com/inforos/12.0.x/en-us/usagelimits/default.html> plus any additional subscription quantities duly authorized by Customer pursuant to an order form. Use in excess of any usage limit requires a subscription to the appropriate tier or a subscription for an additional quantity of permitted use where applicable. Any changes to the Infor OS Service Limits will not result in a material reduction of service.

****Support Level for Subscription Software:**

“CXT” = Infor Essential (24X5); “CXTP” = Infor Premium (24x7); “CXTE” = Infor Customer Success Plus program
 Descriptions of these plans can be found at <http://www.infor.com/cloud/subscription/>
 “CPRE” = Infor Premium (24x7) Descriptions of this can be found at <http://www.infor.com/cloud/MTsubscription/>
 “NAX” = Not Applicable

II. Subscription Term and Subscription Fees

The Initial Subscription Term is for one (1) year. Years two through five are provided below as a pricing quote if the Customer elects to renew the contract beyond the Initial Subscription Term. Customer agrees to notify RPI, in writing, their intent to renew or terminate the subscription 60 days prior to the subscription term end-date.

Product	Year 1	Year 2	Year 3	Year 4	Year 5
Infor CloudSuite Government Essentials & Workforce Management	\$360,000	\$360,000	\$360,000	\$360,000	\$360,000
Questica Budget Suite and Openbook	\$29,500	\$29,500	\$29,500	\$30,680	\$31,907
Total Annual Fee:	\$389,500	\$389,500	\$389,500	\$390,680	\$391,907

All amounts are in US Dollars unless otherwise specified.

Currency: United States Dollars
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III. Payment Terms

Payment is due within 15 days of the date of the invoice.

The first annual Subscription Fee, plus applicable taxes, will be invoiced promptly upon the Order Form Date. All other annual Subscription Fees will be invoiced such that they are due prior to the commencement of the portion of the Subscription Term to which the annual Subscription Fee applies.

End User Primary Location Address: Town of Apex, North Carolina 73 Hunter Street Apex, NC 27502 USA	Invoice Address: Town of Apex, North Carolina 73 Hunter Street Apex, NC 27502 USA
Contact Name: Troy Salahuddin	Contact Name: Troy Salahuddin
Contact Phone: (919) 948-8556	Contact Phone: (919) 948-8556
Contact email: Troy.Salahuddin@apexnc.org	Contact email: Troy.Salahuddin@apexnc.org

IV. Additional Terms for Infor Subscription Software

Please visit <https://www.infor.com/customer-center/MTcloud> for benefits related to the Infor Multi-tenant Cloud Customer Bill of Rights (only applicable to Subscription Software hosted in a multi-tenant environment).

The Service Level Agreement sets forth additional terms and conditions applicable to Customer's access to and use of the Subscription Software licensed herein. The terms of the Agreement are hereby amended by the Service Level Agreement as it relates to the Subscription Software licensed herein. In the event of a conflict between the terms and conditions of the Agreement and the provisions of the Service Level Agreement, the provisions of the Service Level Agreement shall govern and control. The Service Level Agreement can be found at: <https://www.infor.com/service-level-description>.

The Security Plan sets forth additional terms and conditions applicable to Customer's access to and use of the Subscription Software licensed herein. The terms of the Agreement are hereby amended by the Security Plan as it relates to the Subscription Software licensed herein. In the event of a conflict between the terms and conditions of the Agreement and the provisions of the Security Plan, the provisions of the Security Plan shall govern and control. The Security Plan can be found at: <https://www.infor.com/security-plan>.

No changes or modifications of any kind to this Order Form shall be accepted after execution unless signed in writing by both parties.

Education Services – INFOR CAMPUS Membership: NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE AGREEMENT, INFOR MAKES NO WARRANTIES WHATSOEVER, EXPRESSED OR IMPLIED, WITH REGARD TO INFOR CAMPUS MEMBERSHIPS OR ANY EDUCATION SERVICES AND INFOR EXPLICITLY DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE AGREEMENT, THE TOTAL LIABILITY OF INFOR, ITS AFFILIATES AND THIRD PARTY LICENSORS IN CONNECTION WITH AN INFOR CAMPUS MEMBERSHIP OR ANY EDUCATION SERVICES SHALL NOT EXCEED THE ANNUAL FEE PAID BY CUSTOMER FOR SUCH INFOR CAMPUS MEMBERSHIP OR EDUCATION SERVICES (AS APPLICABLE) FOR THE ANNUAL PERIOD IN WHICH THE LIABILITY FIRST AROSE.

By signing this Order Form, Customer represents and warrants that all necessary authorizations and approvals have been obtained including, but not limited to, appropriation of funds and budget approval.

Effective date of this Order Form: _____ (the "Order Form Date")

For: RPI Consultants, LLC	For: Town of Apex, NC
DocuSigned by: <i>Greg Pollard</i> 051F2ECCD3DA480...	
Signature	Signature
Greg Pollard	
Typed or Printed Name	Typed or Printed Name
Partner	
Title	Title
4/12/2023	
Date	Date