



Lexington-Fayette Urban County Government



Hyperion Planning & Budgeting Services

August 2015

CONSULTING SERVICES AGREEMENT

This Consulting Services Agreement (the "Agreement") entered into as of the Effective Date by and between Metaformers, Inc., a Virginia Corporation ("Metaformers") of 2010 Corporate Ridge Drive, Suite 850, McLean, VA 22102 and Lexington-Fayette Urban County Government ("LFUCG") of 200 East Main Street, Lexington, KY 40507

In this Agreement, Metaformers and LFUCG are sometimes each referred to individually as a "Party" and collectively as "Parties."

1. **Scope of Engagement.** For the Term of and subject to the conditions set forth in this Agreement, LFUCG hereby engages Metaformers to provide, and Metaformers hereby agrees to provide, the consulting services and deliverables necessary to perform the work set forth in Exhibit A and the Metaformers response to RFP 24-2015 Budgeting System, Description of Contractor Services, which is attached to this Agreement and incorporated by reference.

2. **Independent Contractor.** The Parties agree that Metaformers is an independent contractor and will not be considered an employee or agent of LFUCG.

3. **Term.** The Term of this Agreement begins on September , 2015 (the "Effective Date") and will continue through December 31st 2016, at which time this Agreement will terminate unless extended by the Parties in writing. All terms and conditions of this Agreement will remain in effect during any extension or renewal term.

4. **Compensation.** LFUCG agrees to compensate Metaformers for its services based on the fixed price proposal in the Metaformers response to RFP. Metaformers will invoice LFUCG at a rate of \$167,000 per month for the first 4 months with the remainder of the contract invoiced in the fifth month at \$83,500.

5. Metaformers will invoice LFUCG monthly, and LFUCG agrees to pay Metaformers' invoices within thirty (30) days after receipt of the invoice. Metaformers may charge daily interest at annual rate of 12% (1% monthly) for invoice balances not paid on time.

6. **Ownership of Materials.**

5.1 Subject to Section 5.2 below, the Parties agree that all deliverables, information, drawings, documents and materials authored or prepared, in whole or in part, by Metaformers in the course of providing services under this Agreement, including without limitation, processes, computer programs, computer systems, data, computer documentation or other materials whatsoever (collectively, "Works"), will be owned by and the property of LFUCG. Metaformers agrees that the creation of Works will be considered "works made for hire," and Metaformers also agrees to assign to LFUCG all such Works.

5.2 Notwithstanding anything to the contrary in Section 5.1 above, LFUCG agrees that and information, drawings, documents and materials authored, prepared, designed and/or developed, in whole or in part, by Metaformers prior to the Term of this Agreement or outside the scope of this Agreement ("Metaformers' Works") are or will be owned by and the property of Metaformers; provided, however, to the extent that any Metaformers' Works are incorporated into a deliverable under this Agreement, Metaformers hereby grants LFUCG a perpetual, non-transferable license to use such Metaformers' Works in and with such deliverables.

5.3 LFUCG represents that it owns or is authorized to use (and to allow Metaformers to use) all programs, information, data, documents and materials provided to Metaformers in connection with its performance under this Agreement. Nothing in this Agreement will be deemed to grant to Metaformers, directly or by implication, estoppel or otherwise, any right or license with respect to such programs, information, data, documents or materials.

6. Compliance with LFUCG Policies and Budgets. Metaformers will use its best efforts to perform work assigned by LFUCG in accordance with the LFUCG policies and procedures, agreed upon applicable work plans and estimated budgets. Metaformers will use its best efforts to perform the services in a timely and professional manner.

7. Termination.

7.1 LFUCG may terminate this Agreement for its convenience upon thirty (30) days written notice to Metaformers, in which case (a) Metaformers will refrain from starting work on new items and will (to the extent possible) complete work on existing items for delivery to LFUCG as of the termination date, and (b) LFUCG will pay Metaformers for its work through the termination date. In addition, either Party may terminate this Agreement upon ten (10) days written notice to the other, in the event the other Party breaches a material term of this Agreement. Sections 4, 5, 8, 9 10, 11, 12, 13, 14 and 16 of this Agreement will survive its termination for any reason.

7.2 In the event either Party materially breaches this Agreement, the non-breaching Party will have the right to terminate this Agreement and to seek all applicable damages in law and equity. In any litigation arising under this Agreement, the prevailing Party will be entitled to collect all of its attorney's fees and costs from the non-prevailing Party.

8. Indemnification and Insurance.

Metaformers agrees to comply with the Risk Management and Insurance provisions contained in RFP 24-2015 as if fully stated herein.

9. Limitation of Liability. Except pursuant to Section 8 above, neither Party will be liable under this Agreement to the other Party in contract, tort or otherwise for consequential, incidental, punitive, special, or exemplary damages. Except pursuant to Section 8 above, in no

event will either Party's damages exceed the total price for the services or deliverables under this Agreement.

10. Confidential Information. All documents, software, reports, data, records, forms and other materials developed by Metaformers in the course of performing any Services (including, but not limited to, LFUCG records and Metaformers proprietary information furnished to the LFUCG) are the proprietary, confidential and trade secret information of the providing Party. The receiving Party will deliver to the providing Party all such materials and all copies thereof at any time upon request, and immediately upon termination of this Agreement. The receiving Party will not use or disclose to any third person, firm or entity any proprietary, confidential or trade secret information of the providing Party without the providing Party's express, prior written permission unless otherwise required by law (i.e, Kentucky Open Records Act or judicial order) .

11. Non-Solicitation of Employees. During the Term of this Agreement and for one year after its termination, expiration or cancellation, LFUCG will not provide or offer employment to any person employed by Metaformers during the engagement period without the express consent of the Metaformers President. Metaformers hereby agrees to not solicit LFUCG's employees for employment for the same period.

12. Severability. In the event that any term or provision of this Agreement will be held to be invalid, void or unenforceable, then the remainder of this Agreement will not be affected, impaired or invalidated, and each such term and provision of this Agreement will be valid and enforceable to the fullest extent permitted by law.

13. Law. This Agreement will be governed by and construed in accordance with the laws of the Commonwealth of Kentucky.

14. Integration. This Agreement constitutes the entire agreement of the Parties hereto and supersedes all prior and contemporaneous representations, proposals, discussions, and communications, whether oral or in writing. This Agreement may be modified only in writing and will be enforceable in accordance with its terms when signed by each of the Parties hereto.

15. General Provisions.

To the extent to which they are not expressly in conflict with the provisions or terms of this Agreement , the "General Provisions" specified in RFP 24-2015 shall apply as if fully stated herein.

16. Force Majeure. Neither Party shall be responsible for failure or delay of performance if caused by: an act of war, hostility, or sabotage; act of God; electrical, internet, or telecommunication outage that is not caused by the obligated party; government restrictions (including the denial or cancellation of any export or other license); or other event outside the

reasonable control of the obligated party. Both Parties will use reasonable efforts to mitigate the effect of a force majeure event. If such event continues for more than 90 days, either of us may cancel unperformed services upon written notice. This section does not excuse either party's obligation to take reasonable steps to follow its normal disaster recovery procedures or your obligation to pay for services provided.

17. Notices. All notices required or permitted under this Agreement shall be deemed to have been sufficiently given if in writing and delivered either personally or by mail to the authorized representative of the other Party; notice given by mail shall also be transmitted by facsimile at the time of mailing.

Metaformers:

Attn: _____

LFUCG:

Attn: _____

In witness whereof, for adequate consideration and intending to be legally bound, the Parties hereto have signed this Agreement, or caused it to be signed by their duly authorized representatives, as of the day and year first above mentioned.

LFUCG

Signature: _____

Name: _____

Title: _____

Date: _____

Metaformers, Inc.

Signature: _____

Name: _____

Title: _____

Date: _____

EXHIBIT A

STATEMENT OF WORK

THIS DOCUMENT IS THE STATEMENT OF WORK (“SOW”) FOR Metaformers' services for LFUCG under the Agreement between them.

- 1. Purpose of Project.** The purpose of this Agreement is to provide Hyperion Cloud design, configuration, testing and deployment services to the LFUCG Department of Budgeting. This support will include design to deployment of a solution to support the budgeting process as defined in Metaformers response to RFP 24-2015 Budgeting Systems. The services will be provided on an agreed time basis between the Director of Budgeting or her written designate, and a Metaformers Vice President.
- 2. Approach.** Metaformers will provide Hyperion services both on-site and remotely, to support the implementation of Hyperion Public Sector Planning and Budgeting Cloud Solutions.
- 3. Schedule.** The Statement of Work covers the period September 1st 2015 to December 31st 2016. The schedule is defined in Metaformers response to RFP 24-2015 Budgeting Systems.
- 4. Deliverable Specifications.** All deliverables are defined in Metaformers response to RFP 24-2015 Budgeting Systems.
- 5. Pricing.** Pricing and associated assumptions are defined in Metaformers response to RFP 24-2015 Budgeting Systems.
- 6. Metaformers' Resources.** Metaformers key resources for these tasks are: Andrew Beck and Kimberly Champion. All other resources will be named at the point of final award and notice to proceed.
- 7. Cooperation.** In addition to any payment or other obligations imposed on LFUCG under this Agreement and/or any Statement of Work, LFUCG shall: (a) provide Metaformers with any and all information and assistance, and make available and provide access to facilities, resources and personnel, as may be reasonably requested by Metaformers from time to time; (b) provide access to all software programs materials necessary for Metaformers to perform its obligations under this Agreement; (c) notify Metaformers in writing of any circumstances reasonably expected to impact or delay Metaformers' performance under this Agreement; and (d) cooperate with any other reasonable Metaformers request to enable Metaformers to perform its duties under this Agreement.

8. Acceptance of Deliverables.

8.1 Deliverables. Metaformers work under this Agreement will be effected through the submission of deliverables to LFUCG. LFUCG understands and agrees that the deliverables are cumulative and that Metaformers' performance of work on a subsequent deliverable will be directly based on LFUCG's acceptance of work on prior deliverables.

8.2 Evaluation and Review. After Metaformers has delivered to LFUCG any deliverable, LFUCG shall have three business days from the date Metaformers of delivery (unless such other acceptance period is agreed to by the Parties) to review the deliverable and to determine whether such deliverable substantially conforms to the specifications set forth in the relevant Statement of Work (the "Acceptance Period").

8.3 Notice of Non-conformity. LFUCG shall within the applicable Acceptance Period provide Metaformers with a written notice of all non-conforming aspects and/or defects in the deliverable together with all information and assistance reasonably necessary for Metaformers to correct such non-conforming aspects and/or defects ("Notice of Non-conformity"). The Notice of Non-conformity shall specify (1) the requirement from the Metaformers' proposal that LFUCG claims does not conform to the specifications; and (2) the manner in which the functional requirement does not conform to the specification. If LFUCG does not issue a Notice of Non-Conformity to Metaformers with the applicable Acceptance Period, then the Parties agree that the deliverable will be deemed to be accepted as 'Final' and LFUCG will provide the appropriate sign-off.

8.4 Correction of non-conforming aspects of Deliverables. Metaformers shall have five business days following receipt of LFUCG's written notice of non-conforming aspects to correct the non-conforming aspects of the deliverable. If changes are too significant to complete in this time frame the PM from the LFUCG and Metaformers can agree to extend the deadline after understanding impact to schedule.

9. Change Orders.

9.1 No change(s) to this Agreement shall become effective unless and until both Parties execute a written Change Order describing any such changes and their impact on performance. Neither Party shall unreasonably withhold, deny or delay approval of any Change Order proposed or requested by the other Party. Metaformers shall have no obligation to perform any services described in any proposed or requested Change Order, or any proposal related thereto, unless and until such Change Order has been executed by both Parties. Upon its execution, such Change Order shall be incorporated into this Agreement.

9.2 If LFUCG wishes to implement any changes or revisions that deviate in any material respect from the applicable Statement of Work, LFUCG shall submit a requested Change Order to Metaformers specifying such changes or revisions in detail. Metaformers shall promptly review such requested Change Order and shall submit to LFUCG a written proposal for implementing such changes or revisions, including any price changes. LFUCG shall have

The foregoing Agreement was subscribed, sworn to and acknowledged before me by Andrew Beck as Vice President of Metaformers, Inc., on this the ____ day of _____, 2015.

My commission expires: _____.
