

**BENEVATE INC. (dba NEIGHBORLY SOFTWARE) SAAS SERVICES ORDER FORM**

<b>Customer:</b> Lexington-Fayette Urban County Government	<b>Contact:</b> Charlie Lanter, Director Grants & Special Programs
<b>Address:</b> 200 E. Main Street, Lexington, KY 40507	<b>Phone:</b> direct: 859.258.3079 / office: 859.258.3070
<b>Services:</b> Company will use commercially reasonable efforts to provide Customer the services described in the Services Statement of Work (“SOW”) attached as Exhibit A hereto (the “Services”).	
<b>Services Fees:</b> \$18,900 per year, payable annually in advance, subject to the terms of Section 4 and Per User Pricing attached as Exhibit D hereto.	<b>Initial Service Term:</b> One year from Effective Date
<b>Implementation Services:</b> Company will use commercially reasonable efforts to provide Customer the services described in the Implementation Services Statement of Work attached as Exhibit C hereto (“Implementation Services”), and Customer shall pay Company 90% of the Implementation Fee at Effective Date and balance upon completion following go-live training.	
<b>Implementation Fee (one-time):</b> \$10,900	

**SAAS SERVICES AGREEMENT**

This SaaS Services Agreement (“Agreement”) is entered into on this \_\_\_\_ day of \_\_\_\_\_ 2019 (the “Effective Date”) between Benevate Inc with a place of business at 3423 Piedmont Rd. NE, Suite 216, Atlanta, GA 30305 (“Company”), and the Customer listed above (“Customer”). This Agreement includes and incorporates the above Order Form, as well as the attached Terms and Conditions and contains, among other things, warranty disclaimers, liability limitations and use limitations.

**BENEVATE Inc.:**

**LEXINGTON-FAYETTE URBAN COUNTY GOVERNEMENT:**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: J. Jason Rusnak

Name: Linda Gorton

Title: President, Benevate Inc

Title: MAYOR

**TERMS AND CONDITIONS**

## **1. SAAS SERVICES AND SUPPORT**

1.1 Company will use commercially reasonable efforts to provide Customer the services described in the Statement of Work (“SOW”) attached as Exhibit A hereto.

1.2 Subject to the terms of this Agreement, Company will use commercially reasonable efforts to provide Customer the Services as described in accordance with the Service Level Terms attached hereto as Exhibit B.

## **2. RESTRICTIONS AND RESPONSIBILITIES**

2.1 Customer will not, directly or indirectly: reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the Services or any software, documentation or data related to the Services (“Software”); modify, translate, or create derivative works based on the Services or any Software (except to the extent expressly permitted by Company or authorized within the Services); use the Services or any Software for timesharing or service bureau purposes

2.2 Customer represents, covenants, and warrants that Customer will use the Services in compliance with all applicable laws and regulations.

2.3 Customer shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Services, including, without limitation, modems, hardware, servers, software, operating systems, networking, web servers and the like (collectively, “Equipment”).

## **3. CONFIDENTIALITY; PROPRIETARY RIGHTS**

3.1 Each party (the “Receiving Party”) understands that the other party (the “Disclosing Party”) has disclosed or may disclose business, technical or financial information relating to the Disclosing Party’s business (hereinafter referred to as “Proprietary Information” of the Disclosing Party). Proprietary Information of Company includes non-public information regarding features, functionality and performance of the Service. Proprietary Information of Customer includes non-public data provided by Customer to Company to enable the provision of the Services (“Customer Data”). The Receiving Party agrees: (i) to take reasonable precautions to protect such Proprietary Information, and (ii) not to use or divulge to any third person any such Proprietary Information.

3.2 Customer shall own all right, title and interest in and to the Customer Data, as well as any data that is based on or derived from the Customer Data and provided to Customer as part of the Services.

3.3 Company shall own and retain all right, title and interest in and to (a) the Services and Software, all improvements,

enhancements or modifications thereto, (b) any software, applications, inventions or other technology developed in connection with Implementation Services or support, and (c) all intellectual property rights related to any of the foregoing.

3.4 Notwithstanding anything to the contrary, Company shall have the right to collect and analyze data and other information relating to the provision, use and performance of various aspects of the Services and related systems and technologies (including, without limitation, information concerning Customer Data and data derived therefrom), and Company will be free (during and after the term hereof) to (i) use such information and data to improve and enhance the Services and (ii) disclose such data solely in aggregate or other de-identified form in connection with its business.

## **4. PAYMENT OF FEES**

4.1 Customer will pay Company the then applicable fees described in the Order Form for the Services and Implementation Services in accordance with the terms therein (the “Fees”). Company reserves the right to change the Fees or applicable charges and to institute new charges and Fees at the end of the Initial Service Term or then-current renewal term, upon thirty (30) days prior notice to Customer (which may be sent by email). Per User Pricing, set forth on Exhibit D, shall increase by no more than 3% (the “Renewal Price Cap”), applied to the then-effective Per User Pricing set forth on Exhibit D at the time of renewal. The aforementioned Renewal Price Cap shall be forfeited if the Services are not renewed prior to the termination date of the initial Service Term or then current renewal term; in which case, the fees for any subsequent renewal shall be calculated according to Company’s then-current pricing.

4.2 Company may choose to bill through an invoice, in which case, full payment for invoices must be received by Company thirty (30) days after receipt of the invoice by Customer. The fees do not include any taxes, including, without limitation, sales, use or excise tax. If Customer is a tax-exempt entity, you agree to provide Company with a tax exempt certificate. Otherwise, Company will pay all applicable taxes to the proper authorities and Customer will reimburse Company for such taxes. If Customer has a valid direct-pay permit, you agree to provide us with a copy. For clarity, Company is responsible for paying Company’s income taxes, both federal and state, as applicable, arising from Company’s performance of this Agreement.

4.3 The parties acknowledge that appropriation of funds is a governmental function which the Customer cannot contractually commit itself in advance to perform and this Agreement does not constitute such commitment. The Customer’s obligation to pay under this Agreement is contingent upon Customer’s annual appropriation of funds for such purpose, and the non-appropriation of funding for such purpose in any fiscal year shall immediately relieve both parties of their respective obligations hereunder, as of

the last day for which funds have been appropriated. The Customer shall endeavor, upon determining that sufficient funds will not be budgeted and appropriated in any fiscal year under this Agreement, to provide prompt written notice within 30 days of such event.

**5. TERM AND TERMINATION**

5.1 Subject to earlier termination as provided below, this Agreement is for the Initial Service Term as specified in the Order Form, and shall be automatically renewed for additional periods of the same duration as the Initial Service Term (collectively, the “Term”), unless either party requests termination at least thirty (30) days prior to the end of the then-current term.

5.2 In addition to any other remedies it may have, either party may also terminate this Agreement upon thirty (30) days’ notice (or without notice in the case of nonpayment), if the other party materially breaches any of the terms or conditions of this Agreement. Customer will pay in full for the Services up to and including the last day on which the Services are provided.

5.3 Upon the termination of this Agreement Company shall, within five (5) business day following the termination of this Agreement, provide Customer, without charge and without any conditions or contingencies whatsoever (including but not limited to the payment of any fees due to Service Provider), with a final extract of the Customer Data in electronic format. Further, Company shall certify to Customer the destruction of any Customer Data within the possession or control of Company, but such destruction shall occur only after the Customer Data has been returned to Customer. This Section shall survive the termination of this Agreement.

**6. WARRANTY AND DISCLAIMER**

Company shall use reasonable efforts consistent with prevailing industry standards to maintain the Services in a manner which minimizes errors and interruptions in the Services and shall perform the Implementation Services in a professional and workmanlike manner. Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Company or by third-party providers, or because of other causes beyond Company’s reasonable control, but Company shall use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled service disruption. HOWEVER, COMPANY DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, THE SERVICES AND IMPLEMENTATION SERVICES ARE PROVIDED “AS IS” AND COMPANY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

**7. INDEMNITY**

Company shall hold Customer harmless from liability to third parties resulting from infringement by the Service of any United States patent or any copyright or misappropriation of any trade secret, provided Company is promptly notified of any and all threats, claims and proceedings related thereto and given reasonable assistance and the opportunity to assume sole control over defense and settlement; Company will not be responsible for any settlement it does not approve in writing.

**8. LIMITATION OF LIABILITY**

NOTWITHSTANDING ANYTHING TO THE CONTRARY, EXCEPT FOR BODILY INJURY OF A PERSON OR PROPERTY DAMAGE, COMPANY AND ITS SUPPLIERS (INCLUDING BUT NOT LIMITED TO ALL EQUIPMENT AND TECHNOLOGY SUPPLIERS), OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS AND EMPLOYEES SHALL NOT BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY: (A) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY OR CORRUPTION OF DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY OR LOSS OF BUSINESS; (B) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; (C) FOR ANY MATTER BEYOND COMPANY’S REASONABLE CONTROL; OR (D) FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE SERVICES UNDER THIS AGREEMENT IN THE 12 MONTHS PRIOR TO THE ACT THAT GAVE RISE TO THE LIABILITY, IN EACH CASE, WHETHER OR NOT COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**9. INSURANCE**

9.1 During the course of performing services under this Agreement, Company agrees to maintain the following levels of insurance: (a) Commercial General Liability of at least \$1,000,000; (b) Professional Liability (E&O) of at least \$1,000,000; (c) Cyber Liability of at least \$1,000,000; and (d). Workers Compensation complying with applicable statutory requirements. Company will add Customer as an additional insured, primary and noncontributory, to our Commercial General Liability policy. Company will provide Customer with copies of certificates of insurance upon Customer’s written request.

**10. MISCELLANEOUS**

10.1 If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this

Agreement will otherwise remain in full force and effect and enforceable.

10.2 This Agreement is not assignable, transferable or sublicensable by Customer except with Company's prior written consent. Company may transfer and assign any of its rights and obligations under this Agreement without consent.

10.3 This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein.

10.4 No agency, partnership, joint venture, or employment is created as a result of this Agreement and Customer does not have any authority of any kind to bind Company in any respect whatsoever.

10.5 All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested.

10.6 Company may use Customer's name and logo in a list of customers section on its website.

10.7 This Agreement shall be governed and construed in all respects in accordance with the laws of the Commonwealth of Kentucky.

## EXHIBIT A

### **Services Statement of Work**

1. SaaS Services Description. Company will provide Customer with hosted software for the enrollment, qualification, administration and reporting of the following activities:
  - a. Housing Rehabilitation
  - b. Emergency Repair Program
  - c. First Time Homebuyer Program
  - d. Neighborhood Action Match Program
  - e. CHDO HOME grant management

Company will make available to Customer all updates, and any documentation for such updates, to the Services. Company will ensure that (i) new features or enhancements to existing features are synchronized with the previous version, and (ii) updates will not degrade the performance, functionality, or operation of the Services.

2. Training Services. Company will conduct one (1) eight (8) hour on-site training session, which may be recorded by Customer. The purpose of the training sessions is to familiarize administrator personnel with the workflow and functionality of hosted software.
3. Technical Support. Company will provide Technical Support to Customer via electronic mail on weekdays during the hours of 9:00 am through 5:00 pm Eastern time, with the exclusion of Federal Holidays (“Support Hours”). Customer may initiate a helpdesk ticket during Support Hours by emailing [support@neighborlysoftware.com](mailto:support@neighborlysoftware.com). Company will use commercially reasonable efforts to respond to all Helpdesk tickets within one (1) business day.
4. Data Storage. Company agrees that any and all Customer data will be stored, processed, and maintained solely in data centers located in the United States.
5. Backup and Recovery of Customer Data. As a part of the Services, Company is responsible for maintaining a backup of Customer Data and for an orderly and timely recovery of such data in the event that the Services may be interrupted. Company shall maintain a contemporaneous backup of Customer Data that can be recovered within four (4) hours at any point in time.
6. Loss of Data. In the event of any act, error or omission, negligence, misconduct, or breach that compromises or is suspected to compromise the security, confidentiality, or integrity of Customer Data or the physical, technical, administrative, or organizational safeguards put in place by Company that relate to the protection of the security, confidentiality, or integrity of Customer Data, Company shall, as applicable: (a) notify Customer as soon as practicable but no later than twenty-four (24) hours of becoming aware of such occurrence; (b) cooperate with Customer in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law or as otherwise required by Customer; (c) in the case of Personally Identifiable Information (PII), at Customer’s sole election, (i) notify the affected individuals who comprise the PII as soon as practicable but no later than is required to comply with applicable law, or, in the absence of any legally required notification period, within five (5) calendar days of the occurrence; (d) in the case of PII, provide third-party credit and identity monitoring services to each of the affected individuals who comprise the PII for the period required to comply with applicable law, or, in the absence of any legally required monitoring services, for six (6) months following the date of notification to such individuals; (e) perform or take any other actions required to comply with applicable law as a result of the occurrence; Notification to affected individuals, as described above, shall comply with applicable law, be written in plain language, and contain, at a minimum: name and contact information of Company’s representative; a description of the nature of the loss; a list of the types of data involved; the known or approximate date of the loss; how such loss may affect the affected individual; what steps Company has taken to protect the affected individual; what steps the affected individual can take to protect himself or herself; contact information for major credit card reporting agencies; and, information regarding the credit and identity monitoring services to be provided by Company. This Section shall survive the termination of this Agreement.

**EXHIBIT B**

**Service Level Terms**

The Services shall be available 99.5%, measured monthly, excluding holidays and scheduled downtime. Further, any downtime resulting from outages of third party connections or utilities or other reasons beyond Company's control will also be excluded from any such calculation. Customer's sole and exclusive remedy, and Company's entire liability, in connection with Service availability shall be a "Performance Credit."

1) Definitions.

- (a) "Actual Uptime" shall mean the total minutes in the reporting month that the Services were actually available for normal use.
- (b) "Maintenance Window" shall mean the total minutes in the reporting month represented by the following day(s) and time(s) during which Company shall maintain the Services: Tuesday, Thursday, Saturday 11pm-3am ET.
- (c) "Scheduled Downtime" shall mean the total minutes in the reporting month represented by the Maintenance Window.
- (d) "Scheduled Uptime" shall mean the total minutes in the reporting month less the total minutes represented by the Scheduled Downtime.

2) Calculation.  $(\text{Actual Uptime} / \text{Scheduled Uptime}) * 100 = \text{Percentage Uptime}$  (as calculated by rounding to the second decimal point)

3) Performance Credit. Performance credits may not be redeemed for cash and will only apply a credit to the month in which the incident occurred.

- (a) Where Percentage Uptime is equal to or greater than 99.5%, no Performance Credit will be due to Customer.
- (b) Where Percentage Uptime is less than 99.5%, Customer shall be due a Performance Credit in the amount of 5% of the Services Fees (as calculated on a monthly basis for the reporting month)

## EXHIBIT C

### **Implementation Services Statement of Work**

This Implementation Services Statement of Work describes the Services to be performed, and Deliverables to be provided, by Company in completion and satisfaction of the Implementation Services.

- 1) **Company Key Roles.** Company will assign an Engagement Manager who will be Customer's primary contact person and who will coordinate all the activities of the Implementation team.
- 2) **Customer Key Roles.** Customer will assign a person to be the focal point to coordinate the user and technical support and resources needed for the implementation, and to be responsible for approvals and decisions. This person will coordinate data collection and reconciliation, review each stage of the implementation process, and provide end user involvement with systems and user acceptance training. Schedule and cost estimates assume that personnel acting in the roles noted above to be reasonably and readily available to the Company team as needed throughout the project. Additionally, all approvals and decisions are made within a reasonable time period.
- 3) **Implementation Steps.** The following are the general steps which make up the implementation process:
  - Kickoff meeting
  - Program Design and Documentation
  - System Configuration and Signoff
  - Data Review and Validation
  - Administrator Training
  - Historical Data Collection
- 4) **Implementation Deliverables.** The following are the items that will be delivered as part of implementation:
  - a. Program Design and Documentation
    - List of all documents to be uploaded into the system as part of the Program
    - List of all documents to be generated by the system as part of the Program
  - b. System Configuration
    - Create Administrator accounts in the system
    - Configure Customer enrollment application in the system
    - Configure Customer specific approvals and workflow in the system.
    - Configure up to ten (10) program documents to be generated by system and train staff on creating of additional documents.
  - c. Data Review and Validation
    - Provide up to five (5) business days for Customer to test and validate system data and configuration
  - d. Administrator Training
    - Conduct one (1) eight (8) hour training session, which may be recorded by Customer.
  - e. Historical data conversion
    - Upload Customer historical "active" data (i.e. outstanding loans, grants, etc.) to be provided by Customer in an electronic format specified by Company.
- 5) **Customer Responsibilities**
  - a. Design and approve data elements, program workflow, and eligibility criteria
  - b. Identify all program documents required to be stored in the system
  - c. Identify all program documents to be generated by the system
  - d. Provide historical data in electronic format specified by Company
  - e. Test and approve system configuration
  - f. Provide final sign off that the system meets all requirements ("Go Live")
  - g. Participate in administrator training session

**EXHIBIT D**

**Per User Pricing**

Additional user licenses may be purchased, pro-rata to the Initial Service Term, based on the pricing table below.

<b>Per User Description</b>	<b>Per User Per Month Pricing</b>		<b>Number of Users Included in Order Form</b>
1. Full User License – Ability to create and edit data records, run reports, and generate program documents.	1-10 Users	\$157.50	10
	11-20 Users	\$112.50	0
	21+ Users	\$67.50	0