

FORSYTH COUNTY
BOARD OF COMMISSIONERS

MEETING DATE: MARCH 1, 2018 AGENDA ITEM NUMBER: 8

SUBJECT: RESOLUTION AWARDING AND AUTHORIZING EXECUTION OF A CONTRACT BETWEEN FORSYTH COUNTY AND WORXTIME HR LLC FOR ONLINE EMPLOYEE BENEFITS ENROLLMENT SERVICES (HUMAN RESOURCES DEPARTMENT)

COUNTY MANAGER'S RECOMMENDATION OR COMMENTS: Recommend Approval

SUMMARY OF INFORMATION: See Attached

ATTACHMENTS: YES NO

SIGNATURE: *J. Audrey Watts, Jr.* DATE: February 28, 2018
COUNTY MANAGER

**RESOLUTION AWARDING AND AUTHORIZING EXECUTION OF
A CONTRACT BETWEEN FORSYTH COUNTY AND
WORXTIME HR LLC FOR ONLINE EMPLOYEE
BENEFITS ENROLLMENT SERVICES
(HUMAN RESOURCES DEPARTMENT)**

WHEREAS, the County's Benefits Consultant prepared a Request for Proposals (RFP) and solicited proposals from benefits enrollment companies; and

WHEREAS, eight firms responded by submitting proposals and the firm with the lowest proposed cost also meeting the requirements of the RFP is Worxtime HR LLC; and

WHEREAS, Worxtime HR LLC's proposal amount is not to exceed \$67,000 during the first year; and

WHEREAS, it is recommended that a contract for online employee benefits enrollment services be awarded to Worxtime HR LLC and that all other proposals be rejected;

NOW, THEREFORE, BE IT RESOLVED by the Forsyth County Board of Commissioners that a contract in an amount not to exceed \$67,000 for the first year is hereby awarded to Worxtime HR LLC for the provision of online benefits enrollment services, for eligible Forsyth County employees and retirees, and all other proposals are hereby rejected.

BE IT RESOLVED that the Chairman or County Manager and Clerk to the Board are hereby authorized to execute, on behalf of Forsyth County, the attached contract between Forsyth County and Worxtime HR LLC, subject to a pre-audit certificate thereon by the County Chief Financial Officer, where applicable, and approval as to form and legality by the County Attorney.

BE IT FURTHER RESOLVED that the County Manager is hereby authorized to execute, on behalf of Forsyth County, subsequent contracts or contract amendments with this provider for these services within budgeted appropriations in current and future fiscal years if these services are deemed necessary.

Adopted this the 1st day of March 2018.

BENEFIT CONSULTING AGREEMENT

THIS AGREEMENT, made and entered into as of this, the 1st day of January, 2018 by and between WorxtimeHR, 360B Quality Circle, Suite 220, Huntsville, Alabama 35806, hereinafter referred to as "WorxtimeHR" and Forsyth County Government, hereinafter referred to as "You or "Your". CAPITALIZED TERMS MAY BE DEFINED IN THE BODY OF THE AGREEMENT, IN THE DEFINITIONS SECTION OF THE AGREEMENT, OR DESIGNATED AS DEFINED IN ANOTHER DOCUMENT, LAW, OR REGULATION REFERENCED BY THE AGREEMENT. DEFINITIONS SHALL BE APPLICABLE TO THE AGREEMENT AND ANY ATTACHMENTS, AMENDMENTS, OR EXHIBITS, UNLESS INDICATED OTHERWISE.

WHEREAS, Worxtime HR shall provide certain benefit communications, enrollment services, and enrollment of certain lines of voluntary insurance coverages to Your employees, associates, or others at the direction of You in accordance with the terms and conditions herein; and

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties hereby agree as follows:

- 1.0 Description of Services. The services to be performed by Worxtime HR for You shall include the services referenced in the body of this Agreement and those listed on Exhibit A, attached hereto and made a part hereof. The services to be performed may only be modified as agreed upon by the parties in writing. The parties further agree that Worxtime HR is an independent contractor and is not an employee of Forsyth County Government. Worxtime HR has the right to determine the means and methods to be used in accomplishing and providing the services to be rendered hereunder.
- 2.0 Duties required of You. You shall provide Worxtime HR with any and all information related to Your benefit program that Worxtime HR may reasonably request in order to perform the services contemplated hereunder including, but not limited to, accurate and timely information related to You and the plans and products subject to the services. Furthermore, You shall distribute in a reasonable manner communication material related to the services being offered by Worxtime HR. Worxtime HR will not independently verify or authenticate information provided by You or on Your behalf. You shall solely be responsible for the accuracy and completeness of such information and other documentation furnished to Worxtime HR. Additional duties of Yours are listed in Exhibit B, attached hereto and made a part hereof.
- 3.0 Term. This Agreement is effective the date written above and will remain in effect for a one (1) year period after the effective date ("Initial Term"). At the end of the Initial Term this Agreement will renew automatically for additional periods ("Renewal Terms") of one (1) year each until such time as either party gives written Notice to the other party of their intent not to renew this Agreement upon the expiration of the then-effective term. Such Notice must be given not less than sixty (60) days prior to the end of the Initial Term or any subsequent Renewal Term.
- 4.0 Fees for Services Performed. A schedule of fees for services to be provided by Worxtime HR is attached hereto as Exhibit C. You agree to timely pay all fees, costs, and expenses arising out of or resulting from all services performed consistent with Exhibit C.
- 5.0 New Pricing Structure. In the event Worxtime HR adopts a new pricing structure that differs from the pricing structure contained in Exhibit C, Worxtime shall give You written notice of such new pricing structure not less than ninety (90) days prior to the end of Your then-current term. The new pricing structure shall be effective with the first Renewal Term commencing after written notice of such new pricing structure.
- 6.0 Expenses. You will not be responsible for direct expenses associated with Worxtime HR's services other than those specifically referenced in this Agreement.
- 7.0 Indemnification.
 - 7.1 The parties acknowledge that Worxtime HR is not named a fiduciary with respect to any plan for which it may provide services. The parties agree that Worxtime HR is not nor shall become a fiduciary of any insurance plan as the result of providing the services anticipated by this Agreement.
 - 7.2 In order to provide the services identified herein, it may be necessary for Worxtime HR to receive from You, or from Your agent, information of a personal nature that may be protected by various privacy laws. Worxtime HR advises that You consult with legal counsel as to laws that may impact You or Your plan(s). You warrant that You or Your agent have the right and authority to disclose certain protected health information to Worxtime HR for Worxtime HR's use in performing the services anticipated by this Agreement. You warrant

- that Worxtime HR's use of this information to perform the services anticipated by this Agreement does not violate any privacy notice issued by You, a benefit program You maintain, or any applicable law.
- 7.3 Neither Worxtime HR nor You shall have any liability for any failure or delay in performance of obligations under this Agreement because of circumstances beyond reasonable control, including without limitation, acts of God, fires, floods, earthquakes, acts of war or terrorism, civil disturbances, sabotage, accidents, unusually severe weather, governmental actions, power failures, computer/network viruses that are not preventable through generally available retail products, catastrophic hardware failures, or attacks on servers.
- 7.4 The parties further agree, notwithstanding any other terms or conditions contained here, that neither Worxtime HR nor You shall have any liability for indirect, special, punitive, consequential or incidental damages, including, without limitation loss of profits.
- 7.5 Except to the extent prohibited by law, You will indemnify, defend, and hold harmless Worxtime HR, its directors, officers, and associates from and against any and all claims and/or lawsuits brought by any person, entity or governmental authority from and against any and all judgments, settlements, costs, penalties, and expenses (including reasonable attorneys' fees and expenses) resulting from or arising out of criminal conduct, negligence, or fraud on the part of You or any of Your directors, officers, or associates (acting alone or in collusion with others) in connection with this Agreement, except to the extent such claim or lawsuit arises from a wrongful act or wrongful omission that Worxtime HR, pursuant to rights under this Agreement, specifically directed You to engage in or which arises from criminal conduct, negligence, or fraud on the part of Worxtime HR or any of Worxtime HR's directors, officers or associates (acting alone or in collusion with others).
- 7.6 Except to the extent prohibited by law, Worxtime HR will indemnify, defend, and hold harmless You, Your directors, officers, and associates from and against any and all claims and/or lawsuits brought by any person, entity or governmental authority against any and all judgments, settlements, costs, penalties, and expenses (including reasonable attorneys' fees and expenses) resulting from or arising out of criminal conduct, negligence, or fraud on the part of Worxtime HR or any of its directors, officers, or associates (acting alone or in collusion with others) in connection with this Agreement, except to the extent such claim or lawsuit arises from a wrongful act or wrongful omission that You, pursuant to rights under this Agreement, specifically directed Worxtime HR to engage in or which arise from criminal conduct, negligence, or fraud on the part of You or any of Your directors, officers or associates (acting alone or in collusion with others).

8.0 Confidentiality.

- 8.1 Worxtime HR will retain in confidence all information and technical data derived from or disclosed to Worxtime HR by You, Your Employees, Your representatives, or Your agents, which is not generally known to the public, hereinafter referred to as "Confidential Information." Examples of Confidential Information include, but are not limited to, information or data disclosed in oral, written, graphic, or machine-readable form or in forms otherwise embodying or displaying such information which is visible or audible to Worxtime HR by virtue of Worxtime HR having an employee, subcontractor, or agent visiting or performing services at a facility controlled by You or one of Your subsidiaries, agents or subcontractors; or by having access to Your systems including, but not limited to, employee information, which may constitute personally identifiable information. Examples of personally identifiable information include, but are not limited to, individual names, addresses, phone numbers, email addresses, employment information, financial information, social security numbers, drivers' license or other identification card numbers, or other similar information. Worxtime HR shall use all Confidential Information solely to perform its obligations under this Agreement. The disclosure of Confidential Information is subject to privacy laws. This obligation of confidentiality shall not, however, apply to information that: (a) is or becomes available in the public domain through no wrongful act or omission of Worxtime HR; (b) is already in Worxtime HR's rightful possession without an obligation of confidentiality prior to disclosure by You; (c) is rightfully disclosed to Worxtime HR by a third party without an obligation of confidentiality that is known to Worxtime HR; (d) is independently developed by Worxtime HR; or (e) is required to be disclosed by law or pursuant to any order of a court of competent jurisdiction or regulatory order properly served on Worxtime HR.
- 8.2 Worxtime HR agrees to regard and preserve as confidential all records and other information including but not limited to participant demographic and benefit election information and any materials developed exclusively for You. Worxtime HR will not, without written authority from You, disclose to others during the term of this Agreement or thereafter, any such records or other information except as required by applicable law.
- 8.3 Upon Termination of this Agreement, each party shall promptly return to the other party all copies of materials involving confidential information in the other party's possession or control.

9.0 Miscellaneous.

- 9.1 Governing Law. Any action, suit, or proceeding arising under or in connection with this Agreement must be commenced within two (2) years after the claim or cause of action arises. This Agreement shall be governed and construed in accordance with the laws of Alabama, excluding Alabama's choice-of-law principles.
- 8.2 Assignment. You may not assign (voluntarily, by operation of law, or otherwise) this Agreement (or any rights or obligations contained herein) without the prior written consent of Worxtime HR, whose consent shall not be unreasonably withheld. Any permitted assignee shall assume all obligations of its assignor under this Agreement. Any purported assignment or transfer in violation of this section shall be void. Worxtime HR may transfer this Agreement upon notice to you.
- 8.3 Entire Agreement. This Agreement is the entire agreement between the parties. This Agreement supersedes all prior or contemporaneous oral or written communications, proposals, and representations with respect to the subject matter covered by this Agreement. The terms and conditions of this Agreement can only be modified via a written agreement signed by all parties.
- 8.4 Counterparts. This Agreement may be executed by the parties in separate counterparts each of which when so, executed and delivered shall be an original, but all such counterparts together shall constitute but one and the same instrument.
- 8.5 Notices. Any notice, communication or payment required under this Agreement shall be addresses as follows:

Client:

Forsyth County Government
201 North Chestnut Street
Winston Salem, NC 27101
Attn: Dudley Watts, Jr.

Vendor:

Worxtime HR, LLC
360B Quality Circle, Suite 220
Huntsville, AL 35806
Attn: Contracting Department

- 8.6 Attorneys' Fees. In the event Worxtime HR or You institutes legal proceedings related to this Agreement against the other party the prevailing party in such proceedings shall be entitled to recover from the other party (in addition to any damages or other relief granted as a result of such litigation) all costs and expenses incurred therein, including reasonable attorneys' fees and courts costs.
- 8.7 HIPAA and HITECH Compliance. Worxtime HR and You shall comply with all federal and state laws and regulations governing the privacy and security of health information, including without limitation, the Health Insurance Portability and Accountability Act (HIPAA), Health Information Technology for Economic and Clinical Health Act (HITECH), and their related regulations, and shall remain in compliance with these laws and regulations, and any other applicable laws, rules or regulations pertaining to the services, as they may be amended from time to time. The parties shall execute whatever additional documents or agreements may be necessary to comply with these laws and regulations.

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IN WITNESS WHEREOF, the parties have caused this Agreement to be executed the date set forth below. The parties hereby agree and consent to the terms and conditions of the Agreement and acknowledge such by executing the Agreement below.

Executed by:	<u>Forsyth County Government</u>	Accepted By:	<u>WorxtimeHR, LLC</u>
Signature:	_____	Signature:	_____
Printed Name:	<u>Dudley Watts, Jr.</u>	Printed Name:	<u>Heather McFarland</u>
Title:	<u>County Manager</u>	Title:	<u>CEO</u>
Date Signed:	_____	Date Signed:	_____
Address:	<u>201 N. Chestnut Street Winston Salem, NC 27101</u>	Address:	<u>360B Quality Circle Suite 220 Huntsville, Alabama 35806</u>
Email:	_____	Email:	<u>heather@worxtimehr.com</u>

**EXHIBIT A
WORXTIME HR SCOPE OF SERVICES**

WORXTIME HR shall provide the following services to You under this Agreement:

- Dedicated Project / Account Manager for entirety of project
- Project plan outlining Client/Broker/ Worxtime HR responsibilities
- Employee enrollment Self-service

Web-Based Enrollment System for open and perpetual enrollment:

- Employee self-service, web-based enrollment portal
- Enrollment portal for Voluntary Benefit enrollment
- Enrollment portal for Core Benefit enrollment
- Administrator access to web-based enrollment portal
- Configuration of web-based enrollment portal

Perpetual New Hire Enrollment: Ongoing Support

- Administrator support for web-based enrollment portal
- Employee self-service, web-based enrollment portal
- Enrollment portal for Voluntary Benefit enrollment
- Employee enrollment Self-service

EDI File Transfers:

- Electronic Data file coordination and configuration for enrollment requirements
- Client with Enrollment Data (Elections)
- Payroll Vendor with Enrollment Data (Elections)
- Carrier(s) with EDI file
- Enrollment Data will be retained/backed up for 12 months following enrollment date

EXHIBIT B
DUTIES OF FORSYTH COUNTY GOVERNMENT and BROKER

You shall be responsible for the following support duties:

- Provide all documentation as it relates to enrollment; rates, parameters, rules, etc.
- Provide Worxtime HR protocol as it pertains to your working environment.
- Utilize problem resolution process if/when obstacles/challenges are identified.
- Adhere to an agreed upon project plan/timeline for enrollment.
- Provide Worxtime HR with required census file based on project timeline.
- Provide Worxtime HR with POC for making enrollment decisions.
- Review and approve enrollment visuals, rates and calculations prior to enrollment for accuracy.

**EXHIBIT C
COMPENSATION SCHEDULE**

WORXTIMEHR shall be paid by tenth of month, through Fees as outlined below.

Fees.

Initial web-based enrollment system setup	• \$4,000
Online Benefit Enrollment System PEPM	• \$2.50 PEPM
Set up fee for Custom Data Feeds to Payroll and/or Carrier(s)	• \$1500 per file (each file in excess of 5 files) (due 3 weeks prior to open enrollment date).
Monthly EDI File Feeds (over 5 files)	• \$125 per month, per file
Customized Programming	• \$200 per hour

Invoicing and Payments. Your initial invoice will include the Set-up Fees and any customized Programming fees shall be due and payable within 14 (fourteen) days. The Monthly charge shall be sent to You on the 1st (first) of each month. Invoices will be delivered via email and are due and payable by the 10th (tenth) of each month. Additional services requested by Forsyth County Government will be billed on a time and materials basis. Examples would be customized programming or development outside the scope of the Benefit Administration System. Forsyth County Government must authorize all additional services and fees, in writing, prior to work being performed.

Executed by:	<u>Forsyth County Government</u>	Accepted By:	<u>WorxtimeHR, LLC</u>
Signature:	_____	Signature:	_____
Printed Name:	<u>Dudley Watts, Jr.</u>	Printed Name:	<u>Heather McFarland</u>
Title:	<u>County Manager</u>	Title:	<u>CEO</u>
Date Signed:	_____	Date Signed:	_____
Address:	<u>201 N. Chestnut Street Winston Salem, NC 27101</u>	Address:	<u>360B Quality Circle Suite 220 Huntsville, Alabama 35806</u>
Email:	_____	Email:	<u>heather@worxtimehr.com</u>

ATTACHMENT A
(Incorporated herein by reference into the underlying Agreement)

The parties understand and agree that:

- **Work Authorization:** Provider will comply, and ensure that subcontractors comply, with Article 2 of Chapter 64 of the North Carolina General Statutes relating to the required use of the federal E-Verify program to verify the work authorization of newly hired employees. Failure of the Provider to comply with this provision or failure of its subcontractors to comply could render this Agreement void under North Carolina law.
- Provider will comply, with all applicable federal immigration laws in its hiring and contracting practices relating to the services covered by this Agreement involving County funds, as outlined in the Resolution adopted by the Forsyth County Board of Commissioners at its regular meeting of October 23, 2006.
- Provider hereby certifies that it is not on the North Carolina State Treasurer's list, prepared pursuant to NCGS §143C-6A-4, of persons engaging in business activities in Iran, nor will Provider utilize on this agreement any subcontractor on such list. Further, the undersigned hereby certifies that he or she is authorized by the Provider named to enter into the underlying agreement and to make the foregoing statement.
- The Provider shall not subcontract any of the work contemplated under this Agreement without prior written approval from the County. The County shall not be obligated to pay for any work performed by any unapproved subcontractor.
- The Provider or Provider's employees shall not be treated as employees of the County with respect to the services performed hereunder for federal or state tax, unemployment or workers' compensation purposes. The Provider understands that neither federal, state, nor payroll tax of any kind shall be withheld or paid by the County on behalf of the Provider or the employees of the Provider. The Provider further understands and agrees that the Provider or Provider's employees are fully responsible for the payment of any taxes arising from the payment of monies under this Agreement.
- The Provider or Provider's employees shall not be treated as employees of the County with respect to the services performed hereunder for purposes of eligibility for, or participation in, any employee pension, health, or other fringe benefit plan of the County.
- The Provider or Provider's employees have no authority to enter into contracts or agreements on behalf of the County.
- The Provider declares that it has complied with all federal, state and local laws regarding business permits, certificates, and licenses that may be required to carry out the services to be performed under this Agreement.
- This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina, without regard to choice of law principles. The Provider, by signing this Agreement, agrees and submits, solely for matters concerning this Agreement, to the exclusive jurisdiction of the courts of North Carolina and agrees, solely for such purpose, that the exclusive venue for any legal proceedings shall be Forsyth County, North Carolina. The place of this Agreement and all transactions and agreements relating to it, and their situs and forum, shall be Forsyth County, North Carolina, where all matters, whether sounding in contract or tort, relating to the validity, construction, interpretation, and enforcement shall be determined.
- Nothing in this Agreement, express or implied, is intended to confer upon any other person other than the parties any rights, remedies, obligations or liabilities of any nature whatsoever.
- **Signature Warranty:** The individuals executing this Agreement represent and warrant that they are authorized to bind their principals to the terms of this Agreement.

ATTACHMENT B -- PRIVACY AND SECURITY
(Incorporated herein by reference into the underlying Agreement)

In consideration of the mutual covenants contained in this Agreement, the parties agree as follows:

1. **Definitions.**
 - a. "Breach" shall mean the acquisition, access, use or disclosure of Sensitive Information in a manner not permitted by this Agreement.
 - b. "Sensitive Information" means any social security number or other personally identifiable information relating to Plan Sponsor's employees, or employees' dependents'; that is disclosed by Plan Sponsor or its employees, or employees' dependents to Impact; regardless of the format in which the information is used or disclosed (oral, written, electronic or other media).

2. **Sensitive Information.** Impact hereby represents and warrants to Plan Sponsor that Impact shall comply with the following:
 - a. Use and disclose the Sensitive Information solely as necessary to provide dependent eligibility audit services and not use or further discloses any Sensitive Information for any other purpose whatsoever;
 - b. Not use or further disclose any Sensitive Information in a manner that would violate this Agreement or any privacy, confidentiality or information security laws or regulations, to which Impact is subject;
 - c. At all times maintain and use appropriate physical, technical and administrative safeguards to prevent use or disclosure of any Sensitive Information other than as expressly set forth in this Agreement.
 - d. Report to Plan Sponsor within twenty-four (24) hours following its discovery of any use or disclosure of any Sensitive Information of which it becomes aware that is not expressly permitted by this Agreement. The notification shall include, to the extent possible, and shall be supplemented on an ongoing basis with:
 - (i) the identifier for all individuals whose Sensitive Information was or is believed to have been involved,
 - (ii) all other information reasonably requested by Plan Sponsor to enable Plan sponsor perform and document a risk assessment, and
 - (iii) all other information reasonably necessary to provide notice to individuals or governmental entities. Notwithstanding the foregoing, in Plan sponsor's sole discretion and in accordance with its directions, Impact shall conduct, or pay the costs of conducting, an investigation of any incident required to be reported under this Section 2 (d), and shall provide or pay the costs of providing, any required notices as set forth in this Section 2 (d).
 - e. Ensure that any subcontractor or agent, approved in writing by Plan Sponsor, to whom it provides any Sensitive Information, agrees in writing to the same conditions and restrictions that apply to Impact with regard to the Sensitive Information under this Agreement;
 - f. Makes its internal practices, books and records relating to the use and disclosure of Sensitive Information available for review or audit by Plan Sponsor and any legally authorized regulatory agency or its designee, with prior notice, during regular business hours and at Plan Sponsor's expense, for purposes of determining compliance with this section and applicable laws regarding the Sensitive Information;
 - g. Returns or destroys all Sensitive Information, and retains no copies of Sensitive Information in any form whatsoever upon the termination of this Agreement, unless required by law to retain.
 - h. This Section 2 survives termination of this Agreement until Impact has returned or destroyed all Sensitive Information.

3. Security Management

- a. Impact Security Contact. Impact shall provide a security representative as the single point of contact for Plan Sponsor on all security issues, who shall be responsible for overseeing compliance with this Attachment.
- b. Policies and Procedures. Impact shall maintain written security management policies and procedures to prevent, detect, contain, and correct violations of measures taken to protect the confidentiality, integrity, availability, or security of the Sensitive Information. Such policies and procedures shall
 - (i) assign specific data security responsibilities and accountabilities to specific individual(s);
 - (ii) include a formal risk management program which includes periodic risk assessments; and
 - (iii) provide an adequate framework of controls that safeguard the Sensitive Information.
- c. Infrastructure Protection. Impact shall maintain industry standard procedures to protect the Sensitive Information, including, at a minimum:
 - (i) formal security programs (policies, standards, processes, etc.);
 - (ii) Processes for becoming aware of, and maintaining, security patches and fixes;
 - (iii) router filters, firewalls, and other mechanisms to restrict access to the Impact systems or data, including without limitation, all local site networks which may be accessed via the Internet (whether or not such sites transmit information);
 - (iv) resources used for mobile access to Impact systems shall be protected against attack and penetration through the use of firewalls; and
 - (v) processes to prevent, detect, and eradicate malicious code (e.g., viruses, etc.) and to notify Plan Sponsor of instances of malicious code detected on Impact systems or affecting Sensitive Information.

4. Risk Management

- a. General Requirements. Impact shall maintain appropriate safeguards and controls and exercise due diligence to protect Sensitive Information against unauthorized access, use, or disclosure, considering all of the below factors. In the event of any conflict or inconsistency, Impact shall protect the Sensitive Information in accordance with the highest applicable requirement:
 - (i) Federal, state, legal and regulatory requirements;
 - (ii) Information technology and industry best practices;
 - (iii) Sensitivity of the data; and
 - (iv) Relative level and severity of risk of harm should the integrity, confidentiality, availability or security of the data be compromised, as determined by Impact as part of an overall risk management program.
- b. Security Evaluations. Impact shall periodically (no less than annually) evaluate its processes and systems to ensure continued compliance with obligations imposed by law, regulation or contract with respect to the confidentiality, integrity, availability, and security of Sensitive Information. Impact shall document the results of these evaluations and any remediation activities taken in response to such evaluations, and make available a copy to Plan Sponsor upon request.
- c. Internal Records. Impact shall maintain mechanisms to capture, record, and examine information relevant to security incidents and other security-related events. In response to such events, Impact shall take appropriate action to address and remediate identified vulnerabilities to Impact systems.
- d. Impact Locations. All work performed under this agreement shall be performed inside of the 50 United States unless approved in writing by Plan Sponsor.

5. Personnel Security

- a. Access to Sensitive Information. Impact shall require its employees, contractors and agents who have, or may be expected to have, access to Sensitive Information to comply with the provisions of the Agreement, including this Exhibit and any confidentiality agreement(s) binding upon Impact. Impact will remain responsible for any breach of this Exhibit by its employees, contractors, and agents.
- b. Security Awareness. Impact shall ensure that its employees and contractors remain aware of industry standard security practices, and their responsibilities for protecting the Sensitive Information. This shall include, but not be limited to:
 - (i) Protection against malicious software (such as viruses);
 - (ii) Appropriate password protection and password management practices; and
 - (iii) Appropriate use of workstations and computer system accounts.
- c. Sanction Policy. Impact shall maintain a sanction policy to address violations of Impact's internal security requirements or security requirements which are imposed on Impact by law, regulation, or contract.
- d. Supervision of Workforce. Impact shall maintain processes for authorizing and supervising its employees, temporary employees, and independent contractors and for monitoring access to the Sensitive Information.
- e. Background Checks. Impact shall maintain processes to determine whether a prospective member of Impact's workforce is sufficiently trustworthy to work in an environment which contains Sensitive Information.

6. **Physical Security.** Impact shall maintain appropriate physical security controls (including facility and environmental controls) to prevent unauthorized physical access to Impact facilities and areas in which Sensitive Information is stored or processed. Where practicable, this obligation shall include controls to physically protect hardware (e.g., lockdown devices). Impact shall adopt and implement a written facility security plan which documents such controls and the policies and procedures through which such controls will be maintained. Impact shall maintain appropriate records of maintenance performed on Impact systems and on the physical control mechanisms used to secure Impact systems.

7. Communication Security

- a. Exchange of Sensitive Information. The parties agree to utilize a secure method of transmission when transmitting or exchanging Sensitive Information electronically.
- b. Encryption. Impact shall maintain encryption, in accordance with standards mutually agreed upon between the parties, for all transmission of Sensitive Information via public networks (e.g., the Internet). Such transmissions include, but are not limited to:
 - (i) Sessions between web browsers and web servers;
 - (ii) Email containing Sensitive Information (including passwords); and
 - (iii) Transfer of files via the Internet.
- c. Protection of Storage Media. Impact shall ensure that storage media containing Sensitive Information is properly sanitized of all Sensitive Information or is destroyed prior to disposal or re-use for non-Impact processing. All media on which Sensitive Information is stored shall be protected against unauthorized access or modification. Impact shall maintain reasonable and appropriate processes and mechanisms to maintain accountability and tracking of the receipt, removal and transfer of storage media used for Impact processing or on which Sensitive Information has been stored.
- d. Data Integrity. Impact shall maintain processes to prevent unauthorized or inappropriate modification of Sensitive Information, for both data in transit and data at rest.

8. Access Control

- a. Identification and Authentication. All access to any Sensitive Information shall be Identified and Authenticated as defined in this Section. "Identification" refers to processes which establish the identity of the person or entity requesting access to Sensitive Information or Impact systems. "Authentication" refers to processes which validate the purported identity of the requestor. For access to Sensitive Information or Impact systems, Impact shall require Authentication by the use of an individual, unique user ID and an individual password or other appropriate Authentication technique. Impact shall maintain procedures to ensure the protection, integrity, and soundness of all passwords created by Impact and/or used by Impact in connection with the Agreement.
- b. Account Administration. Impact shall maintain appropriate processes for requesting, approving, and administering accounts and access privileges for Impact systems and Sensitive Information. These processes shall include procedures for granting and revoking emergency access.
- c. Access Control. Impact shall maintain appropriate access control mechanisms to

prevent all access to Sensitive Information and Impact systems, except by Impact personnel who have a "need to access" to perform a particular function in support of Impact Services. The access and privileges granted shall be limited to the minimum necessary to perform the assigned functions. Impact shall maintain appropriate mechanisms and processes for detecting, recording, analyzing, and resolving unauthorized attempts to access Sensitive Information or Impact systems.

d. **Remote Access Audit Controls.** If Impact personnel provide Services remotely, the following audit controls shall apply:

- (i) Impact shall monitor remote or at home users on a periodic basis, which shall include both quarterly onsite audits and a summary report on findings and remediation efforts.
- (ii) Impact shall follow the additional confidentiality obligations:
 - (a) Impact will not remove any Sensitive Information from Impact location(s).
 - (b) Impact shall inventory any Sensitive Information obtained by Impact and shall return or destroy Sensitive Information as required by Plan Sponsor. If requested by Plan Sponsor, Impact shall provide a certificate of secure destruction.
 - (c) Impact will prohibit the storage of Sensitive Information on any device other than the secure Impact server, including but not limited to thumb drives, PCs, handheld devices, mobile phones, or other devices.
 - (d) Impact will maintain written security management policies and procedures regarding secure possession of Sensitive Information when traveling and utilizing Sensitive Information in public environments.

9. **Business Continuity Management.** Impact will, at its sole expense, establish and maintain (i) written business continuity plans for the Services and supporting facilities and (ii) written disaster recovery plans for critical technology and systems infrastructure and (iii) proper risk controls (collectively, the "Contingency Plans") to enable continued performance under this Agreement in the event of a disaster or other unexpected break in Services. Impact will update and test the operability of any applicable Contingency Plan at least annually, and will maintain each such plan upon the occurrence of a disaster event. As used herein, a disaster is defined as an unanticipated incident or event, including, without limitation, force majeure events, technological accidents, or human-caused events, that may cause a material service or critical application to be unavailable without any reasonable prediction for resumption, or that causes data loss, property damage or other business interruption without any reasonable prediction for recovery, within a commercially reasonable time period.

10. **Third Party Data Managers.** In the event that Impact uses, or sub-contracts with, third parties ("Data Storage/Management Vendors") to store or manage Sensitive Information in connection with the Services, Impact

- (a) shall ensure that each such Data Storage/Management Vendor has the same or comparable protections and systems in place as are required of Impact pursuant to this Agreement; and
- (b) shall require each such Data Storage/Management Vendor to enter into a written agreement
 - (i) imposing on such Data Storage/Management Vendor the same conditions and restrictions that apply to Impact with regard to the Sensitive Information under this Agreement; and
 - (ii) expressly obligating such Data Storage/Management Vendor to have the same or comparable protections and systems in place as are required of Impact pursuant to this Agreement; and
 - (iii) providing that Plan Sponsor shall be a third party beneficiary of such agreement with the right to enforce the Data Storage/Management Vendor's obligations thereunder. Notwithstanding any such agreement or arrangement with any such Data Storage/Management Vendor, Impact acknowledges and agrees that it remains fully responsible to Plan Sponsor for the security of Sensitive Information, as set forth in this Agreement.

11. **Compliance; Remedies.** Impact shall comply with Plan Sponsor's reasonable periodic requests for information confirming Impact's compliance with its obligations under this Agreement, including but not limited to those obligations set forth in Sections 2 through 10. Because of the difficulties in placing monetary value on the information comprising or contained in the Sensitive Information, in the event of any breach or threatened breach of this Agreement, Plan Sponsor shall, in addition to other remedies at law or in equity that may be available, be entitled to seek specific performance and injunctive relief as remedies for any such breach or threatened breach by Impact. Such remedy shall not be the exclusive remedy for any breach of this Agreement, but shall be in addition to all other rights and remedies available at law or in equity. Impact expressly acknowledges that Impact shall be responsible for any violations of the provisions of this Agreement by any employee, agent, subcontractor, or other representative. This section 11 survives termination of this Agreement.

12. **No License Granted.** As between the parties, all Sensitive Information shall be and remain the exclusive property of Plan Sponsor. Impact recognizes and agrees that nothing contained in this Agreement will be construed as granting any rights, by license or otherwise, to any Sensitive Information, except as provided in this Agreement.

Contract #2018-0315-00: Worxtime--Benefits Administration Platform

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

2/1/2018

Date


Director of Finance