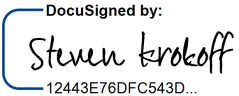# CITY COUNCIL AGENDA ITEM

TO: City Council   **DATE:** December 14, 2021

FROM: Steven Krokoff, City Manager

DocuSigned by:
Steven Krokoff
12443E76DFC543D...

AGENDA ITEM: Approval of a Professional Services Agreement and SaaS Agreement between the City of Milton and Journal Technologies for Use of Ecourt Case Management Software

MEETING DATE: Monday, December 20, 2021 City Council Meeting

BACKGROUND INFORMATION: (Attach additional pages if necessary)

See attached memorandum

APPROVAL BY CITY MANAGER: __X__ *APPROVED* ___ *NOT APPROVED*

CITY ATTORNEY APPROVAL REQUIRED: __X__ *YES* ___ *NO*

CITY ATTORNEY REVIEW REQUIRED: __X__ *YES* ___ *NO*

APPROVAL BY CITY ATTORNEY __X__ *APPROVED* ___ *NOT APPROVED*

PLACED ON AGENDA FOR: __December 20, 2021__

To: Honorable Mayor and City Council Members

From: Brooke Lappin, Clerk of Court

Brooke Lappin
A4607A6E6419449...

Date: Submitted November 9, 2021 for the December 20, 2021 Regular
              City Council Meeting

Agenda Item: Approval of a Professional Services Agreement and SaaS
              Agreement between the City of Milton and Journal Technologies for
              Use of Ecourt Case Management Software

_____

Department Recommendation: Approval

Executive Summary:
On December 31, 2021 the Administrative Office of the Courts will no longer have access
to Ecourt software from Journal technologies. The Milton Municipal Court wishes to
continue utilizing Ecourt in order to effectively manage the current and future caseload.
This will require Milton to enter into its own agreement with the software company.

Funding and Fiscal Impact:
The total quoted price is $35,000.00 annual fee and $10,000.00 implementation services.

Procurement Summary:

    Purchasing method used: Other (See Comment Above)

    Requisition Total: $45,000.00

Financial Review: Bernadette Harvill, November 9, 2021

Bernadette Harvill
ED09D88B47F7499...

Legal Review: Dennis Bost, Jarrard & Davis, LLP – December 9, 2021

Concurrent Review: Steve Krokoff, City Manager

Attachment: Professional Services Agreement and SaaS Agreement

Journal Technologies, Inc.

PROFESSIONAL SERVICES AGREEMENT

This PROFESSIONAL SERVICES AGREEMENT (this "**Agreement**"), by and between Journal Technologies, Inc., a Utah corporation, having its principal office at 915 E. 1st Street, Los Angeles, CA, 90012 (hereinafter "**Journal Technologies**"), and the City of Milton, Georgia, a municipal corporation of the State of Georgia, acting by and through its governing authority, the Mayor and City Council, located at 2006 Heritage Walk, Milton, GA 30004 (hereinafter "**Client**"), and is made as of the date executed by both Journal Technologies and Client (the "**Effective Date**"). Journal Technologies and the Client may be collectively referred to hereinafter as the "Parties," or individually referred to as a "Party."

Whereas, Client desires for Journal Technologies to implement the Software-as-a-Services offering "eCourtOnline Georgia" pursuant to the terms set forth herein,

In consideration for the representations and agreements contained herein, the Parties hereby covenant and agree as follows:

1.   DEFINITIONS

1.1   **Deliverable(s)** means one or more items (which may include software, services or other items) to be delivered by Journal Technologies to Client under a Statement of Work or this Agreement.

1.2   **Go Live** has the meaning ascribed to such term in the SaaS Agreement.

1.3   **SaaS Agreement** means that certain Software as a Services Agreement entered into by Journal Technologies (as Licensor) and Client (as Licensee) concurrently herewith (as such agreement may be amended from time to time pursuant to the terms thereof).

1.4   **SaaS Service** has the meaning ascribed to such term in the SaaS Agreement.

1.5   **Project** means each project undertaken by Journal Technologies under Section 2 ("Services") pursuant to a Statement of Work.

1.6   **Professional Services Fees** means the fees to be paid by Client for Services, as set forth in the Pricing Proposal attached hereto as Exhibit A for the initial Services or in the applicable Statement of Work for additional Services.

1.7   **Professional Services** means those services provided by Journal Technologies to Client under Section 2 ("Professional Services") of this Agreement.

1.8   **Statement of Work** means a statement of work, prepared and executed pursuant to the provisions of Section 2 ("Professional Services") of this Agreement.

2.   PROFESSIONAL SERVICES

2.1   Projects. Journal Technologies agrees to provide Professional Services to Client, as such may be determined from time to time in accordance with the provisions of this Section 2 ("Professional Services"). All Professional Services will be rendered in accordance with the provisions of this Agreement, the applicable Statement of Work, if any, and any other guidelines agreed upon in writing by Journal Technologies and Client.

2.2   Project Requests. If Client requests that Journal Technologies provide Professional Services to Client other than those expressly set forth in this Agreement or Exhibit A hereto, Client shall submit a reasonably detailed Project request to Journal Technologies. Journal Technologies shall have the right to request additional details about the proposed Project described in the Project request. If Journal Technologies believes that it can provide the requested Professional Services, within a commercially reasonable time, Journal Technologies shall submit a proposed Statement of Work to Client. Notwithstanding, Client shall have no obligation to pay Journal Technologies for any alternative or additional Professional Services except as expressly stated in this Agreement absent written notice from the Client accepting the same.

2.3   Procedure for Agreement upon Statements of Work.

2.3.1   Statement of Work. Upon Client's receipt of a proposed Statement of Work, Journal Technologies and Client shall attempt reasonably to meet, consult and agree upon a mutually approved Statement of Work which, unless otherwise agreed by the parties, shall include the agreed costs and payment terms for a Project.

2.3.2   Incorporation of Statement of Work. At such time as the parties shall have agreed upon a Statement of Work, the Statement of Work as so completed, approved and executed by their authorized representatives shall constitute an agreement under and be subject to the non-conflicting provisions of this Agreement.

2.3.3   Changes. Modifications to a Statement of Work shall be accomplished by the negotiation and execution of an amendment reasonably satisfactory to each of the Parties, which may result in an increase or decrease in the overall cost of a Project.

2.4   Journal Technologies' Employees and Subcontractors; Indemnification Generally. Journal Technologies shall require all of its employees and subcontractors to comply with the terms of this Agreement and any reasonable and lawful employment and security policies and procedures adopted from time to time by Client. Journal Technologies shall procure all business permits necessary to perform under this Agreement and pay all related fees. Journal Technologies and Client shall each indemnify, defend and hold harmless the other and their respective affiliates, officers, directors, employees and agents, from and against any and all losses, liabilities, damages, causes of action, claims, demands, and expenses (including reasonable legal fees and expenses) incurred by the indemnified party, arising out of or resulting from (i) the violation by the indemnifying party or its employees, agents, of any applicable law, order, ordinance, regulation or code or (ii) the

gross negligence or intentional misconduct of the indemnifying party or its employees, agents or contractors.

Notwithstanding anything in conflict or to the contrary in this Agreement or in the SaaS Agreement attached hereto, nothing contained in the Agreement or otherwise in the SaaS Agreement shall be construed to be a waiver of Client's sovereign immunity or any individual's qualified, good faith or official immunities. Nothing herein or in the SaaS Agreement shall be construed as creating any individual or personal liability on the part of any of Customer's elected or appointed officials, officers, boards, commissions, employees, representatives, consultants, servants, agents, attorneys or volunteers. To the extent the Agreement imposes a contractual duty of indemnification upon the Customer, such duty shall apply only to the extent, if any, allowed by law, and then only to the extent of Client's fault or wrongdoing.

2.5   Status Reporting. Journal Technologies will provide reasonable status reports to Client upon request.

2.6   Status Meetings. If Client so requests, Journal Technologies shall hold periodic status meetings with Client management in order to review the status of Journal Technologies activities.

2.7   Record Keeping and Inspection. Journal Technologies shall maintain reasonable accounting records, in a form sufficient to substantiate Journal Technologies' charges hereunder. Journal Technologies shall retain such records in accordance with its general record retention policies. Client shall have the right to inspect any such records upon reasonable notice, at Journal Technologies' main office and during Journal Technologies' normal business hours, and such inspection response shall not be unreasonably withheld, denied, or delayed by Journal Technologies.

2.8   Go Live. Upon the occurrence of each Go Live of the SaaS Service for a Project, Client is deemed to have recognized that the Deliverables provided in respect of such Project satisfy the applicable requirements therefor, except to the extent otherwise expressly set forth in a writing signed by both Parties in connection with such Go Live.

2.9   Ownership of Product of Professional Services. Unless otherwise specified to the contrary in the applicable Statement of Work, all data, materials, Deliverables and other products developed by Journal Technologies under a Statement of Work or this Agreement shall be and remain the sole and exclusive property of Journal Technologies, which shall retain all rights therein; provided that upon payment of all required amounts by Client, Client shall have the right to utilize any Deliverables for Client's internal purposes in accordance with the terms and conditions of the Statement of Work and the SaaS Agreement.

3.   WARRANTIES

3.1   Professional Services Warranties. Journal Technologies warrants and represents that the Professional Services rendered to Client pursuant to this Agreement shall be performed in a competent and professional manner, and that each of Journal

Technologies' employees, contractors and agents assigned to perform Professional Services pursuant to this Agreement shall have training, background and skills commensurate with the level of performance reasonably expected for the tasks to which he or she is assigned.

3.2   Warranty of Law. Journal Technologies warrants and represents that to the best of its knowledge: (i) Journal Technologies has full authority to enter into this Agreement and to consummate the transactions contemplated hereby and (ii) this Agreement is not prohibited by any other agreement to which Journal Technologies is a party or by which it may be bound (the "**Legal Warranty**"). In the event of a breach of the Legal Warranty, Journal Technologies shall indemnify and hold harmless Client from and against any and all losses, liabilities, damages, causes of action, claims, demands, and expenses (including reasonable legal fees and expenses) incurred by Client, arising out of or resulting from said breach.

3.3   No Other Warranties. THE WARRANTIES AND REPRESENTATIONS STATED WITHIN THIS AGREEMENT ARE EXCLUSIVE, AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. WARRANTIES WITH RESPECT TO THE OPERATION OF ANY DELIVERABLE SHALL BE AS SET FORTH IN THE SAAS AGREEMENT OR STATEMENT OF WORK.

4.   PAYMENT

Service Fees shall be payable in respect of Professional Services provided by Journal Technologies (including its agents and contractors) to, for, or at the request of Client or those acting on its behalf under this Agreement, including but not limited to installation, configuration, training and the like. If any Professional Services are requested and provided in writing as signed by the Client, but without a Statement of Work, they will be billed by Journal Technologies to Client in accordance with Journal Technologies' normal billing practices at the time, on a time-and-expense basis, with hourly rates at the then-standard rates, and expenses charged at cost, or as the parties may otherwise agree in writing. Unless otherwise set forth in a written agreement of the parties (including, without limitation, in any Exhibit hereto), payment for all Service Fees for the SaaS Service shall become due and payable upon the final Go Live of the SaaS Service for such Project, net thirty (30) days.

The Parties herein agree and acknowledge that Client is exempt from Federal Excise Tax (if applicable) and Georgia Sales and Use Tax, and other tariff exemptions that may be applicable to contracting with local government. Journal Technologies represents that no special license payments will be required for any installation related to the Service aside from those set forth in Exhibit A to the SaaS Agreement. No payment will be made for the Services performed until the Company furnishes the Client with an invoice excluding the foresaid exempted taxes or tariffs.

5.   LIMITATIONS ON LIABILITY

NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OR LOSS OF ANTICIPATED REVENUES (OR LIKE AMOUNTS) IN CONNECTION WITH OR ARISING OUT OF THE SUBJECT MATTER OF THIS AGREEMENT. FURTHERMORE, CLIENT'S TOTAL LIABILITY WITH RESPECT TO CLAIMS ARISING OUT OF THE SUBJECT MATTER OF THIS AGREEMENT SHALL NOT EXCEED, IN THE AGGREGATE, THE TOTAL AMOUNT OF FEES PAYABLE HEREUNDER TO JOURNAL TECHNOLOGIES. IN NO EVENT SHALL JOURNAL TECHNOLOGIES' TOTAL LIABILITY WITH RESPECT TO CLAIMS ARISING OUT OF THE SUBJECT MATTER OF THIS AGREEMENT EXCEED, IN THE AGGREGATE, THE TOTAL AMOUNT OF FEES PAID HEREUNDER TO JOURNAL TECHNOLOGIES.

6.   CONFIDENTIALITY

6.1   Client's Responsibilities. Client hereby agrees that (i) all materials received from Journal Technologies under this Agreement are the confidential and proprietary information of Journal Technologies, (ii) Client shall take all necessary steps to protect and ensure the confidentiality of such confidential information, and (iii) except as permitted by a Statement of Work, none of such materials shall be in any way disclosed by Client to any third party, in whole or in part, without the prior written consent of Journal Technologies, which may be granted or withheld in its sole discretion. If Client becomes aware of the unauthorized possession of such materials, it shall promptly notify Journal Technologies. Client shall also assist Journal Technologies with preventing the recurrence of such unauthorized possession and with any litigation against the third parties deemed necessary by Journal Technologies to protect its proprietary rights. Notwithstanding, the foregoing sentence shall not be construed as an obligation for Client to indemnify Journal Technologies for third-party claims.

6.2   Journal Technologies' Responsibilities. Journal Technologies hereby agrees that (i) any information related to the official business of Client that Journal Technologies obtains from Client in the course of the performance of this Agreement is the confidential and proprietary information of Client, (ii) Journal Technologies shall take all necessary steps to protect and ensure the confidentiality of such information, and (iii) such information shall not be in any way disclosed by Journal Technologies to any third party, in whole or in part, without the prior written consent of Client, which may be granted or withheld in its sole discretion. If Journal Technologies becomes aware of the unauthorized possession of such information, it shall promptly notify Client. Journal Technologies shall also assist Client with preventing the recurrence of such unauthorized possession and with any litigation against the third parties deemed necessary by Client to protect its proprietary rights.

6.3   Confidentiality Breach. In the event a Party breaches any of its obligations under this Section 6 ("Confidentiality"), the breaching Party shall indemnify, defend and hold harmless the non-breaching party from and against any and all losses, liabilities, damages, causes of action, claims, demands, and expenses (including reasonable legal fees and expenses) incurred by the non-breaching Party arising out of such breach by the

breaching Party. In addition, the non-breaching Party will be entitled to obtain injunctive relief against the breaching Party.

6.4 <u>Exclusions</u>. The provisions of this Section 6 ("Confidentiality") shall not apply to any information (i) that is in the public domain prior to the disclosure or that becomes part of the public domain other than by way of a breach of this Agreement, (ii) that was in the lawful possession of Journal Technologies or Client, as the case may be, prior to the disclosure without a confidentiality obligation to any person, (iii) that was disclosed to Journal Technologies or Client, as the case may be, by a third party who was in lawful possession of the information without a confidentiality obligation to any person, (iv) that was independently developed by Journal Technologies or Client, as the case may be, outside the scope of this Agreement or (v) that Journal Technologies or Client, as the case may be, is required to disclose by law or legal process, including the Georgia Open Records Act O.C.G.A. § 50-18-70.

7. TERM AND TERMINATION

7.1 <u>Term</u>. The term of this Agreement shall commence on the Effective Date and shall continue until terminated in accordance with the terms of this Section 7 ("Term and Termination").").

7.2 <u>Term of Statements of Work</u>. Each Statement of Work pertaining to the provision of Professional Services, and each other written agreement for such Professional Services, shall commence on the date of execution of such Statement of Work or other agreement and shall continue in full force and effect thereafter until terminated in accordance with the provisions thereof or until the Professional Services required have been provided and paid for. A termination of this Agreement shall simultaneously terminate any outstanding Statements of Work, the SaaS Agreement or other agreement for Professional Services.

7.3 <u>Termination by Journal Technologies.</u>

7.3.1 <u>Payment Default</u>. Journal Technologies shall have the right to terminate this Agreement (but reserving cumulatively all other rights and remedies under this Agreement, in law and/or in equity), for any failure of Client to make payments of amounts due when the same are due, and such failure continues for a period of thirty (30) days after written notice thereof by Journal Technologies to Client.

7.3.2 <u>Other Client Defaults</u>. Journal Technologies may terminate this Agreement (but reserving cumulatively all other rights and remedies under this Agreement, in law and/or in equity), for any other material breach by Client which violation or breach continues for a period of thirty (30) days after written notice thereof by Journal Technologies to Client.

7.4 <u>Termination by Client</u>. Client shall have the right to terminate this Agreement (reserving cumulatively all other rights and remedies under this Agreement, in law and/or in equity) without further obligation or liability to Journal Technologies (except as specified in

Subsection 7.5 below) if Journal Technologies commits any material breach of this Agreement and fails to remedy such breach within thirty (30) days after written notice by Client to Journal Technologies of such breach. Client shall have the right to terminate this Agreement effective immediately and without prior notice if Journal Technologies goes into liquidation or files for bankruptcy.

7.5　　Effect of Termination. Termination of this Agreement, including pursuant to Section 7.6 below, or any Statement of Work shall not affect any rights and/or obligations of the Parties which arose prior to any such termination and such rights and/or obligations shall survive any such termination. Within thirty (30) days after the effective date of any such termination, Client shall pay Journal Technologies' fees and expenses at its then-standard rates for all Professional Services rendered under the applicable Statement of Work or this Agreement up to the effective date of termination, including, without limitation, all work in process. Upon termination, each Party shall return the confidential property of the other party obtained under the terminated Statement of Work or this Agreement, as applicable. This includes, without limitation, all work product of Journal Technologies produced pursuant to this Agreement or any Statement of Work, and Client shall have no further right to retain or use such work product following termination. Upon termination hereunder, Journal Technologies shall dispose of Client's stored information in the manner set forth in Section 13.3(b) of the SaaS Agreement. In addition, the confidentiality obligations of the parties in Section 6 ("Confidentiality") shall survive the termination of this Agreement but remain subject to the Georgia Open Records Act (O.C.G.A. § 50-18-70, et seq.).

7.6　　Statutory Auto-Termination and Renewal: As required by O.C.G.A. § 36-60-13, this Agreement shall terminate absolutely and without further obligation on part of Client on December 31 each calendar year of the Term, and the Agreement shall automatically renew on January 1 each subsequent calendar year of the Term, absent Customer's provision of written notice of non-renewal to Journal Technologies at least thirty (30) days prior to the end of the then current calendar year. Titles to any supplies, materials, equipment, or other personal property (to the extent any title transfers pursuant to the Agreement) shall remain in Journal Technologies until fully paid for by Client.

8.　　GENERAL

8.1　　Waiver, Amendment or Modification. The waiver, amendment or modification of any provision of this Agreement or any right, power or remedy hereunder shall not be effective unless made in writing and signed by both parties. No failure or delay by either party in exercising any right, power or remedy with respect to any of its rights hereunder shall operate as a waiver thereof.

8.2　　Notice. All notices under this Agreement shall be in writing and shall be deemed to have been duly given if delivered in person, by commercial overnight courier or by registered or certified mail, postage prepaid, return receipt requested, and addressed as follows:

To Journal Technologies:

Journal Technologies, Inc.
915 East First Street
Los Angeles, CA 90012
Attention: Maryjoe Rodriguez, Vice President

and

Munger, Tolles & Olson LLP
1155 F St. NW
Washington, DC 20004
Attention: Brett Rodda

To Client: City of Milton, Georgia
2006 Heritage Walk
Milton, GA 30004
Attention: Procurement Manager

8.3   <u>No Third Party Beneficiaries</u>. This Agreement is not intended to create any right in or for the public, or any member of the public, any subcontractor, supplier or any other third party, or to authorize anyone not a "Party" to this Agreement to maintain a suit to enforce or take advantage of its terms.

8.4   <u>Successors and Assigns</u>. Neither Party may assign this Agreement in whole or part without the prior written consent of the other Party; provided that Journal Technologies may assign this Agreement to another subsidiary of Daily Journal Corporation, directly or by operation of law, with the prior written consent of Client. Any attempt to assign this Agreement without the prior written consent of the other Party is void and without legal effect, and such an attempt constitutes a material breach and grounds for termination by the other Party. Subject to the foregoing, all of the terms, conditions, covenants and agreements contained herein shall inure to the benefit of, and be binding upon, any successor and any permitted assignees of the respective parties hereto. It is further understood and agreed that consent by either Party to such assignment in one instance shall not constitute consent by the Party to any other assignment. A transfer of corporate control, merger, sale of substantially all of a party's assets and the like, even though including this Agreement as an assigned asset or contract, shall not be considered an assignment for these purposes.

8.5   <u>Dispute Resolution</u>. Any dispute arising under or related to this Agreement shall be resolved exclusively as follows, with the costs of any mediation and arbitration to be shared equally by both Parties:

8.5.1   <u>Initial Resolution by Meeting</u>. The Parties shall first attempt to resolve amicably the dispute by meeting with each other, by telephone or in person at a mutually convenient time and location, within thirty (30) days after written notice

of a dispute is delivered from one Party to the other. Subsequent meetings may be held upon mutual agreement of the Parties.

8.5.2   Mediation. If the dispute is not resolved within sixty (60) days of the first meeting, the Parties shall submit the dispute to mediation by an organization or company specializing in providing neutral, third-party mediators. Client shall be entitled to select either (i) the location of the mediation or (ii) the organization or company, and Journal Technologies shall select the other. The mediation shall be conducted within sixty (60) days of the date the dispute is submitted to mediation, unless the Parties mutually agree on a later date.

8.5.3   Arbitration. Any dispute that is not otherwise resolved by meeting or mediation shall be exclusively resolved by arbitration between the parties in accordance with the Comprehensive Arbitration Rules & Procedures of JAMS, with the arbitration to be conducted in a location mutually agreed by the Parties. The results of such arbitration shall be binding on the Parties, and judgment may be entered in any court having jurisdiction. Notwithstanding the foregoing, either party may seek interim injunctive relief from any court of competent jurisdiction.

8.5.4   Any arbitration or mediation resulting in a compensation settlement between the Parties shall be subject to the limitation set forth in Section 5, above ("Limitations on Liability").

8.6   Control of Defense. All indemnification obligations under this Agreement are conditioned upon (i) written notice by the indemnified Party to the indemnifying Party within thirty (30) days of the indemnified Party's receipt of any claim for which indemnification is sought, (ii) tender of control over the defense and settlement to the indemnifying party and (iii) such reasonable cooperation by the indemnified Party in the defense as the indemnifying Party may request; provided, however, the indemnifying Party shall not, without the prior written consent of the indemnified Party, settle, compromise or consent to the entry of any judgment with respect to any pending or threatened claim unless the settlement, compromise or consent provides for and includes an express, unconditional release of such claim against the indemnified Party.

8.7   Force Majeure. Neither Party will be liable for any delay or failure to perform any obligation under this Agreement (except for any obligations to make payments) where the delay or failure results from any cause beyond such party's reasonable control including, without limitation, acts of God, labor disputes or other industrial disturbances, electrical or power outages, utilities or other telecommunications failures, internet service provider failures or delays, denial of service attacks, earthquake, storms or other elements of nature, blockages, embargoes, riots, acts or orders of government, acts of terrorism, war, epidemics or pandemics.

8.8   Governing Law. The validity, construction and performance of this Agreement and the legal relations among the Parties to this Agreement shall be governed by

and construed in accordance with the laws of the State of Georgia without giving effect to its conflict of law principles.

8.9   Independent Contractor. Journal Technologies, in performance of this Agreement, is acting as an independent contractor. Personnel supplied by Journal Technologies (including personnel supplied by subcontractors) hereunder are not Client's personnel or agents, and Journal Technologies assumes full responsibility for their acts. Journal Technologies shall be solely responsible for the payment of compensation of Journal Technologies employees and contractors assigned to perform services hereunder, and such employees and contractors shall be informed that they are not entitled to the provision of any Client employee benefits. Client shall not be responsible for payment of worker's compensation, disability or other similar benefits, unemployment or other similar insurance or for withholding income or other similar taxes or social security for any Journal Technologies employee, and such responsibility shall solely be that of Journal Technologies.

8.10   Severability. In the event any one or more of the provisions of the Agreement shall for any reason be held to be invalid, illegal or unenforceable, the remaining provisions of this Agreement shall be unimpaired, and the invalid, illegal or unenforceable provision shall be replaced by a provision, which, being valid, legal and enforceable, comes closest to the intention of the parties underlying the invalid, illegal or unenforceable provision.

8.11   Entire Agreement. This Agreement, together with the SaaS Agreement and all Exhibits attached hereto and thereto, constitutes the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein and therein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter.

8.12   Counterparts. This Agreement and any Statement of Work may be executed in counterparts and by the exchange of signatures by facsimile or PDF.

8.13   Sovereign Immunity: Indemnification: No express or implied waiver shall affect any term or condition other than the one specified in such waiver, and that one only for the time and manner specifically stated. Nothing contained in this Agreement or in the SaaS Agreement shall be construed to be a waiver of Client's sovereign immunity or any individual's qualified, good faith or official immunities.

8.14   Employment of Unauthorized Aliens Prohibited – E-Verify Affidavit: Journal Technologies hereby verifies that it has, prior to executing the Agreement, executed a notarized affidavit, the form of which is provided in **Exhibit C**, and submitted such affidavit to Client or provided Client with evidence that it is an individual not required to provide such an affidavit. Further, Journal Technologies hereby agrees to comply with the requirements of the federal Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603, O.C.G.A. § 13-10-91 and Georgia Department of Labor Rule 300-10-1-.02.

In the event Journal Technologies employs or contracts with any subcontractor(s) in connection with the services hereunder, Journal Technologies agrees to secure from such

subcontractor(s) attestation of the subcontractor's compliance with O.C.G.A. § 13-10-91 and Rule 300-10-1-.02 by the subcontractor's execution of the subcontractor affidavit, the form of which is attached hereto as **Exhibit D**, which subcontractor affidavit shall become part of the Journal Technologies/subcontractor agreement, or evidence that the subcontractor is not required to provide such an affidavit. If a subcontractor affidavit is obtained, Journal Technologies agrees to provide a completed copy to Customer within five (5) business days of receipt from any subcontractor.

8.15   Nondiscrimination: In accordance with Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and all other provisions of federal law, Polco agrees that, during performance of this Agreement, Polco for itself, its assignees and successors in interest, will not discriminate against any employee or applicant for employment, any subcontractor, or any supplier because of race, color, creed, national origin, gender, age or disability. In addition, Polco agrees to comply with all applicable implementing regulations and shall include the provisions of this paragraph in every subcontract for services contemplated under this Agreement.

8.16   Ethics: Journal Technologies certifies that to the best of its knowledge no circumstances exist which will cause a conflict of interest in performing the Professional Services hereunder. The Parties acknowledge that it is prohibited for any person to offer, give, or agree to give any City of Milton employee or official, or for any City of Milton employee or official to solicit, demand, accept, or agree to accept from another person gratuity of more that nominal value or rebate or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefor. The Parties further acknowledge that it is prohibited for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor, or any person associated therewith, as an inducement for the award of subcontract or order.

[Signature Begin on the Next Page]

IN WITNESS WHEREOF, the Parties have caused this instrument to be duly executed as of the date last written below.

JOURNAL TECHNOLOGIES, INC. (Journal Technologies):

By: _ll Rodriguez_____   Date: 11/9/2021_____

Printed Name and Title: _____Maryjoe Rodriguez, Vice President_____
                               Maryjoe Rodriguez, Vice President

CITY OF MILTON, GEORIGA (Client):

By: _____   Date: _____

Printed Name and Title: _____
                               Joe Lockwood, Mayor

Attest:

_____
Tammy Lowit, City Clerk

Approved as to Form: [CITY SEAL]

_____
          City Attorney

EXHIBIT A
PRICING FOR PROFESSIONAL SERVICES
(excluding SaaS Service Fees set forth in SaaS Agreement Exhibit A)

	One-Time Cost
Professional Services, including expenses (Notes)	
Implementation Services	$10,000
Total	$10,000

Notes

Upon signing of this Agreement, JTI will provide Client access credentials for a designated number of users, migrate Client data, and Client's Access to the SaaS Service will begin pursuant to the terms of the SaaS Agreement.

The one-time setup fee of $10,000 includes setup of the environment, local financial assessments and training. Journal Technologies does not provide or install hardware or operating system software, or provide its maintenance and support.

The interfaces included are set forth in Exhibit B ("Statement of Work"). Any additional interfaces will be done pursuant to a subsequent Statements of Work with additional costs.

JTI has prepared this proposal based on the assumption that Client is exempt from Federal excise taxes and is not subject to any State or local sales or use taxes levied on account of payments to JTI. Any such taxes shall be the responsibility of Client.

Non-routine projects, including legislative-type updates and subsequent training, will be done pursuant to a Statement of Work using an agreed upon hourly rate plus expenses. Journal Technologies' current hourly rate is $200.

Exhibit B
Statement of Work – eCourtOnlineGeorgia

eCourtOnlineGeorgia is a purely-online, SaaS offering. Upon signing of the Agreement, Journal Technologies will perform, with assistance from Client:

- Setup of Client hosted environment in the cloud, which will include:
  - eCourt – Client's case management system
  - ePayIt
    - WebModule – for online payments
    - CreditCard Readers – for payments over the counter
- Setup of Client administrator user accounts
- Setup any local (city or county) financial assessments.
- Train Client system administrators to configure the following for a maximum of a 2-week period:
  - Directory
  - User Accounts
  - Till Setup
  - Statutes Management
  - Document Templates
  - Financials Assessments
  - Financial Reporting
  - ePayIt processing

  The training will begin as soon as the environments are setup and will go on for a continuous period.

- Data Conversion: Journal Technologies will provide to the court a data conversion utility where the court can upload the data extracted from their legacy system in a format that is predetermined by the system, and the system will import the data in eCourt. Journal Technologies will train the system administrators to use the data conversion utility.
- Interfaces: The system comes built in with the following interfaces:
  - Georgia Department of Driver Services
  - Georgia State Patrol

Additional interfaces can be built pursuant to a subsequent Statement of Work. Journal Technologies' current rate for interfaces is $20,000 per data exchange.

The one-time-setup fee for the above services is $10,000. As soon as the training is completed, Journal Technologies will invoice Client for the one-time fee, and the annual recurring fee set forth in the SaaS Agreement starts. Client can decide to Go Live whenever they feel comfortable.

When the Client is ready for the provision of eFiling, Journal Technologies will provide the eFiling service for $4.95 per filing + a credit card fee of credit card fee of 2.75%, and pursuant to certain additional terms and conditions to be included as an addendum to the SaaS Agreement.

EXHIBIT C

STATE OF _California_
COUNTY OF _Los Angeles_

CONTRACTOR AFFIDAVIT AND AGREEMENT

By executing this affidavit, the undersigned contractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm, or corporation which is engaged in the physical performance of services on behalf of the City of Milton, Georgia has registered with, is authorized to use and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91. Furthermore, the undersigned contractor will continue to use the federal work authorization program throughout the contract period and the undersigned contractor will contract for the physical performance of services in satisfaction of such contract only with subcontractors who present an affidavit to the contractor with the information required by O.C.G.A. § 13-10-91(b).

Contractor hereby attests that its federal work authorization user identification number and date of authorization are as follows:

189428
Federal Work Authorization User Identification
Number

2/11/2009
Date of Authorization

JOURNAL TECHNOLOGIES, INC.
Name of Contractor

eCourtOnline
Name of Project

City of Milton, Georgia
Name of Public Employer

I hereby declare under penalty of perjury that the foregoing is true and correct.
Executed on _November_ , 20 _21_ in _Los Angeles_ (city), _CA_ (state).

ll Rodriguez
Signature of Authorized Officer or Agent

Maryjoe Rodriguez, Vice President
Printed Name and Title of Authorized Officer or Agent

SUBSCRIBED AND SWORN BEFORE ME
ON THIS THE _11th_ DAY OF
November , 20 _21_.

NOTARY PUBLIC

[NOTARY SEAL]

My Commission Expires:
May 6 / 2023

EXHIBIT D

STATE OF _____
COUNTY OF _____

SUBCONTRACTOR AFFIDAVIT

By executing this affidavit, the undersigned subcontractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services under a contract with **JOURNAL TECHNOLOGIES, INC.** on behalf of the City of Milton, Georgia has registered with, is authorized to use and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91. Furthermore, the undersigned subcontractor will continue to use the federal work authorization program throughout the contract period, and the undersigned subcontractor will contract for the physical performance of services in satisfaction of such contract only with sub-subcontractors who present an affidavit to the subcontractor with the information required by O.C.G.A. § 13-10-91(b). Additionally, the undersigned subcontractor will forward notice of the receipt of an affidavit from a sub-subcontractor to the contractor within five (5) business days of receipt. If the undersigned subcontractor receives notice that a sub-subcontractor has received an affidavit from any other contracted sub-subcontractor, the undersigned subcontractor must forward, within five (5) business days of receipt, a copy of the notice to the contractor.

Subcontractor hereby attests that its federal work authorization user identification number and date of authorization are as follows:

_____
Federal Work Authorization User Identification Number

_____
Date of Authorization

_____
Name of Subcontractor

eCourtOnline
Name of Project

City of Milton, Georgia
Name of Public Employer

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on _____, 20___ in
_____ (city), _____ (state).

_____
Signature of Authorized Officer or Agent

_____
Printed Name and Title of Authorized Officer or Agent

SUBSCRIBED AND SWORN BEFORE ME
ON THIS THE _____ DAY OF
_____, 20___.

_____
NOTARY PUBLIC

[NOTARY SEAL]

My Commission Expires:

_____

Journal Technologies, Inc.

Software as a Service Agreement

This Software as a Service Agreement (the "**Agreement**"), effective as of the date of last signature below (the "**Effective Date**"), is by and between Journal Technologies, Inc., a Utah corporation ("**Provider**"), and City of Milton, Georgia, a municipal corporation of the State of Georgia, acting by and through its governing authority, the Mayor and City Council ("**Customer**"), the Provider and Customer may collectively be referred to herein as the "parties," or individually as a "party."

WHEREAS, Provider provides access to its SaaS Service to its customers;

WHEREAS, Customer desires to access the SaaS Service, and Provider desires to provide Customer access to the SaaS Service, subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1.   Definitions.

"**Access Credentials**" means any user name, identification number, password, license or security key, security token, PIN, or other security code, method, technology, or device, used alone or in combination, to verify an individual's identity and authorization to access and use the SaaS Service.

"**Action**" means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena, or investigation of any nature, civil, criminal, administrative, regulatory, or other, whether at law, in equity, or otherwise.

"**Affiliate**" of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term "control" (including the terms "controlled by" and "under common control with") means the direct or indirect power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

"**Agreement**" has the meaning set forth in the preamble.

"**Authorized Users**" means Customer's employees, consultants, contractors, and agents (a) who are authorized by Customer to access and use the SaaS Service under the rights granted to Customer pursuant to this Agreement; and (b) for whom access to the SaaS Service has been purchased hereunder.

"**Confidential Information**" has the meaning set forth in Section 8.1.

"**Customer**" has the meaning set forth in the preamble.

"**Customer Data**" means information, data, and other content, in any form or medium, that is collected, downloaded, or otherwise received, directly or indirectly, from Customer or an Authorized User by or through the SaaS Service. For the avoidance of doubt, Customer Data does not include Resultant Data or any other information reflecting the access or use of the SaaS Service by or on behalf of Customer or any Authorized User.

"**Customer Failure**" has the meaning set forth in Section 4.2.

"**Customer Indemnitee**" has the meaning set forth in Section 11.1.

"**Customer Systems**" has the meaning set forth in Section 6.2.

"**Disclosing Party**" has the meaning set forth in Section 8.1.

"**Documentation**" means any manuals, instructions, or other documents or materials that the Provider provides or makes available to Customer in any form or medium and which describe the functionality, components, features, or requirements of the SaaS Service or Provider Materials, including any aspect of the installation, configuration, integration, operation, use, support, or maintenance thereof.

"**Effective Date**" has the meaning set forth in the preamble.

"**Fees**" has the meaning set forth in Section 7.1.

"**Force Majeure Event**" has the meaning set forth in Section 14.9(a).

"**Go Live**" is the time upon which Customer received from Provider Access Credentials to access and use the SaaS Service, and upon which time Authorized Users are able to access and use the SaaS Service.

"**Harmful Code**" means any software, hardware, or other technology, device, or means, including any virus, worm, malware, or other malicious computer code, the purpose or effect of which is to (a) permit unauthorized access to, or to destroy, disrupt, disable, distort, or otherwise harm or impede in any manner any (i) computer, software, firmware, hardware, system, or network; or (ii) any application or function of any of the foregoing or the security, integrity, confidentiality, or use of any data Processed thereby; or (b) prevent Customer or any Authorized User from accessing or using the SaaS Service or Provider Systems as intended by this Agreement. Harmful Code does not include any Provider Disabling Device.

"**Indemnitee**" has the meaning set forth in Section 11.3.

"**Indemnitor**" has the meaning set forth in Section 11.3.

"**Intellectual Property Rights**" means any and all registered and unregistered rights granted, applied for, or otherwise now or hereafter in existence under or related to any

patent, copyright, trademark, trade secret, database protection, or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

"**Law**" means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, or other requirement of any federal, state, local, or foreign government or political subdivision thereof, or any arbitrator, court, or tribunal of competent jurisdiction.

"**Losses**" means any and all losses, damages, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees and the costs of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers.

"**Person**" means an individual, corporation, partnership, joint venture, limited liability entity, governmental authority, unincorporated organization, trust, association, or other entity.

"**Process**" means to take any action or perform any operation or set of operations that the SaaS Service are capable of taking or performing on any data, information, or other content, including to collect, receive, input, upload, download, record, reproduce, store, organize, compile, combine, log, catalog, cross-reference, manage, maintain, copy, adapt, alter, translate, or make other derivative works or improvements, process, retrieve, output, consult, use, perform, display, disseminate, transmit, submit, post, transfer, disclose, or otherwise provide or make available, or block, erase, or destroy. "**Processing**" and "**Processed**" have correlative meanings.

"**Provider**" has the meaning set forth in the preamble.

"**Provider Disabling Device**" means any software, hardware, or other technology, device, or means (including any back door, time bomb, time out, drop dead device, software routine, or other disabling device) used by Provider or its designee to disable Customer's or any Authorized User's access to or use of the SaaS Service automatically with the passage of time or under the positive control of Provider or its designee.

"**Provider Indemnitee**" has the meaning set forth in Section 11.2.

"**Provider Materials**" means the SaaS Service, Documentation, and Provider Systems and any and all other information, data, documents, materials, works, and other content, devices, methods, processes, hardware, software, and other technologies and inventions, including any deliverables, technical or functional descriptions, requirements, plans, or reports, that are provided or used by Provider or any Subcontractor in connection with the SaaS Service or otherwise comprise or relate to the SaaS Service or Provider Systems. For the avoidance of doubt, Provider Materials include Resultant Data and any information, data, or other content derived from Provider's monitoring of Customer's access to or use of the SaaS Service, but do not include Customer Data.

"**Provider Personnel**" means all individuals involved in the performance of SaaS Service as employees, agents, or independent contractors of Provider or any Subcontractor.

"**Provider Systems**" means the information technology infrastructure used by or on behalf of Provider in performing the SaaS Service, including all computers, software, hardware, databases, electronic systems (including database management systems), and networks, whether operated directly by Provider or through the use of third-party services.

"**Receiving Party**" has the meaning set forth in Section 8.1.

"**Representatives**" means, with respect to a party, that party's employees, officers, directors, consultants, agents, independent contractors, service providers, sublicensees, subcontractors, and legal advisors; provided that in no event shall Provider be, or be deemed to be, a Representative of Customer under this Agreement.

"**Resultant Data**" means data and information related to Customer's use of the SaaS Service that is used by Provider in an aggregate and anonymized manner, including to compile statistical and performance information related to the provision and operation of the SaaS Service.

"**Service Allocation**" has the meaning set forth in Section 3.2.

"**SaaS Service**" means the software-as-a-service offering described in **Exhibit A**.

"**Subcontractor**" has the meaning set forth in Section 2.6.

"**Support Services**" has the meaning set forth in Exhibit B.

"**Term**" has the meaning set forth in Section 13.1.

"**Third-Party Materials**" means materials and information, in any form or medium, including any open-source or other software, documents, data, content, specifications, products, equipment, or components of or relating to the SaaS Service that are not proprietary to Provider.

2.   SaaS Service.

2.1   Access and Use. Subject to and conditioned on Customer's and its Authorized Users' compliance with the terms and conditions of this Agreement, Provider hereby grants Customer a non-exclusive, non-transferable (except in compliance with Section 14.8) right to access and use the SaaS Service during the Term, solely for use by Authorized Users in accordance with the terms and conditions herein. Such use is limited to Customer's internal use. Provider shall provide to Customer the Access Credentials prior to or upon the date of Go Live. The total number of Authorized Users will not exceed the number set forth in **Exhibit**

A, except as expressly agreed to in writing by the parties and subject to any appropriate adjustment of the Fees payable hereunder.

2.2   Documentation License. Provider hereby grants to Customer a non-exclusive, non-sublicensable, non-transferable (except in compliance with Section 14.8) license to use the Documentation during the Term solely for Customer's internal business purposes in connection with its use of the SaaS Service.

2.3   Service and System Control. Except as otherwise expressly provided in this Agreement, as between the parties:

(a)   Provider has and will retain sole control over the operation, provision, maintenance, and management of the Provider Materials; and

(b)   Customer has and will retain sole control over the operation, maintenance, and management of, and all access to and use of, the Customer Systems, and sole responsibility for all access to and use of the Provider Materials by any Person by or through the Customer Systems or any other means controlled by Customer or any Authorized User, including any: (i) information, instructions, or materials provided by any of them to the SaaS Service or Provider; (ii) results obtained from any use of the SaaS Service or Provider Materials; and (iii) conclusions, decisions, or actions based on such use.

Notwithstanding anything to the contrary in this Agreement, all SaaS Service, including all Processing of Customer Data by or on behalf of Provider shall be provided solely from within, and on computers, systems, networks, and other infrastructure located in, the United States.

2.4   Reservation of Rights. Nothing in this Agreement grants any right, title, or interest in or to (including any license under) any Intellectual Property Rights in or relating to, the SaaS Service, Provider Materials, or Third-Party Materials, whether expressly, by implication, estoppel, or otherwise. All right, title, and interest in and to the SaaS Service, the Provider Materials, and the Third-Party Materials are and will remain with Provider and the respective rights holders in the Third-Party Materials.

2.5   Changes. Provider reserves the right, in its sole discretion, to make any changes to the SaaS Service and Provider Materials that it deems necessary or useful to: (a) maintain or enhance: (i) the quality or delivery of Provider's services to its customers; (ii) the competitive strength of or market for Provider's services; or (iii) the SaaS Service' cost efficiency or performance; or (b) to comply with applicable Law. Without limiting the foregoing, either party may, at any time during the Term, request in writing changes to the SaaS Service. The parties shall evaluate and, if agreed, implement all such requested changes in accordance with the change procedure set forth in Section 1.6 of **Exhibit B**. No requested changes will be effective unless and until memorialized in a written change order signed by both parties and Customer pays the applicable fees and amounts for such requested changes as set forth in such change order.

2.6   Subcontractors. Provider may from time to time in its discretion engage third parties to perform SaaS Service (each, a "**Subcontractor**"). In the event the Provider engages a Subcontractor hereunder, the Provider shall obtain executed E-verify Subcontractor's Affidavits as described more particularly in Section 14.18 herein.

2.7   Suspension or Termination of SaaS Service. Provider may, directly or indirectly, and by use of a Provider Disabling Device or any other lawful means, suspend, terminate, or otherwise deny Customer's, any Authorized User's, or any other Person's access to or use of all or any part of the SaaS Service or Provider Materials, without incurring any resulting obligation or liability, if: (a) Provider receives a judicial or other governmental demand or order, subpoena, or law enforcement request that expressly or by reasonable implication requires Provider to do so; or (b) Provider believes, in its sole discretion, that: (i) Customer or any Authorized User has failed to comply with any material term of this Agreement, or accessed or used the SaaS Service beyond the scope of the rights granted or for a purpose not authorized under this Agreement or in any manner that does not comply with any instruction or requirement of any specifications provided by Provider; (ii) Customer or any Authorized User is, has been, or is likely to be involved in any fraudulent, misleading, or unlawful activities relating to or in connection with any of the SaaS Service; or (iii) this Agreement has expired or is terminated. This Section 2.7 does not limit any of Provider's other rights or remedies, whether at law, in equity, or under this Agreement.

3.   Use Restrictions; Service Usage and Data Storage.

3.1   Use Restrictions. Customer shall not, and shall not permit any other Person to, access or use the SaaS Service or Provider Materials except as expressly permitted by this Agreement and, in the case of Third-Party Materials, the applicable third-party license agreement. For purposes of clarity and without limiting the generality of the foregoing, Customer shall not, except as this Agreement expressly permits:

(a)   copy, modify, or create derivative works or improvements of the SaaS Service or Provider Materials;

(b)   rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available any SaaS Service or Provider Materials to any Person, including on or in connection with the internet or any time-sharing, service bureau, software as a service, cloud, or other technology or service;

(c)   reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to the source code of the SaaS Service or Provider Materials, in whole or in part;

(d)   bypass or breach any security device or protection used by the SaaS Service or Provider Materials or access or use the SaaS Service or Provider Materials other than by an Authorized User through the use of his or her own then valid Access Credentials;

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(e)   input, upload, transmit, or otherwise provide to or through the SaaS Service or Provider Systems, any information or materials that are unlawful or injurious, or contain, transmit, or activate any Harmful Code;

(f)   damage, destroy, disrupt, disable, impair, interfere with, or otherwise impede or harm in any manner the SaaS Service, Provider Systems, or Provider's provision of services to any third party, in whole or in part;

(g)   remove, delete, alter, or obscure any trademarks, specifications, Documentation, warranties, or disclaimers, or any copyright, trademark, patent, or other intellectual property or proprietary rights notices from any SaaS Service or Provider Materials, including any copy thereof;

(h)   access or use the SaaS Service or Provider Materials in any manner or for any purpose that infringes, misappropriates, or otherwise violates any Intellectual Property Right or other right of any third party, or that violates any applicable Law;

(i)   access or use the SaaS Service or Provider Materials for purposes of the development, provision, or use of a competing software service or product or any other purpose that is to the Provider's detriment or commercial disadvantage; or

(j)   otherwise access or use the SaaS Service or Provider Materials beyond the scope of the authorization granted under this Section 3.1.

3.2   Service Usage and Data Storage. **Exhibit A** sets forth Fees for a designated number of Authorized Users and a specified amount of database storage (each a "**Service Allocation**"), beginning with the Fees payable by Customer for the number of Authorized Users and database storage in effect as of the date of Go Live. Provider will notify Customer in writing after Customer has reached eighty percent (80%) of its then current Service Allocation for database storage and Customer's Service Allocation for database storage will automatically be expanded by one (1) terabyte and Customer's Fees will be adjusted accordingly at the then current annual rate in accordance with **Exhibit A**. Document storage shall be charged in accordance with the terms and conditions of Exhibit A.

4.   Customer Obligations.

4.1   Customer Systems and Cooperation. Customer shall at all times during the Term: (a) set up, maintain, and operate in good repair and in accordance with the specifications set forth in Section 2.1 of **Exhibit B**, all Customer Systems on or through which the SaaS Service are accessed or used; and (b) provide all cooperation and assistance as Provider may reasonably request to enable Provider to exercise its rights and perform its obligations under and in connection with this Agreement.

4.2   Effect of Customer Failure or Delay. Provider is not responsible or liable for any delay or failure of performance caused in whole or in part by Customer's or any of its Representatives' delay in performing, or failure to perform, any of its or their obligations under this Agreement (each, a "**Customer Failure**").

4.3   Corrective Action and Notice. If Customer becomes aware of any actual or threatened activity prohibited by Section 3.1, Customer shall, and shall cause its Authorized Users and Representatives to, immediately: (a) take all reasonable and lawful measures within their respective control that are necessary to stop the activity or threatened activity and to mitigate its effects (including, where applicable, by discontinuing and preventing any unauthorized access to the SaaS Service and Provider Materials and permanently erasing from their systems and destroying any data to which any of them have gained unauthorized access); and (b) notify Provider of any such actual or threatened activity.

5.   Data Backup. The Provider Systems are programmed to perform routine data backups as set out in Provider's backup policy as amended from time to time, a current version of which is set forth in Section 2.5 of **Exhibit B.**

6.   Security.

6.1   Information Security. Provider will employ security measures in accordance with Provider's data privacy and security policy as amended from time to time, a current copy of which is set forth in Section 2 of **Exhibit B**.

6.2   Customer Control and Responsibility. Customer has and will retain sole responsibility for: (a) all Customer Data, including its content and use; (b) all information, instructions, and materials provided by or on behalf of Customer or any Authorized User in connection with the SaaS Service; (c) Customer's information technology infrastructure, including computers, software, databases, electronic systems (including database management systems), and networks, whether operated directly by Customer or through the use of third-party services ("**Customer Systems**"); (d) the security and use of Customer's and its Authorized Users' Access Credentials; and (e) all access to and use of the SaaS Service and Provider Materials directly or indirectly by or through the Customer Systems or its or its Authorized Users' Access Credentials, with or without Customer's knowledge or consent, including all results obtained from, and all conclusions, decisions, and actions based on, such access or use.

6.3   Access and Security. As reasonable under each circumstance, Customer shall employ all physical, administrative, and technical controls, screening, and security procedures and other safeguards necessary to: (a) securely administer the distribution and use of all Access Credentials and protect against any unauthorized access to or use of the SaaS Service; and (b) control the content and use of Customer Data, including the uploading or other provision of Customer Data for Processing by the SaaS Service. Customer is solely responsible for, and shall indemnify, defend, and hold harmless Provider regarding any unlawful or accidental access to or authorized or improper disclosure of Customer Data that results from (i) the conduct of an Authorized User or any other Customer Representative, (ii) an unauthorized person obtaining an Authorized User's account credentials from such an Authorized User or Customer or its Representatives, (iii) changes that Customer or any of its Representatives makes to the configuration of the SaaS Service or the hosted database, or (iv) software scripts added to the SaaS Service or the hosted database by Customer or any of its Representatives. Without limiting the foregoing, Customer and its Representatives shall: (A)

notify Provider immediately of any unauthorized use of any password or account or any other known or suspected breach of security; (B) report to Provider immediately and use reasonable efforts to stop immediately any copying or distribution of content that is known or suspected by Customer or any of its Representatives or Authorized Users; and (C) not impersonate another Authorized User or provide false identity information to gain access to or use the SaaS Service. Notwithstanding, nothing in this paragraph of Section 6.3 shall be construed as a waiver of Customer's sovereign immunity or any individual's qualified, good faith or official immunities and shall not obligate the Customer to indemnify the Provider for any third-party claims.

7.   Fees and Payment.

7.1   Fees. Customer shall pay Provider the fees set forth in **Exhibit A** ("**Fees**") in accordance with this Section 7.

7.2   Taxes. All Fees and other amounts payable by Customer under this Agreement are exclusive of taxes and similar assessments. The parties herein agree and acknowledge that Customer is exempt from Federal Excise Tax (if applicable) and Georgia Sales and Use Tax, and other tariff exemptions that may be applicable to contracting with local government. The Provider represents that no special license payments will be required for any installation related to the SaaS Service. No payment will be made for the SaaS Services performed until the Provider furnishes the Customer with an invoice excluding the foresaid exempted taxes or tariffs.

7.3   Payment. Customer shall pay all Fees set forth in **Exhibit A** within thirty (30) days after the date of the invoice therefor. Customer shall make all payments hereunder in US dollars. Customer shall make payments to the address or account specified in **Exhibit A** or such other address or account as Provider may specify in writing from time to time.

7.4   Late Payment. If Customer fails to make any payment when due then, in addition to all other remedies that may be available:

(a)   Customer shall reimburse Provider for all costs incurred by Provider in collecting any late payments, including attorneys' fees, court costs, and collection agency fees;

(b)   if such failure continues for thirty (30) days, at any time thereafter, Provider may, immediately upon notice to Customer, suspend performance of the SaaS Service until all past due amounts have been paid in full, without incurring any obligation or liability to Customer or any other Person by reason of such suspension, and Customer shall remain responsible for all Fees incurred during the period of suspension; and

(c)   in connection with any such suspension under Section 7.4(b), and only after the lateness of any payment has persisted for a period of at least ninety (90) days, Provider may, in its sole discretion, permanently erase all Customer Data and Customer's Confidential Information from all systems Provider directly or indirectly

controls, including Provider's backups, archives and disaster recovery systems, without incurring any obligation or liability to Customer or any other Person by reason of such erasure or otherwise. Provider shall not erase the same until after first providing Customer thirty (30) days' advanced written notice and reasonably facilitating a means for Customer to extract and retain said Customer Data. Subject to the terms of Section 12.2 ("Cap of Monetary Liability"), Provider hereby agrees to indemnify, defend and hold harmless Customer and Customer's officers, directors, employees, agents, successor and assigns (each, a "Customer Indemnitee") from and against any and all Losses incurred by Customer Indemnitee resulting from any Action by a third party (other than an Affiliate of a Customer Indemnitee) arising from Provider's material breach of this Section 7.4(c) that is attributable to Provider's negligence or willful misconduct.

7.5   No Deductions or Setoffs. All amounts payable to Provider under this Agreement shall be paid by Customer to Provider in full without any setoff, recoupment, counterclaim, deduction, debit, or withholding for any reason (other than any deduction or withholding of tax that is required by applicable Law, and other than as Stated in Section 6.2 above).

7.6   Fee Increases. In accordance with the terms set forth in **Exhibit A** hereto.

8.   Confidentiality.

8.1   Confidential Information. In connection with this Agreement each party (as the "**Disclosing Party**") may disclose or make available Confidential Information to the other party (as the "**Receiving Party**"). Subject to Section 8.2, "**Confidential Information**" means information in any form or medium (whether oral, written, electronic, or other) that the Disclosing Party considers confidential or proprietary, including information consisting of or relating to the Disclosing Party's technology, trade secrets, know-how, operations, plans, strategies, customers, clients, and pricing, and information with respect to which the Disclosing Party has contractual, legal or other confidentiality obligations, in each case whether or not marked, designated, or otherwise identified as "confidential".

8.2   Exclusions. Confidential Information does not include information that: (a) was rightfully known to the Receiving Party without restriction on use or disclosure prior to such information's being disclosed or made available to the Receiving Party in connection with this Agreement; (b) was or becomes generally known by the public other than by the Receiving Party's or any of its Representatives' noncompliance with this Agreement; (c) was or is received by the Receiving Party on a non-confidential basis from a third party that, to the Receiving Party's knowledge, was not or is not, at the time of such receipt, under any obligation to maintain its confidentiality; or (d) the Receiving Party can demonstrate by written or other documentary records was or is independently developed by the Receiving Party without reference to or use of any Confidential Information.

8.3   Protection of Confidential Information. As a condition to being provided with any disclosure of or access to Confidential Information, the Receiving Party shall:

(a)   not access or use Confidential Information other than as necessary to exercise its rights or perform its obligations under and in accordance with this Agreement;

(b)   except as may be permitted by and subject to its compliance with Section 8.4, not disclose or permit access to Confidential Information other than to its Representatives who: (i) need to know such Confidential Information for purposes of the Receiving Party's exercise of its rights or performance of its obligations under and in accordance with this Agreement; (ii) have been informed of the confidential nature of the Confidential Information and the Receiving Party's obligations under this Section 8.3; and (iii) are bound by confidentiality and restricted use obligations at least as protective of the Confidential Information as the terms set forth in this Section 8;

(c)   safeguard the Confidential Information from unauthorized use, access, or disclosure using at least the degree of care it uses to protect its similarly sensitive information and in no event less than a reasonable degree of care;

(d)   promptly notify the Disclosing Party of any unauthorized use or disclosure of Confidential Information and take all reasonable steps with Disclosing Party to prevent further unauthorized use or disclosure; and

(e)   ensure its Representatives' compliance with, and be responsible and liable for any of its Representatives' non-compliance with, the terms of this Section 8.

(f)   Notwithstanding any other provisions of this Agreement, the Receiving Party's obligations under this Section 8 with respect to any Confidential Information that constitutes a trade secret under any applicable Law will continue until such time, if ever, as such Confidential Information ceases to qualify for trade secret protection under one or more such applicable Laws other than as a result of any act or omission of the Receiving Party or any of its Representatives.

8.4   Compelled Disclosures. If the Receiving Party or any of its Representatives is compelled by applicable Law to disclose any Confidential Information then, to the extent permitted by applicable Law, the Receiving Party shall: (a) promptly, and prior to such disclosure, notify the Disclosing Party in writing of such requirement so that the Disclosing Party can seek a protective order or other remedy or waive its rights under Section 8.3; and (b) provide reasonable assistance to the Disclosing Party, at the Disclosing Party's sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure. If the Disclosing Party waives compliance or, after providing the notice and assistance required under this Section 8.4, the Receiving Party remains required by Law to disclose any Confidential Information, the Receiving Party shall disclose only that portion of the Confidential Information that, on the advice of the Receiving Party's legal counsel, the Receiving Party is legally required to disclose and, on the Disclosing Party's request, shall use commercially reasonable efforts to obtain assurances from the applicable court or other presiding authority that such Confidential Information will be afforded confidential treatment. Notwithstanding the foregoing paragraph in Section 8.4, no confidentiality requirement in this Agreement or otherwise in the Professional Services Agreement (attached hereto) shall

impose any obligation on either Party inconsistent with the rights and duties created by the Georgia Open Records Act (O.C.G.A. § 50-18-70, et seq.). Furthermore, the parties agree and acknowledge that the written text of this Agreement and the Profession Services Agreement shall not be "confidential," as the same must be approved during, and spread upon the minutes of, a public meeting of the Milton City Council.

9.   Intellectual Property Rights.

        9.1   Provider Materials. All right, title, and interest in and to the Provider Materials, including all Intellectual Property Rights therein, are and will remain with Provider and, with respect to Third-Party Materials, the applicable third-party providers own all right, title, and interest, including all Intellectual Property Rights, in and to the Third-Party Materials. Customer has no right, license, or authorization with respect to any of the Provider Materials except as expressly set forth in Section 2.1 or the applicable third-party license, in each case subject to Section 3.1. All other rights in and to the Provider Materials are expressly reserved by Provider. In furtherance of the foregoing, Customer hereby unconditionally and irrevocably grants to Provider an assignment of all right, title, and interest in and to the Resultant Data, including all Intellectual Property Rights relating thereto.

        9.2   Customer Data. As between Customer and Provider, Customer is and will remain the sole and exclusive owner of all right, title, and interest in and to all Customer Data, including all Intellectual Property Rights relating thereto, subject to the rights and permissions granted in Section 9.3.

        9.3   Consent to Use Customer Data; Restrictions on Use. Customer hereby irrevocably grants all such rights and permissions in or relating to Customer Data as are necessary or useful to Provider, its Subcontractors, and the Provider Personnel to enforce this Agreement and exercise Provider's, its Subcontractors', and the Provider Personnel's rights and perform Provider's, its Subcontractors', and the Provider Personnel's obligations hereunder. Provider will only Process, use, retain, or disclose Customer Data to provide the SaaS Service, to perform Provider's obligations hereunder and for the other permitted purposes set forth in this Agreement, and for no other purpose whatsoever without Customer's prior written consent or request. Provider will not sell the Customer Data or retain, use, or disclose the information outside of the direct business relationship between Customer and Provider. Provider certifies that it understands the restrictions on Customer Data set forth in the preceding two sentences and will comply with them. For the avoidance of doubt, this Section is not intended to prevent Provider's support personnel from accessing Customer Data for purposes of investigating or resolving a Support service request from Customer or its Representatives.

10.   Representations and Warranties.

        10.1   Mutual Representations and Warranties. Each party represents and warrants to the other party that:

(a)   it has the full right, power, and authority to enter into and perform its obligations and grant the rights, licenses, consents, and authorizations it grants or is required to grant under this Agreement;

(b)   the execution of this Agreement by its representative whose signature is set forth at the end of this Agreement has been duly authorized by all necessary corporate, governmental or organizational action of such party; and

(c)   when executed and delivered by both parties, this Agreement will constitute the legal, valid, and binding obligation of such party, enforceable against such party in accordance with its terms.

10.2   <u>Additional Provider Representations, Warranties, and Covenants</u>. Provider represents, warrants, and covenants to Customer that Provider will perform the SaaS Service using personnel of required skill, experience, and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and will devote adequate resources to meet its obligations under this Agreement.

10.3   <u>Additional Customer Representations, Warranties, and Covenants</u>. Customer represents, warrants, and covenants to Provider that Customer owns or otherwise has and will have the necessary rights and consents in and relating to the Customer Data so that, as received by Provider and Processed in accordance with this Agreement, they do not and will not infringe, misappropriate, or otherwise violate any Intellectual Property Rights, or any privacy or other rights of any third party or violate any applicable Law.

10.4   <u>DISCLAIMER OF WARRANTIES</u>. ALL SAAS SERVICE AND PROVIDER MATERIALS ARE PROVIDED "AS IS." EXCEPT TO THE EXTENT PROHIBITED BY LAW, OR TO THE EXTENT ANY STATUTORY RIGHTS APPLY THAT CANNOT BE EXCLUDED, LIMITED OR WAIVED, PROVIDER (ON BEHALF OF ITSELF, ITS AFFILIATES AND ITS AND THEIR REPRESENTATIVES) SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, NONE OF PROVIDER, ITS AFFILIATES OR ITS OR THEIR REPRESENTATIVES MAKES ANY WARRANTY OF ANY KIND WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE REGARDING THE SAAS SERVICE OR PROVIDER MATERIALS, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, OR THAT ANY OF THE FOREGOING WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM, OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE OR COMPONENTS, OR ERROR FREE, OR THAT ANY CUSTOMER DATA WILL BE SECURE OR NOT OTHERWISE LOST OR ALTERED. ALL THIRD-PARTY MATERIALS ARE PROVIDED "AS IS" AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD-PARTY

MATERIALS IS STRICTLY BETWEEN CUSTOMER AND THE THIRD-PARTY OWNER OR THIRD-PARTY DISTRIBUTOR OF THE THIRD-PARTY MATERIALS.

11. <u>Indemnification</u>.

11.1 <u>Provider Indemnification</u>. Provider shall indemnify, defend, and hold harmless Customer and Customer's officers, directors, employees, agents, successors, and assigns (each, a "**Customer Indemnitee**") from and against any and all Losses incurred by Customer Indemnitee resulting from any Action by a third party (other than an Affiliate of a Customer Indemnitee) that Customer's use of the SaaS Service (excluding Customer Data and Third-Party Materials) in accordance with this Agreement infringes or misappropriates such third party's US Intellectual Property Rights. The foregoing obligation does not apply to the extent that the alleged infringement arises from:

     (a)   Third-Party Materials or Customer Data;

     (b)   access to or use of the Provider Materials in combination with any hardware, system, software, network, or other materials or service not provided by Provider or specified for Customer's use in the Documentation;

     (c)   modification of the Provider Materials other than: (i) by or on behalf of Provider; or (ii) with Provider's written approval in accordance with Provider's written specification;

     (d)   failure to timely implement any modifications, upgrades, replacements, or enhancements made available to Customer by or on behalf of Provider; or

     (e)   act, omission, or other matter described in Section 11.2(a), Section 11.2(b), Section 11.2(c), or Section 11.2(d), whether or not the same results in any Action against or Losses by any Provider Indemnitee.

11.2 <u>Customer Indemnification</u>. Except as precluded by applicable law, Customer shall indemnify, defend, and hold harmless Provider and its Subcontractors and Affiliates, and each of its and their respective officers, directors, employees, agents, successors, and assigns (each, a "**Provider Indemnitee**") from and against any and all Losses incurred by such Provider Indemnitee resulting from any Action <u>by </u>a third party (other than an Affiliate of a Provider Indemnitee) that arise out of or result from, or are alleged to arise out of or result from:

     (a)   Customer Data, including any Processing of Customer Data by or on behalf of Provider in accordance with this Agreement;

     (b)   any other materials or information (including any documents, data, specifications, software, content, or technology) provided by or on behalf of Customer or any Authorized User, including Provider's compliance with any specifications or directions provided by or on behalf of Customer or any Authorized User to the extent prepared without any contribution by Provider;

(c)   allegation of facts that, if true, would constitute Customer's breach of any of its representations, warranties, covenants, or obligations under this Agreement; or

(d)   negligence or more culpable act or omission (including recklessness or willful misconduct) by Customer, any Authorized User, or any third party on behalf of Customer or any Authorized User, in connection with this Agreement.

(e)   unlawful or accidental access to or unauthorized or improper disclosure of Customer Data that results from (i) the conduct of an Authorized User, (ii) an unauthorized person obtaining an Authorized User's account credentials from such an Authorized User or Customer, or (iii) software scripts that are added to the SaaS Service by Customer.

(f)   <u>Sovereign Immunity; Personal Liability; Indemnification</u>: Notwithstanding anything to the contrary or in conflict herein, nothing contained in this Agreement shall be construed to be a waiver of Customer's sovereign immunity or any individual's qualified, good faith or official immunities. Nothing herein shall be construed as creating any individual or personal liability on the part of any of Customer's elected or appointed officials, officers, boards, commissions, employees, representatives, consultants, servants, agents, attorneys or volunteers. To the extent the Agreement imposes a contractual duty of indemnification upon the Customer, such duty shall apply only to the extent, if any, allowed by law, and then only to the extent of Customer's fault or wrongdoing.

11.3   <u>Indemnification Procedure</u>. Each party shall promptly notify the other party in writing of any Action for which such party believes it is entitled to be indemnified pursuant to Section 11.1 or Section 11.2, as the case may be. The party seeking indemnification (the "**Indemnitee**") shall cooperate with the other party (the "**Indemnitor**") at the Indemnitor's sole cost and expense. The Indemnitor shall promptly assume control of the defense and shall employ counsel reasonably acceptable to the Indemnitee to handle and defend the same, at the Indemnitor's sole cost and expense. The Indemnitee may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing. The Indemnitor shall not settle any Action on any terms or in any manner that adversely affects the rights of any Indemnitee without the Indemnitee's prior written consent, which shall not be unreasonably withheld or delayed. If the Indemnitor fails or refuses to assume control of the defense of such Action, the Indemnitee shall have the right, but no obligation, to defend against such Action, including settling such Action after giving notice to the Indemnitor, in each case in such manner and on such terms as the Indemnitee may deem appropriate. The Indemnitee's failure to perform any obligations under this Section 11.3 will not relieve the Indemnitor of its obligations under this Section 11, except to the extent that the Indemnitor can demonstrate that it has been prejudiced as a result of such failure.

11.4   <u>Mitigation</u>. If any of the SaaS Service or Provider Materials are, or in Provider's opinion are likely to be, claimed to infringe, misappropriate, or otherwise violate any third-party Intellectual Property Right, or if Customer's or any Authorized User's use of the SaaS

Service or Provider Materials is enjoined or threatened to be enjoined, Provider may, at its option and sole cost and expense:

(a)   obtain the right for Customer to continue to use the SaaS Service and Provider Materials materially as contemplated by this Agreement;

(b)   modify or replace the SaaS Service and Provider Materials, in whole or in part, to seek to make the SaaS Service and Provider Materials (as so modified or replaced) non-infringing, while providing materially equivalent features and functionality, in which case such modifications or replacements will constitute SaaS Service and Provider Materials, as applicable, under this Agreement; or

(c)   by written notice to Customer, terminate this Agreement with respect to all or part of the SaaS Service and Provider Materials, and require Customer to immediately cease any use of the SaaS Service and Provider Materials or any specified part or feature thereof.

11.5   Sole Remedy. THIS SECTION 11 SETS FORTH CUSTOMER'S SOLE REMEDIES, AND PROVIDER'S SOLE REMEDIES, AND CUSTOMER'S SOLE LIABILITY AND PROVIDER'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE SAAS SERVICE AND PROVIDER MATERIALS OR ANY SUBJECT MATTER OF THIS AGREEMENT INFRINGES, MISAPPROPRIATES, OR OTHERWISE VIOLATES ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

12.   Limitations of Liability.

12.1   EXCLUSION OF DAMAGES. IN NO EVENT WILL EITHER PROVIDER OR CUSTOMER, OR ANY OF PROVIDER OR CUSTOMER'S EMPLOYEES, STAFF, OFFICIALS AND/OR ELECTED OFFICALS, OR PROVIDER, OR ANY OF PROVIDER'S LICENSORS, SERVICE PROVIDERS, OR SUPPLIERS BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY (EXCEPT THE PARTIES RESERVE THE RIGHT TO INJUNCTION AS IT RELATES TO DISSEMINATION, PROHIBITED DISCLOSURE, AND/OR PROHIBITED DELETION, OR DAMAGE TO, CUSTOMER DATA AND CONFIDENTIAL INFORMATION), INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (a) LOSS OF PRODUCTION, USE, BUSINESS, REVENUE, OR DIMINUTION IN VALUE; (b) IMPAIRMENT, INABILITY TO USE OR LOSS, INTERRUPTION, OR DELAY OF THE SAAS SERVICE; (c) LOSS, DAMAGE, CORRUPTION, OR RECOVERY OF DATA (EXCEPT AS PROVIDED FOR IN SECTION 7.4(C)), OR BREACH OF DATA OR SYSTEM SECURITY; (d) COST OF REPLACEMENT GOODS OR SERVICES; (e) LOSS OF GOODWILL OR REPUTATION; OR (f) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND

NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

12.2 <u>CAP ON MONETARY LIABILITY</u>. IN NO EVENT WILL THE AGGREGATE LIABILITY OF PROVIDER OR CUSTOMER ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING UNDER OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR ANY OTHER LEGAL OR EQUITABLE THEORY, EXCEED THE AMOUNT OF ANNUAL FEES PAID TO PROVIDER UNDER THIS AGREEMENT FOR THE THEN CURRENT YEAR OF THE TERM DURING WHICH THE EVENT GIVING RISE TO THE CLAIM OCCURRED. THE FOREGOING LIMITATIONS APPLY EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

13. <u>Term and Termination</u>.

13.1 <u>Term</u>. The term of this Agreement commences as of the Effective Date and, unless terminated earlier pursuant any of the Agreement's express provisions, will continue in effect until the first anniversary of Go Live, and shall thereafter automatically renew for successive one-year periods (the "**Term**"), unless either party elects to not renew the Term upon written notice to the other party given not less than sixty (60) days prior to the end of the then-current Term. If the Professional Services Agreement, of even date herewith, is terminated, then this Agreement shall be terminated concurrently; if the Provider causes termination of the Professional Services Agreement, then the obligations of Customer shall be as set forth in Section 13.3(f).

13.2 <u>Termination</u>. In addition to any other express termination right set forth elsewhere in this Agreement:

(a) Provider may terminate this Agreement, effective on written notice to Customer, if Customer: (i) fails to pay any amount when due hereunder, and such failure continues more than thirty (30) days after Provider's delivery of written notice thereof; or (ii) breaches any of its obligations under Section 3.1, Section 6.2, Section 6.3, or Section 8;

(b) either party may terminate this Agreement without cause by giving the other party written notice at least sixty (60) days prior to the date of termination;

(c) either party may terminate this Agreement, effective on written notice to the other party, if the other party materially breaches this Agreement (which *material breach* shall include, but not be limited to the non-recoverable deletion/erasure of Customer Data and/or Customer's Confidential Information from systems Provider directly or indirectly controls due to the intentional act(s), or act of ordinary or gross negligence, of Provider (or its officers, employees, contractors, or subcontractors), and not otherwise permitted by this Agreement), and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured thirty (30) days after the non-breaching party provides the breaching party with written notice of such breach; and

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(d)   either party may terminate this Agreement, effective immediately upon written notice to the other party, if the other party: (i) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (ii) files, or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency Law; (iii) makes or seeks to make a general assignment for the benefit of its creditors; or (iv) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

(e)   <u>Statutory Auto-Termination and Renewal</u>: As required by O.C.G.A.§ 36-60-13(a), during the initial Term and during any renewal Term, this Agreement shall terminate absolutely and without further obligation on the part of Customer on December 31 each calendar year, and shall automatically renew on January 1 of each subsequent calendar year of the applicable Term, absent Customer's provision of written notice of non-renewal to the Provider at least sixty (60) days prior to the end of the then-current calendar year. Title to any supplies, materials, equipment, or other personal property (if any should transfer under this Agreement) shall remain in Provider until fully paid for by Customer.

(f)   Customer may terminate this Agreement by giving Provider written notice at least thirty (30) days prior to the date of termination in the event Customer believes, in its reasonable judgment, that the SaaS Service has been substantially and materially altered by Provider such that the SaaS Service is no longer substantially the same product or service as what the Customer intended to procure in this Agreement.

13.3   <u>Effect of Termination or Expiration</u>. Upon any expiration or termination of this Agreement, except as expressly otherwise provided in this Agreement:

(a)   all rights, licenses, consents, and authorizations granted by either party to the other hereunder will immediately terminate;

(b)   Provider shall immediately cease all use of any Customer Data or Customer's Confidential Information and (i) upon Customer's payment of the amounts set forth in Section 2.5 of **Exhibit B** return to Customer, or at Customer's written request destroy, all documents and tangible materials containing, reflecting, incorporating, or based on Customer Data or Customer's Confidential Information; and (ii) **after performing the acts referenced in Section 13.3(b),** and subject to the requirements set forth in Section 7.4(c) herein, Provider shall permanently erase all Customer Data and Customer's Confidential Information from all systems Provider directly or indirectly controls, provided that, for clarity, Provider's obligations under this Section 13.3(b) do not apply to any Resultant Data;

(c)   Customer shall immediately cease all use of any SaaS Service or Provider Materials and (i) promptly return to Provider, or at Provider's written request destroy, all documents and tangible materials containing, reflecting, incorporating, or based on any Provider Materials or Provider's Confidential Information; and (ii)

permanently erase all Provider Materials and Provider's Confidential Information from all systems Customer directly or indirectly controls;

(d)   notwithstanding anything to the contrary in this Agreement, with respect to information and materials then in its possession or control: (i) the Receiving Party may retain the Disclosing Party's Confidential Information; (ii) Provider may retain Customer Data; (iii) Customer may retain Provider Materials, in the case of each of subclause (i), (ii) and (iii) in its then current state and solely to the extent and for so long as required by applicable Law; (iv) Provider may also retain Customer Data in its backups, archives, and disaster recovery systems until such Customer Data is deleted in the ordinary course; and (v) all information and materials described in this Section 13.3(d) will remain subject to all confidentiality, security, and other applicable requirements of this Agreement;

(e)   Provider may disable all Customer and Authorized User access to the Provider Materials;

(f)   if Customer terminates this Agreement pursuant to Section 13.2(b) or 13.2(f), or if Provider terminates this Agreement pursuant to Section 13.2(b), Customer will be relieved of any obligation to pay any Fees attributable to the period after the effective date of such termination and Provider will refund to Customer any Fees paid in advance for SaaS Service that Provider has not performed as of the effective date of termination;

(g)   if Provider terminates this Agreement pursuant to Section 13.2(a) or Section 13.2(b), or if Customer terminates this Agreement pursuant to Section 13.2(b), all Fees that would have become payable had the Agreement remained in effect until expiration of the Term will become immediately due and payable, and Customer shall pay such Fees, together with all previously-accrued but not yet paid Fees, on receipt of Provider's invoice therefor; and

(h)   if Customer requests in writing at least 30 days prior to the effective date of expiration or termination, subject to Section 13.3(d), Provider shall, within a commercially reasonable timeframe following such expiration or termination, deliver to Customer the then most recent version of Customer Data maintained by Provider, provided that Customer has at that time paid all Fees then outstanding and any amounts payable after or as a result of such expiration or termination, including any expenses and fees, on a time and materials basis, for Provider's services in transferring such Customer Data.

13.4   <u>Surviving Terms</u>. The provisions set forth in the following sections, and any other right or obligation of the parties in this Agreement that, by its nature, should survive termination or expiration of this Agreement, will survive any expiration or termination of this Agreement: Section 3.1, Section 5 (last sentence only), Section 6.2, Section 6.3, Section 8, Section 10.4, Section 11, Section 12, Section 13.3, this Section 13.4, and Section 14.

14. <u>Miscellaneous</u>.

14.1   Further Assurances. On a party's reasonable request, the other party shall, at the requesting party's sole cost and expense, execute and deliver all such documents and instruments, and take all such further actions, as may be necessary to give full effect to this Agreement.

14.2   Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

14.3   No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

14.4   Notices. Except as otherwise expressly set forth in this Agreement, any notice, request, consent, claim, demand, waiver, or other communications under this Agreement have legal effect only if in writing and addressed to a party as follows (or to such other address or such other person that such party may designate from time to time in accordance with this Section 14.4):

If to Provider: Journal Technologies, Inc.
915 East First Street
Los Angeles, CA 90012
Attention: President

If to Customer: City of Milton, Georgia

2006 Heritage Walk

Milton, GA 30004

Email: brooke.lappin@cityofmiltonga.us

Attention: Brooke Lappin, Court Clerk

Notices sent in accordance with this Section 14.4 will be deemed effectively given: (a) when received, if delivered by hand, with signed confirmation of receipt; (b) when received, if sent by a nationally recognized overnight courier, signature required; and (c) on the third (3rd) business day after the date mailed by certified or registered mail, return receipt requested, postage prepaid.

14.5   Interpretation. For purposes of this Agreement: (a) the words "include," "includes," and "including" are deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; (c) the words "herein," "hereof," "hereby," "hereto," and "hereunder" refer to this Agreement as a whole; (d) words denoting the singular have a comparable meaning when used in the plural, and vice-versa; and (e) words denoting any

gender include all genders. Unless the context otherwise requires, references in this Agreement: (x) to sections, exhibits, schedules, attachments, and appendices mean the sections of, and exhibits, schedules, attachments, and appendices attached to, this Agreement; (y) to an agreement, instrument, or other document means such agreement, instrument, or other document as amended, supplemented, and modified from time to time to the extent permitted by the provisions thereof; and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. The parties intend this Agreement to be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The exhibits, schedules, attachments, and appendices referred to herein are an integral part of this Agreement to the same extent as if they were set forth verbatim herein, and each of them is incorporated herein by this reference.

14.6   Headings. The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.

14.7   Entire Agreement. This Agreement, together with the Exhibits hereto, constitutes the sole and entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter.

14.8   Assignment. Customer shall not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance under this Agreement, in each case whether voluntarily, involuntarily, by operation of law, or otherwise, without Provider's prior written consent. No assignment, delegation, or transfer will relieve Customer of any of its obligations or performance under this Agreement. Any purported assignment, delegation, or transfer in violation of this Section 14.8 is void. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective successors and permitted assigns.

14.9   Force Majeure.

(a)   No Breach or Default. In no event will either party be liable or responsible to the other party, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations to make payments), when and to the extent such failure or delay is caused by any circumstances beyond such party's reasonable control (a "**Force Majeure Event**"), including acts of God, flood, fire, earthquake or explosion, war, terrorism, invasion, riot or other civil unrest, pandemic, epidemic, embargoes or blockades in effect on or after the date of this Agreement, national or regional emergency, strikes, labor stoppages or slowdowns or other industrial disturbances, passage of Law or any action taken by a governmental or public authority, including imposing an embargo, export or import restriction, quota, or other restriction or prohibition or any complete or partial government shutdown, or national or regional shortage of adequate power or telecommunications or transportation. Either party may

terminate this Agreement if a Force Majeure Event affecting the other party continues substantially uninterrupted for a period of 30 days or more.

(b)   Affected Party Obligations. In the event of any failure or delay caused by a Force Majeure Event, the affected party shall give prompt written notice to the other party stating the period of time the occurrence is expected to continue and use commercially reasonable efforts to end the failure or delay and minimize the effects of such Force Majeure Event.

14.10   Amendment and Modification; Waiver. No amendment to or modification of this Agreement is effective unless it is in writing and signed by an authorized representative of each party; provided, however, that Provider may amend or modify the terms of **Exhibit B** at any time upon written notice to Customer of such amendment or modification. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement will operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

14.11   Severability. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

14.12   Governing Law. This Agreement is governed by and construed in accordance with the internal laws of the State of Georgia without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of Georgia.

14.13   Dispute Resolution. Any dispute arising under or related to this Agreement shall be resolved exclusively as follows, with the costs of any arbitration to be shared equally by both parties. The parties shall first attempt to resolve amicably the dispute by meeting with each other, by telephone or in person at a mutually convenient time and location, within thirty (30) days after written notice of a dispute is delivered from one party to the other. Subsequent meetings may be held upon mutual agreement of the parties. Any dispute that is not otherwise resolved by meeting or mediation shall be exclusively resolved by arbitration between the parties in accordance with the Comprehensive Arbitration Rules & Procedures of JAMS, with the arbitration to be conducted in a location mutually agreed by the parties. The results of such arbitration shall be binding on the parties, and judgment may be entered in any court having jurisdiction. Notwithstanding the foregoing, either party may seek interim injunctive relief

from any court of competent jurisdiction. Furthermore, arbitration judgments shall be subject to the limitation set forth in Section 12, above ("Limitations of Liability").

14.14   Equitable Relief. Each party acknowledges and agrees that a breach or threatened breach by such party of any of its obligations under Section 8 or, in the case of Customer, Section 3.1, Section 4.3, or Section 6.2, would cause the other party irreparable harm for which monetary damages would not be an adequate remedy and that, in the event of such breach or threatened breach, the other party will be entitled to equitable relief, including a restraining order, an injunction, specific performance, and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity, or otherwise.

14.15   Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

14.16   Nondiscrimination. In accordance with Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and all other provisions of federal law, Company agrees that, during performance of this Agreement, Provider, for itself, its assignees and successors in interest, will not discriminate against any employee or applicant for employment, any subcontractor, or any supplier because of race, color, creed or belief, political affiliation, national origin, gender, age or disability. In addition, Provider agrees to comply with all applicable implementing regulations and shall include the provisions of this paragraph in every subcontract for services contemplated under this Agreement.

14.17   Terms Attached to Software Services: Customer shall not be bound to any additional or different terms, other than the terms within the Agreement, which may be transmitted by the Provider or by other third-party related to the SaaS Services or included in "click-through" screens necessary to access the SaaS Services. No Customer employee accessing the software is authorized or obligated to accept new or different terms on behalf of the Customer. The Customer shall not, in any event, be bound by silence or acceptance of equipment to any terms and conditions other than those explicitly stated in this Agreement.

14.18   Employment of Unauthorized Aliens Prohibited – E-Verify Affidavit. The Provider hereby verifies that it has, prior to executing the Agreement, executed a notarized affidavit, the form of which is provided in Exhibit "C" attached to the Professional Services Agreement, and submitted such affidavit to Customer or provided Customer with evidence that it is an individual not required to provide such an affidavit. Further, Provider hereby agrees to comply with the requirements of the federal Immigration Reform and Control Act

of 1986 (IRCA), P.L. 99-603, O.C.G.A. § 13-10-91 and Georgia Department of Labor Rule 300-10-1-.02.

In the event Provider employs or contracts with any subcontractor(s) in connection with the SaaS Services hereunder, the Provider agrees to secure from such subcontractor(s) attestation of the subcontractor's compliance with O.C.G.A. § 13-10-91 and Rule 300-10-1-.02 by the subcontractor's execution of the subcontractor affidavit, the form of which is attached hereto as Exhibit "D" attached to the Professional Services Agreement, which subcontractor affidavit shall become part of the Provider/subcontractor agreement, or evidence that the subcontractor is not required to provide such an affidavit. If a subcontractor affidavit is obtained, the Provider agrees to provide a completed copy to Customer within five (5) business days of receipt from any subcontractor.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

PROVIDER: JOURNAL TECHNOLOGIES, INC.

By:_____

Name: ___Maryjoe Rodriguez_____

Title: _Vice President_____

Date: _12/14/2021_____

CUSTOMER: CITY OF MILTON, GEORGIA

By:_____

Name: _____
                 Joe Lockwood

Title: Mayor, City of Milton, Georgia

Date: _____

[CITY SEAL]

Attest:

_____

City Clerk, Tammy Lowit

Date:_____

Approved as to Form:

_____

City Attorney

<div align="center">

EXHIBIT A
FEES

</div>

eCourt® Online

1. Software as a Service Offering: eCourt® Online. Annual Fees include access to the SaaS Service, 1 terabyte ("**TB**") of database storage, maintenance updates, upgrades, and Support Services as described in this Agreement. Document storage is billed accordance to the rate table in Section 2.

2. Annual eCourt® Online Fees: $35,000 (and adjusted for any CPI increase after the first year), which includes access to the SaaS Service for up to 10 Authorized Users and 1 TB database storage. Each additional TB of database storage utilized by Customer shall cost $4,000 annually per TB and shall be added to Customer's annual Fee, and such additional amount shall be payable within 30 days following the date of Provider's invoice therefor provided pursuant to Section 3.2 of this Agreement.

Document storage shall be charged in accordance with Customer's usage, and pursuant to the table set forth below (A. Document Storage). Document storage incorporates two access tiers: *Frequent Access* and *Infrequent Access*. Documents that have not been accessed for a minimum of thirty (30) days are automatically moved to the *Infrequent Access* tier. If the document is requested it will be moved back to the *Frequent Access* tier and the lifecycle begins again. Each document object can be up to 5TB in size and is replicated automatically across multiple data centers for redundancy.

All Document Storage fees are NON-REFUNDABLE for any reason. Provider will NOT refund, and will not be obligated or required to refund, any storage fees under any circumstances. Document storage fees are subject to change throughout the course of the Agreement upon 60 days prior notice by Provider.

     A. DOCUMENT STORAGE

1. PRICING/FEES

Service	Price per month
Storage - Frequent Access Tier	$0.093 per GB
Storage – Infrequent Access Tier	$0.055 per GB

Storage usage is calculated in binary gigabytes (GB), where 1GB is 1,073,741,824 bytes. This unit of measurement is also known as a gibibyte (GiB), defined by the International Electrotechnical Commission (IEC)

2. PAYMENTS

Provider automatically bills Customer on a monthly basis for Document Storage. Customer has two options for paying monthly fees:

Option #1: Invoice
Customer will be sent a monthly invoice for average daily storage usage. Customer may use ACH to make monthly invoice payments.

Option #2: Automated
Customer may opt to automatically pay monthly storage by setting up an automatic online payment plan with Provider. If Customer is interested in using this method of payment, Customer should contact Provider using the contact information set forth in Section 14.4.

B. DATABASE STORAGE

1. PRICING/FEES

Description	Price per month
First 1TB	Included
Cost per year for each additional TB	$4,000

2. PAYMENTS

If database storage is either (i) automatically expanded or (ii) Customer requests purchase of additional storage, Customer will be invoiced immediately with the prorated rate calculated to the end of the annual Term renewal period. Thereafter the additional storage is billed annually as part of the Services Fee.

C. INCREASE OR DECREASE OF AUTHORIZED USERS

If the number of Authorized Users increases or decreases, the annual Fee will be adjusted pursuant to the pricing table set forth below, but subject in all events to a minimum annual Fee of $35,000:

Annual Fees for SaaS Service Based on Number of Authorized Users (with 1TB of database storage), includes AWS hosting fees	
Up to 10 Authorized Users	$35,000
Between 11 and 20 Authorized Users	$35,000 plus $3,000 per each User over 10 Users
Between 21 and 30 Authorized Users	$65,000 plus $2,500 per each User over 20 Users
Between 31 and 60 Users	$115,000 plus $2,000 per each User over 30 Users

Fees set forth in the table above, and Customer's annual Fees, will not increase during the first 3 years after Go Live (excluding increases for additional Authorized Users or additional database storage). Subsequently, upon the beginning of the fourth (4th) year of the Term, Customer's annual Fees will be increased by nine (9) percent and, subsequently, an annual CPI-U adjustment will automatically be applied to the annual Fees for each year of the Agreement after the fourth (4th) year. For the avoidance of doubt, such increase will also apply to any Fees paid by Customer for additional storage provided pursuant to Section 3.2 of this Agreement.

1. Support Services

1.1 Support Services Availability. Support Services are available by e-mail or internet submission from 5:00 am to 7:00 pm Mountain time, Monday through Friday, except for federal holidays. Provider shall make commercially reasonable efforts to provide an initial response to Support Services requests within four (4) hours of first contact.

Email: Support@JournalTech.com

a. Outages. Outages of the SaaS Service may be reported by telephone at the number below:

Telephone: 1-877-587-8927

1.2 Self-help Resources. Many self-help resources have been built into the SaaS Service, using which Customer should be able to resolve many questions or issues with the SaaS Service without additional assistance from Provider. Customer should initially consult these resources and Provider may direct Customer to these resources in the event Provider believes they can lead to full resolution of a Support Services request. The self-help resources include the following:

a. In-line Help Text: All forms entailed in the SaaS Service include issue-specific guidance
b. Consolidated Documentation: Provides guidance as to all aspects of the SaaS Service
c. Self-Training Videos: A library of issue-specific video demonstrations

1.3. Incident Category. Upon receiving a request for Support Services, Provider shall, in its good faith discretion, categorize the request pursuant to the criteria below:

Incident Category	Description
1 – Service Failure or Severe Degradation	This status represents a complete loss of the SaaS Service and no workaround exists. This status only applies to applications that are in production.
2 – Mild Degradation	A fault causing the SaaS Service not to operate in accordance with specifications, but usable with a minimum to moderate level of difficulty.
3 – General Issue or Services Enhancement	Includes product questions and feature requests. This category includes all requests relating to applications that are not in production.

1.4 Resolution. Upon categorizing a Support Services request according to the above criteria, Provider shall take commercially reasonable steps toward resolving a given request in the manner described below:

Incident Category	Nature of Resolution
1	Provider will take steps to resolve Category 1 requests as quickly as is commercially reasonable. Provider will help with workarounds and bug reporting. Provider will give Customer reasonable updates.
2	Provider will help with workarounds and bug reporting. Critical bugs will generally be fixed in Provider's next regular maintenance release. Non-critical bugs will be scheduled according to a variety of considerations.
3	Where applicable Provider will direct Customer to self-help materials as to SaaS Service questions. Provider will consider feature requests and act upon such requests as Provider in its discretion deems appropriate.

1.5. Conditions to Receive Support.

a. Customer must designate at least one and as many as three system administrators, each of whom shall be an employee or contractor of Customer. Only a designated system administrator may request Support Services. It is the responsibility of Customer to instruct Authorized Users to route Support Services requests through system administrators. Additionally, system administrators will resolve issues raised by Authorized Users wherever possible and will direct Authorized Users to the self-help resources listed above in the event such resources may provide such resolution**.**

b. Customer must provide Provider with accurate screen shots or other files and documentation as required for each Support Services request.

1.6. Additional Work. Additional work, not specifically referenced above as part of the Support Services, may be requested by Customer. Provider, in its sole discretion, may elect to perform such additional work, for additional fees as mutually agreed to in a separate statement of work.

1.7. Maintenance and Software Updates. Provider will generally provide any updates or enhancements as part of regular maintenance releases. As referenced above, resolution of Category 2 incidents will generally occur as part of such regular releases.

a. Weekly Maintenance Window: The SaaS Service will be subject to a maintenance window each Wednesday evening (9:00PM Wednesday to 4:00AM Thursday, Mountain Time) or at such additional times as may be separately agreed between Provider and Customer. The SaaS Service maintenance window may include loss of network access, the servers, and the operating system during such window. The SaaS Service will not always be disrupted during each weekly maintenance window.

b. Extended Maintenance Outage. If Provider requires additional time for maintenance or installation, Provider shall provide written notification to Customer at least 24 hours prior to implementing an extended maintenance outage. Provider's notice shall explain the nature and expected duration for the extended maintenance outage.

c. Critical Security Maintenance. The SaaS Service shall be subject to immediate security maintenance with less than 24-hour notice given to the Customer in the event a critical software vulnerability needs to be patched.

2. Security

2.1 Customer Responsibilities. In addition to Customer's obligations set forth elsewhere in this Agreement, Customer's additional responsibilities with respect to the SaaS Service are as follows:

a. Provide a secure internet connection between Authorized Users and the SaaS Service that meets necessary bandwidth requirements.
b. Customer shall (i) notify Provider immediately of any unauthorized use of any password or account or any other suspected breach of security known to Customer, (ii) report to Provider immediately and use reasonable efforts to stop immediately any unauthorized copying or distribution of content that is known or suspected by Customer or Authorized Users; and (iii) not impersonate another Authorized User or provide false identity information to gain access to or use the SaaS Service.
c. Accept that Customer and any and all third parties associated with Customer (i) will never have direct, privileged access to Provider's hosted infrastructure (servers, database, file storage, monitoring, dashboards, etc) and accordingly (ii) are restricted from installing or requiring installation of third-party software.
d. Accept that each hosted instance allows for one (1) terabyte of database storage. Customer will be notified when database storage usage thresholds exceed 80% of the then available storage and the database storage will be automatically expanded in accordance with **Exhibit A**. Additional database storage may be pre-purchased at any time.
e. Have and maintain the workstation configuration requirements as required by Provider; the current list of such requirements is set forth below but will be periodically updated on Provider's website:

Component	Minimum Specification
Processor	1 @ 2.0 Ghz or faster
Hardware	Mouse/trackpad, keyboard
Memory	4 GB minimum (8+ GB preferred)

Monitor Size	Minimum resolution: 1600x1200
Video Card	Standard
Disc space	100 GB minimum
Network interface	Secure internet connection
Operating system/version	Supported OS from Microsoft or Apple
Other required software and versions	Support browser versions of Customer's choice from the following list: Microsoft IE, Microsoft Edge, Firefox, Google Chrome, Apple Safari. Java Runtime Environment 8 only for automated printing and scanning.
Third-party applications and versions, what they are used for	MS Word, Adobe (This is for viewing and generating documents in Word and PDF format)

2.2 Secure Hosted Environment. Provider leverages world class cloud infrastructure providers like Amazon Web Service (AWS) and Microsoft Azure to host Customer data and software. These companies provide state-of-the-art compute power, storage and security. Provider's cloud hosting service results in a higher level of security, availability, fault tolerance and disaster preparedness than is generally available with on-premise solutions.

AWS offers an environment specifically for government applications called AWS GovCloud (US). GovCloud is an isolated AWS region designed to host sensitive data and regulated workloads in the cloud, helping customers support their U.S. government compliance requirements, including the International Traffic in Arms Regulations (ITAR) and Federal Risk and Authorization Management Program (FedRAMP). GovCloud is operated solely by employees who are vetted U.S. Citizens on U.S. soil. Root account holders of AWS accounts must confirm they are U.S. Persons before being granted access credentials to the region. All GovCloud data centers are in the continental United States. GovCloud, in conjunction with other security and procedural practices, helps to create a JTIS and FIPS 140-2 compliant environment. More information about GovCloud is available at https://aws.amazon.com/govcloud-us/

Microsoft Azure provides similar services and security.

2.3 Data Security. Provider builds the SaaS Service to meet data security standards and best practices set forth by the U.S. Department of Justice Criminal Justice Information Services (CJIS) Security Policy. Provider also references *Security Control Mapping of CJIS Security Policy Version 5.9 Requirements to NIST Special Publication 800-53 Revision 5* a mapping represents a "best fit" correlation between the CJIS Security Policy controls and NIST federal controls.

Data at Rest – The database in Provider's hosted solution is attached to an encrypted volume with a data key using the industry-standard AES-256 algorithm.

Data in Transit – Customer is hosted in AWS GovCloud (US). The connection to Customer's location is established using a site-to-site virtual private network (VPN) or over HTTP or TLS (HTTPS). When CJI is transmitted outside the boundary of a physically secure AWS data center, the transmission is encrypted utilizing FIPS 140-2 compliant ciphers with a symmetric cipher key strength of at least 128-bit strength.

2.4 Security Testing. Provider runs nightly vulnerability scans on its hosted infrastructure. This includes scans for vulnerabilities such as OWASP exploits, weak authentication, operating system and application versions, etc. It also checks for suspicious behaviors (or indicators of compromise) which are programs or people doing activity they don't normally do such as escalating privileges, logging into a server a named user never uses, accounts running scripts they previously did not, etc.

Provider undergoes monthly, internal penetration and vulnerability tests across its product lines using NIST 800-30 to assess the overall risk of any vulnerabilities found. Guidance for vulnerability tests come from the OWASP Application Security Verification Standard (ASVS) 4.0.

Provider has completed a System & Organization Control (SOC) 2 Type 1 audit, an independent third-party examination of Provider's information security controls. Provider can make available to Customer SOC reports upon Customer's reasonable request therefor, subject to the confidentiality provisions of this Agreement and any other procedures Provider may deem necessary to protect the security of such reports.

2.5 Security Breach. A security breach is an incident that results in unauthorized access to data, applications, networks or devices. In the event of a potential security breach, Provider will follow its Security Incident Response Plan. If a verified security breach occurs Provider will promptly notify Customer IT representatives or CSO.

2.6 Data Ownership. All the hosted Customer Data remains Customer's property during and after the lifetime of the hosting contract. Provider interaction with Customer Data is strictly limited to supporting Customer's operation.

2.7 Data Backups and Disaster Recovery. Provider backs up Customer's production database redundant storage available in multiple availability zones. At the end of the day, the final backup is archived, and the other hourly backups are overwritten the next day. Provider maintains fourteen days of archival data backup.

This gives Provider a Restore Point Objective (RPO) of two hours or less.

Provider snapshots Customer's running Compute Instances (CI) once every 24 hours and rotates

the CI backups every 14 days.

All backups and snapshots are encrypted at rest.

In a disaster scenario, should Customer's compute instances in the primary availability zone cease to respond for two hours Provider begins to restore from backups and snapshots to a different availability zone.

Provider's DR Restore Point Objective (RPO) is two hours or less and Provider's Recovery Time Objective (RTO) is twenty-four hours or less.

Copies of the systems database are available upon request for a transfer fee of $300 dollars and are provided as an MS SQL Backup file. Backup requests take 3 business days to process and will be made available on a secure transfer site for download.

Copies of the systems complete document file store are available upon request for a transfer fee of $40/Day + $0.20 USD/GB with a minimum of 10 calendar days to complete extraction. Shipping and handling will be added. For this extraction, all documents and other digital files stored in the case management system will be copied to an encrypted hard drive and delivered via a certified carrier. Transfer fee is subject to price change throughout the course of this agreement upon 60 days prior notice.

2.8 Cloud Maintenance. Provider (i) installs operating system (OS) updates as needed during maintenance windows and (ii) installs critical OS updates within 24-48 hours of a CVSS score of 7 or above