



## PROPRIETARY SERVICES AGREEMENT

This PROPRIETARY SERVICES AGREEMENT (this "Agreement") is entered as of 13 day of March 2023 (the "Effective Date") between Visual Computer Solutions, Inc., a New Jersey corporation (the "Company") and Township of Tinton Falls (the "Customer"). By placing an order for Services, the Customer and all outside vendors hired by the Customer (each a "Vendor") agree to be bound by this Agreement.

Services are governed exclusively by the terms of this Agreement. Subject to the terms and conditions hereof, the Customer hereby engages and appoints the Company to administer the Customer's off duty services program. Therefore, in consideration of the foregoing, the parties, intending to be legally bound, hereby agree to the following:

**1. TERM & TERMINATION** – The term of this Agreement shall commence on the Effective Date and continue unless terminated by either party upon thirty (30) days' prior written notice to the other party. If either party materially breaches this Agreement, the non-breaching party shall give the breaching party written notice of such breach and provide the breaching party with the opportunity to remedy any such breach within thirty (30) days of such notice. Failure to remedy any such breach within this time period will constitute sufficient grounds for termination without any further notice.

**1a.** The Company will commence on boarding for Jobs4Blue Services immediately following execution of this Agreement. Should an appropriate resolution by the applicable governing body be denied or fail to be approved, the Company will terminate this Agreement.

**2. ENTIRE AGREEMENT** – This Agreement, including any exhibits hereto, represents the entire agreement between the parties hereto and supersedes all prior and contemporaneous written or oral agreements and all other communications between the parties relating to the Services to be rendered. Any additions, deletions or modifications shall not be binding on either party unless accepted or approved in writing by duly authorized representatives of both parties.

**3. SERVICES** – The Customer engages the Company to provide Services and administer the Customer's off duty program, which shall include:

**3.1** Engagement with representatives, organizations and institutions desiring off duty assistance via phone, website, and email. The exchange of information includes but is not limited to; discussions regarding program rules and rates, account setup in accordance with customer rules and scheduling expectations, method in which off duty detail requests are received and processed and any and all other pertinent information required for engagement success.

**3.2** Management of off-duty payment processing in conjunction with the Customer existing payroll system if desired. The Company will provide payroll files, reports and payments to the Customer on a cadence consistent with the Customer's existing payroll process.

**3.3** Management of escrow and pre-payment accounts as well as invoicing and follow up of all collection activities as necessary to ensure an effective payment processing system.



**3.4** Accept the Customer's credit risk and finance, at sole cost to the Company, all financing float costs associated with invoicing process to the Customer.

**4. PAYMENT AND FEES:** The Customer agrees to pay the Company for Services in accordance with the terms of this Agreement. In consideration for the rendering of administrative off duty Services, the Customer shall charge the Customer's Vendor(s) a fee of eight (8)%. The scheduling fee will be applied to any off-duty revenue including officer pay, vehicle fees, and the Customer's administrative fees.

**4a. PAYMENT TO CITY:** The Company will provide payments to the Customer via ACH bank transactions for officers' pay and administrative fees collected on behalf of the Customer. The following data must be provided by the Customer.

- ACH Bank
- Account Type
- Routing #
- Account #

**5. PAYMENT TIMELINE** – The Company will report officer pay and applicable administrative fees in accordance with the current schedule of the Customer's regular overtime payment reporting process. The ACH payroll processing period begins once a job is closed by the employee. At that time, the Company requires one (1) business day to validate and verify the respective job. Once verification is complete, the date on which the Customer's next payroll period commences is the date in which payment will be rendered. Any job falling outside of these parameters will result in the Company issuing payment at the next or following pay period.

#### **6. Obligations of the Parties:**

**6.1** The Company shall have the ability to engage with the Customer and the Customer's personnel to the extent required with respect to the fulfillment of Services covered under this Agreement.

**6.2** If the Company requires access (either on-site or remotely) to the Customer's network or computer systems to perform Services, the Customer shall limit its use to those computer systems, files, software or services reasonably required to perform Services.

**6.3** Each party will hold the other party's Confidential Information (as hereinafter defined) in confidence and will not disclose any such Confidential Information to any third party without first obtaining the disclosing party's written consent. By way of illustration but not limitation, "Confidential Information" includes software, trade secrets, processes, formulas, source and object codes, scripts, data, programs, design, business plans, prices and costs, suppliers and customers and any information regarding the skills and compensation of the employees of the disclosing party.

**6.4** The Customer agrees to provide and make available off duty officers to the Company for assignment to special events and circumstances in response to requests from citizens or businesses that require off duty services. Should the Customer be unable to fulfill an off-duty requirement by a vetted citizen or business, the Company reserves the right to seek alternate off-duty services in accordance with the Customer's existing list of approved departments that would typically handle such services. Alternate services can include but are not limited to; recruitment of off duty officers from neighboring and approved police departments, counties, communities, or sheriff's offices as needed to fulfill said requests.



**6.5** The Company will provide and administer Services in accordance with professionally accepted industry standards.

**6.6** The Customer will provide reasonable working space and access to the Customer's facility as may potentially be required for the implementation and training required for the successful completion of said services.

**6.7** While at the Customer's facility or remote work of any kind, the Company shall observe and follow all work rules, policies and standards of the Customer including but not limited to, handling of intellectual property, security and all of the Customer's applicable facility protocol.

**6.8** The Company shall provide a primary account manager responsible for understanding and delivering off duty Services in accordance with the Customer rules and processes.

**6.9** The Company shall keep and maintain systematic records of all Services purchased by the Customer. Records can include but are not limited to; job details, payments, expenses, organizational profiles, and any financial records, procedures or documentation pertaining to the Company's performance under the terms of this Agreement. The Company shall preserve and maintain all records according to the longest of the following two periods:

**6.9a.** In accordance with the record retention period mandated by any applicable law. In the event of a legal matter that requires preservation of certain records, the Company shall suspend destruction of such records as requested by the Customer or any authorized governmental body.

**6.9b.** During the term of this Agreement, and thereafter, in accordance with applicable record retention, the Customer shall have the right to inspect, copy and audit those records identified in this Section during regular business hours. This right shall include, but not be limited to the right to inspect, copy and audit any records that may pertain to invoice records, contracts with third parties and payment relating to said records.

**6.10** The Company reserves the right to work with only credit worthy Vendors/customers and stipulates the option to refuse Services to those Vendors/customers that are deemed non-credit worthy or those Vendors/customers that reflect past due invoices (60) days or older.

**7. INDEPENDENT CONTRACTOR** – The Customer acknowledges that the Company is an independent contractor that is responsible for all taxes and other expenses attributable to the rendering of off duty administrative Services to the Customer. This Agreement is not intended to and shall not be construed to create a joint venture, partnership, or employer/employee relationship between the parties. Neither the Company nor its employees or agents shall look to the Customer for vacation pay, sick leave, retirement benefits, social security, disability or unemployment insurance benefits, or other employee benefits; nor shall the Customer, its Vendor(s) or their respective employees or agents look to the Company for the same. Neither the Company nor the Customer shall be or become liable or bound by any representation, act, or omission whatsoever of the other made contrary to the provisions of this Agreement.

**8. PROPRIETARY MATERIAL** – All intellectual property rights in all documents, data, know-how, methodologies, software, and other materials provided by or used by the Company in performing the Services and developed or acquired by the Company prior to or independently of this Agreement (collectively, "Pre-Existing Materials") shall be owned exclusively by the Company and its licensors. The Company hereby grants Customer a limited, revocable, fully paid-up, royalty-free, non-transferable, non-sublicensable, worldwide, non-



exclusive license to use, display, reproduce, any Pre-Existing Materials to the extent incorporated in or otherwise necessary for the use of any deliverables created for the Customer. All other rights in and to the Pre-Existing Materials are expressly reserved by the Company.

**9. LIMITATION OF LIABILITY** – EXCEPT FOR OBLIGATIONS TO MAKE PAYMENT OR INDEMNIFICATION OBLIGATIONS, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR: (A) ANY LOSS OF USE, REVENUE, OR PROFIT [OR LOSS OF DATA] OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; OR (B) DIRECT DAMAGES OF MORE THAN THE AGGREGATE AMOUNTS PAID OR PAYABLE TO COMPANY IN THE SIX MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

**10. VENDOR FINANCIAL OBLIGATIONS:** All credit-worthy Vendors are offered a maximum of N15 payment terms. The Company accepts credit risk on all vendors and finances the financial float associated with such payment terms.

**10.1** The Company reserves the right to deem any Vendor non-credit worthy and require pre-payment from such Vendor.

**10.2** A Vendor designated as non-credit worthy has the option to pre-pay for all off-duty Services via check, credit card or escrow account. The Company can impose a 4% finance fee for the processing of associated credit card payments.

**10.3** The Company reserves the right and ability to charge a late fee of 1.5% per month to a Vendor on all invoices aged thirty (30) days and over.

**11. INDEMNIFICATION** – Each party (“Indemnifying Party”) shall indemnify, defend and hold harmless the other (“Indemnified Party”), its agents, servants, employees, officers, directors, attorneys, subsidiaries and assigns from and against any and all third party claims, losses, damages, liabilities and expenses (including but not limited to, reasonable attorney fees and court costs) arising out of or in connection with the Indemnifying Party’s (a) fraudulent or grossly negligent acts or omissions, or (b) material breach of any representations, warranties or obligations contained herein; *provided that*, such claims, losses, damages and liabilities were not caused in whole or in part, by any act or omission of the Indemnified Party. In addition, the Indemnified Party must promptly notify the Indemnifying Party in writing of any such claim and the Indemnifying Party is permitted to control the defense and any settlement of such claim as such defense or settlement shall not include an admission of guilt or financial obligation on the Indemnified Party. The provisions of this Section shall survive any termination, expiration, or cancellation of this Agreement.

**12. SEVERABILITY** – The provisions of this Agreement shall be deemed severable, and if any portion of the Agreement shall be held invalid, illegal or unenforceable for any reason, the remainder of the Agreement shall be effective and binding upon both parties, unless to do so would clearly violate the present and legal intention of the parties hereto.

**13. INSURANCE** – During the term of this Agreement, the Company shall, at its own expense, maintain and carry insurance in full force and effect with financially sound and reputable insurers, that includes, but is not limited to: (a) Commercial General Liability with limits no less than Two Million Dollars (\$2,000,000.00) per occurrence combined single limit bodily injury and property damage, and Three Million Dollars (\$3,000,000.00) general aggregate; (b) Worker's Compensation with limits no less than the minimum amount required by



applicable law; (c) Professional Errors and Omissions Liability Insurance with coverage of at least Two Million Dollars (\$2,000,000.00) per occurrence and an annual aggregate limit of at least Three Million Dollars (\$3,000,000.00). Upon the Customer's request, the Company shall provide the Customer with a certificate of insurance from the Company's insurer evidencing the insurance coverage specified in this Agreement. For the avoidance of doubt, employees of the city, town, municipality, etc... and/or Customer will not be covered under the Company's worker compensation insurance.

**14. SURVIVAL** - All sections inclusive of this Agreement shall survive the expiration or termination of this Agreement in accordance with their terms.

**15. NOTICE** – Any notice required or permitted to be given under this Agreement shall be in writing and deemed effective if either delivered in person or via overnight courier, facsimile or first-class mail, certified with return receipt requested or email.

Notices to the Customer shall be delivered to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Notices to the Company shall be delivered to:

Visual Computer Solutions, Inc.  
4400 US Highway 9  
Freehold, NJ 07728  
Attn: Jobs4Blue Operations Manager

**16. ASSIGNMENT** – This Agreement is not assignable or transferable by the Customer without the Company's prior written consent. This Agreement is not assignable or transferable by the Company without the written consent of the Customer, which consent shall not be unreasonably withheld or delayed.

**17. GOVERNING LAW-VENUE** – This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New Jersey, USA, without regards to the principles of conflicts of laws. Any action or proceeding arising from or relating to this Agreement shall be settled by binding arbitration in Monmouth County, New Jersey, in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect. Judgment upon the award rendered may be entered and enforced in any court of competent jurisdiction..

**18. REVIEW OF AGREEMENT** – It is hereby acknowledged that the Customer has had ample opportunity to review and consider the terms of this Agreement and to review this Agreement with the Customer's counsel and has voluntarily agreed to the terms presented, including, without limitation, to waive any other rights it may have, in consideration of the Agreement set forth herein.

**19. COUNTERPARTS** - Each individual executing this Agreement of a party hereto represents and warrants that such individual is duly and authorized to act on behalf of such party, with full right and authority to execute this Agreement and to bind such party with respect to all of its obligations hereunder. This Agreement may be executed in counterparts by original or electronic signature, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.



**20. FORCE MAJEURE** – Neither party shall be responsible for delays or failures (including any delay relative to prosecution of such services) if such delay arises out of causes beyond its control. Such causes can include, but are not limited to; acts of God, acts of terrorism, fires, floods, epidemics, riots, quarantined restrictions, strikes, freight, embargoes, earthquakes, electrical outages, severe weather or any other natural disaster.

IN WITNESS HEREOF, the parties hereto execute this Agreement as of the date set forth above.

**COMPANY** – VISUAL COMPUTER SOLUTIONS, INC.

By: Michael Babulski 

Title: Product Specialist

Date: March 13, 2023

**CUSTOMER** – Township of Tinton Falls

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_