



## MEMO

TO: **DDA Board**  
Upendo Shabazz, Chairwoman  
Robert Samuels, Vice Chair  
Howard Pincus  
Clint Fowlkes  
Mary Hurley Lane  
Bob Sanders  
James Hansen

FROM: Catherine Ast

RE: Professional Security Consultants Agreement

DATE: Tuesday, October 18<sup>th</sup>, 2016

---

The following agreement is our proposed renewal for security services. Staff has extensively discussed the use of an SUV and determined that it is not the best options at this time. Instead, staff has been researching better quality utility vehicles that will allow the same access as golf carts but more visibility and quality than we currently have.



ALTERNATIVE  
UTILITY  
VEHICLES



EASILY CUSTOMIZED

## **SECURITY AGREEMENT**

THIS AGREEMENT, made on the \_\_\_\_\_ day of November, 2013, between the West Palm Beach Downtown Development Authority, a special taxing district organized under the laws of the State of Florida, located at 301 Clematis Street, Suite 200, West Palm Beach, Florida 33401 (hereinafter referred to as the DDA) and Professional Security Concepts, Inc., a California for-profit corporation registered to do business in the state of Florida, located at 11454 San Vicente Blvd. Los Angeles, CA 90049 and having local offices located at 700 South Rosemary Avenue, West Palm Beach, FL 33401, (hereinafter referred to as PSC).

**WHEREAS**, the DDA and PSC entered into an agreement on November 20, 2013 for PSC to provide security services for the Downtown Area Security Program; and

**WHEREAS**, the DDA Board has determined that it is in the best interests of the public for PSC to continue to provide security services; and

**WHEREAS**, the DDA and PSC mutually desire to enter into a new agreement for security services.

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

### **Section 1. Term of Agreement**

a) This Agreement shall commence on October 18, 2016, effective retroactively to October 1, 2016, and shall terminate at the end of the day on September 30, 2019. The obligations of DDA under this Agreement are subject to the availability of funds lawfully appropriated for its purpose by DDA.

b) This Agreement may be extended for two (2) additional three (3) – year terms, without need for notices or additional action being taken by either party hereto. However, unless waived or otherwise agreed to by the parties, this Agreement shall not be extended if either party notifies the other in writing by August 1<sup>st</sup> that it does not desire to extend the Agreement beyond its scheduled expiration date. If either party desires to extend the Agreement with changes to the Agreement for the additional term, that party shall so notify the other party in writing no later than August 1<sup>st</sup> of the last year of the term or the then expiring extended term. Any changes agreed to by the Parties shall be made by written amendment to the Agreement signed by both Parties and any such amendment(s) shall be attached to the Agreement and become a part hereof. If the Parties cannot agree to any proposed changes, either Party may notify the other Party in writing by September 15<sup>th</sup> that it does not desire to extend the Agreement for the additional term. Unless such notice is given, the Agreement shall be automatically extended for the one (1) additional three (3) – year term on the same terms and conditions then in effect.

## **Section 2. PSC Services**

PSC shall provide Downtown Security Patrol Officers for the Downtown Area Security Program. The hours of operation, number of officers and location of the officers is specified in Exhibit A attached hereto and incorporated by reference into this Agreement. The DDA and PSC may mutually agree to amend the hours of service or number and location of officers during the course of this Agreement. The DDA may request different or additional services for special events.

## **Section 3. Payment for Services**

a) The DDA agrees to pay PSC at the weekly cost of \$10,010.00 for Downtown Security Patrol Labor Coverage. (See Attached Exhibit A). If service is provided at the staff level and hours specified in Exhibit A, the DDA will pay for 572 hours per week x 52 weeks = 29,744 hours. However, the parties agree that the DDA shall only pay for the actual number of hours worked by PSC, and PSC agrees to invoice the DDA only for the actual hours worked during the billing period.

b) The parties acknowledge that a significant factor in the DDA's selection of PSC is the presence of Mr. Willie Perez as the manager for the Downtown Area Security Program. Because of his unique skills, the parties agree that the DDA will pay Mr. Perez a management fee of \$513.07 per week for each week that Mr. Perez manages the Downtown Area Security Program, for a total of \$26,679.64 per year. These payments shall be included in PSC's invoices. PSC agrees to pay this money directly to Mr. Perez. Should Mr. Perez no longer manage the Downtown Area Security Program, the DDA shall no longer be obligated to pay this management fee and PSC shall cease including this fee on its invoices.

c) PSC shall provide and utilize one 4 – person golf cart or compact model patrol vehicle in performing its obligations in Exhibit A. PSC shall be responsible for providing insurance, and shall have the DDA named an additional insured on the insurance policy. This golf cart shall be billed at a rate of \$475.00 per month, for a total of \$5,700.00 per year.

d) The total cost for this contract shall not exceed \$555,000.00 for any one (1) year term, unless the DDA authorizes an increase in the total cost in writing prior to the additional services being performed.

e) The DDA agrees to pay PSC no later than ten (10) days after receiving an invoice from PSC. Any invoice that remains unpaid after the time provided above shall bear interest at the rate as provided for in Section 218.74 (4), *Florida Statutes* (2013).

#### **Section 4. Termination**

Notwithstanding the term provisions in Section 1, either the DDA or PSC may terminate this Agreement at any time during the term thereof by providing forty-eight (48) hours advance written notice to the other party. Such notice shall be provided to the DDA at the address above or to PSC at its local address above.

#### **Section 5. Indemnification**

The parties agree that PSC is an independent contractor and not an agent or employee of the DDA. PSC shall indemnify and hold the DDA harmless from any and all loss for claims, damages, bodily injury, or property damage, including but not limited to reasonable attorney's fees, arising out of the services provided hereunder to the extent caused by PSC's negligent, willful or intentional acts or omissions. The DDA shall indemnify and hold PSC harmless from any and all loss for claims, damages, bodily injury or property damage, including but not limited to reasonable attorney's fees, arising out the services provided hereunder to the extent caused by the DDA's negligent, willful or intentional acts or omissions subject to the limits of Section 768.28, Florida Statutes. However, the foregoing indemnification shall be operative only at such days, hours and/or times as PSC has officially been requested by the DDA to provide on-site services.

#### **Section 6. Insurance**

PSC agrees to add the DDA to its liability insurance policies and any golf cart insurance policy and provide the DDA with a certificate of insurance naming the DDA as an additional named insured. PSC agrees to give the DDA thirty (30) days notice prior to cancellation of any policy where the DDA is an additional named insured.

#### **Section 7. Law and Venue**

This Agreement shall be governed by the laws of the State of Florida. Venue for any action under this Agreement shall be in Palm Beach County, Florida. It is hereby understood and agreed that in the event any lawsuit in the judicial system, federal or state, is brought to enforce compliance with this Agreement or interpret same, or if any administrative proceeding is brought for the same purposes, each party shall pay its own attorney's fees and costs, including appellate fees and costs.

#### **Section 8. Binding Effect; Entire Agreement**

This Agreement shall be binding upon and inure to the benefit of the respective heirs, successors and assigns of the parties. This Agreement contains the entire Agreement between the parties; any and all prior or contemporaneous agreements or representations, oral, written or otherwise are hereby null and void. This Agreement and any attachments hereto can only be modified or amended by written agreement, signed and dated by both parties.

**Section 9. Public Records**

In accordance with Sec. 119.0701, *Florida Statutes*, PSC must keep and maintain this Agreement and any other records associated therewith and that are associated with the performance of the work contemplated herein. Upon request, PSC must provide the public with access to such records in accordance with access and cost requirements of Chapter 119, *Florida Statutes*. Further, PSC shall ensure that any exempt or confidential records associated with this Agreement or associated with the performance of the work contemplated herein are not disclosed except as authorized by law. Finally, PSC shall retain the records described in this paragraph throughout the performance of the work contemplated herein, and at the conclusion of said work, transfer to DDA, at no cost to the DDA, all such records in the possession of PSC and destroy any duplicates thereof. Records that are stored electronically must be transferred to the DDA in a format that is compatible with the DDA's information technology systems.

**Professional Security Consultants doing  
business as Professional Security  
Concepts**

\_\_\_\_\_  
Attest

(SEAL)

\_\_\_\_\_  
By: Shaul Maouda

Title: Senior Vice President

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

**Downtown Development Authority**

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

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

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



## MEMO

TO: **DDA Board**  
Upendo Shabazz, Chairwoman  
Robert Samuels, Vice Chair  
Howard Pincus  
Clint Fowlkes  
Mary Hurley Lane  
Bob Sanders  
James Hansen

FROM: Raphael Clemente

RE: Pedestrian Counting System – Springboard Agreement

DATE: Tuesday, October 18<sup>th</sup>, 2016

---

Taking into consideration the Boards questions regarding the length and terms, staff has reduced initial terms from five (5) years to three (3) years, with options to renew annually thereafter.

Startup costs were split into two (2) payments and years two (2) and three (3) will be billed on a quarterly basis.

The following is the final agreement proposed by staff for approval.

SPRINGBOARD INC. SERVICES AGREEMENT

This Services Agreement (this "Agreement") is made and entered into as of 20 September 2016 (the "Effective Date") by and between Springboard Inc., a Delaware corporation, (the "Company") with a principal place of business located at The CFO Center, 60 State Street, Suite 700, Boston MA02109 and the West Palm Beach Downtown Development Authority(the "Client") with a principal place of business at 301 Clematis Street, Suite 200, West Palm Beach, FL 33401 In consideration of the mutual promises contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

COUNTERS: 13

COST PER LOCATION PER ANNUM: \$2176.30

COST 3g PER ANNUM: \$639.00

TOTAL ALL LOCATIONS & 3G PER ANNUM: \$36,598.90

INSTALLATION FEE YR 1: \$9,139.00 +\$3000.00 PROJECT MANAGEMENT FEE

INITIAL TERM: 3 YEARS

\$48,737.90

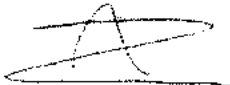
PAYMENT PROFILE:

NUMBER OF PAYMENTS	FREQUENCY	WHEN PAYABLE	AMOUNT OF EACH PAYMENT
1	Once	Starting upon date of this agreement, 50% of the installation fee Yr 1 fee	\$24,368.95
1	Once	Starting 1 month after the delivery of first days data – remaining 50% of the installation fee and Yr 1 fee	\$24,368.95
8	Quarterly	From Year 2	\$9149.73

TOTAL PAYMENTS: \$121,935.70

This Agreement (including the Terms & Conditions and all attachments hereto, which are hereby incorporated herein by this reference) is the entire agreement between the parties relating to the subject matter hereof and supersedes all prior and contemporaneous agreements, communications and course of dealings between the parties regarding the same subject matter. Each party hereto agrees to be bound by the terms of this Agreement and has caused this Agreement to be signed by its duly authorized representative.



<p><b>SPRINGBOARD INC.</b></p> <p>By:</p>  <p>Name: Steve Booth</p> <p>Title: CEO</p> <p>Date : 20 September 2016</p>	<p>CLIENT: Fremont Street Experience</p> <p>.....</p> <p>signature</p> <p>Name:</p> <p>Title:</p> <p>Date:</p>
--	--

1

EXHIBIT "A"

TERMS AND CONDITIONS

1. DEFINITIONS

In addition to the capitalized terms defined elsewhere in this Agreement, as used in this Agreement, the following terms have the following meanings:

"Authorized Users" means those employees, agents and independent contractors of the Client who are authorized by the Client to use the Subscription Services, the Software and the Documentation.

"Business Day" means any day of the year other than (i) any Saturday or Sunday or (ii) any other day on which banking institutions located in the State of Florida are required or permitted to be closed for business.

"Client Data" means the data contained in the reports prepared by the Company, the reports generated by the Company pursuant to this Agreement and made available to the Client, based upon or derived from Raw Data.

"Confidential Information" means any information (whether written, oral or graphical) received by a party from the other party that relates to the disclosing party's products, technology, research, development, customers or business activities, and which is confidential or proprietary to or a trade secret of, the disclosing party including, but not limited to, information and tangible and intangible property which may relate to proprietary products, concepts, marketing information, technology, processes, methodologies, drawings, specifications, programs, models, financial information and projections, formulae, data, know-how, developments, designs, improvements, software programs, marketing materials, plans and strategies, customer and supplier lists and other valuable business information and products.

"Documentation" means the documentation made available to the Client by the Company online via the Website, or such other website as the Company may notify the Client of from time to time, which sets out a description of the Subscription Services and the user instructions for the Subscription Services.

"Host" means the Company or individual, or other organisation that has agreed to host the System at the Location.

"Location" means the location where the System will be installed, as specified in the first page of this Agreement.

"Normal Business Hours" means 9:00 am to 5:00 pm Eastern Time each Business Day.

"Raw Data" means data collected by the System in connection with the Company's performance of the Services.

"Services" means, collectively, the Company's performance of the installation and configuration of the System, the collection of Raw Data at the Location, compilation, preparation and generation of the reports, Client Data and information and making the same available to Client via the Subscription Services, all substantially in accordance with the Documentation and in compliance with the terms and conditions of this Agreement.

"Software" means the Company's proprietary online software applications provided by the Company as part of the Subscription Services.

"Subscription Services" means the Client's access to information, reports, Client Data and Raw Data provided by the Company via the Website pursuant this Agreement.

"System" means the Company's proprietary system including, without limitation, equipment, computer hardware and software for collecting data relating to foot traffic at the Location, as described in the first page of this Agreement.

"Taxes" are any value-added, country or local sales, use or similar taxes assessed by any taxing authority, and any telecommunications excise taxes, except taxes on the net income of a party.

"Term" means, collectively, the Pilot Term, the Initial Term, and any Renewal Term.

"Virus" means any virus, "Trojan horse," timer, clock, counter, or other limiting design, instruction, or routine that erases data or programming or causes software or any hardware or computer system to become inoperable or otherwise incapable of being used in the full manner for which it was designed, or is designed to do so.

"Website" means the website operated by the Company located at [www.spring-board.info](http://www.spring-board.info).

## 2. THE SERVICES

2.1 The Company's Obligations. During the Term, the Company will perform the Services including the installation and configuration of the System at the Location, the collection of Raw Data, the compilation, preparation and generation of reports containing Client Data and the Raw Data, and the operation of the Website enabling the Client to access such reports, Raw Data and Client Data, subject to all of the terms and conditions of this Agreement.

2.1.1 Following the full execution of this Agreement, the parties shall mutually agree upon a date for the Company to commence installation and configuration of the System at the Location and, upon completion of such installation, shall agree in writing to the commencement of the Pilot Term.

2.1.2 Client Data and Raw Data, based upon data collected by the System, will be made available to Client in raw form and also will be presented in a written report in a format that is mutually agreed upon by the parties prior to the Company's commencement of the Services or such other format as the parties may mutually agree upon from time to time.

- 2.2 Changes. If either party proposes in writing a change to the Services, the other party will reasonably and in good faith consider and discuss with the proposing party the proposed change. No change to the Services shall be binding upon either party unless it is accepted by both parties in a written amendment of this Agreement. In the event the Client requests any such change (including, without limitation, a change in the Location, the components of the System or the scope of the reports or Client Data or Raw Data to be provided by the Company) that would change the economics of the Company's performance of the Services, the Company and Client will agree in writing upon a reasonable change in the amount of Fees payable by the Client hereunder.
- 2.3 Website Availability. The Company will exercise commercially reasonable efforts to ensure the Website is operational and the Subscription Services are available, excluding time for planned maintenance (the dates and duration of which shall be made available to the Client in advance of said outage) and unscheduled maintenance, provided that the Company shall use commercially reasonable efforts to provide the Client notice during Normal Business Hours at least six (6) hours in advance of such maintenance. The duration and frequency of planned maintenance and scheduled maintenance shall in no respects materially interfere with the Services to be provided to Client hereunder.
- 2.4 Support. The Company shall provide the Client, at no additional cost or expense to Client, the Company's standard support services during Normal Business Hours in accordance with the terms and conditions set forth in Attachment "1" attached hereto. Support services outside of Normal Business Hours will be provided at the Company's then-current rates.
- 2.5 Non-exclusivity. The Company's performance of the Services hereunder is non-exclusive. Nothing in this Agreement shall restrict the Company from providing the same or similar services to, or entering into any agreement with, or independently developing, using, selling or licensing any documentation, products and/or services, for any third party.
- 2.6 Compliance with Laws. The Company shall comply with all applicable laws and regulations in the course of performing the Services.

### 3. THE CLIENT'S OBLIGATIONS

- 3.1 Cooperation. The Client shall (i) provide the Company with reasonable access to the premises at the Location and furnish such information as the Company may reasonably request from time to time (and is in the possession of Client) as necessary for the Company's performance of the Services and (ii) reasonably cooperate with the Company in providing the Services. Without limiting the generality of the foregoing, the Client shall be responsible for obtaining all necessary licenses, permits, and consents for the Company to install and maintain the systems at the Locations (including, without limitation, data collected through the use of photography and video recording). The Client acknowledges that the Company's performance of the Services is dependent in part on the Client's cooperation and assistance. Accordingly, any failure or delay in the Company's performance hereunder shall be excused if such failure or delay was caused directly by the Client's failure to provide any material items or assistance in a timely manner.
- 3.2 Authorized Users. During the Term, the Client shall maintain an accurate list of all Authorized Users and, upon the Company's written request from time to time, the Client shall provide the Company within five (5) Business Days with a written list of the names of all then Authorized Users.
- 3.3 Security. The Client will use commercially reasonable efforts to prevent unauthorized access to and use of the Subscription Services and the Website. The Client will follow reasonable authentication

procedures provided by the Company from time to time regarding access to the Website. The Company will provide the Client a unique identification password that will provide access to the Website. The Client agrees to safeguard the confidentiality of the password and to take reasonable measures to ensure that its employees not disclose the password to any third parties.

3.4 Third Party Claims.

Except for claims with respect to infringement as set forth in Section 9

(a) The Client shall defend, indemnify and hold the Company, and its directors, officers, employees and agents, harmless from and against any and all claims, suits and proceedings brought by any third party and all resulting liabilities, damages, judgments, settlements, losses, costs and expenses (including attorneys' fees and court costs) resulting from or arising out of (i) the Client's use of the Client Data, reports or Raw Data (other than in connection with the viewing of same on the Website) and (ii) any grossly negligent act or omission by any of the Client's employees or contractors. Nothing herein shall be construed to waive any of the Client's rights as set forth under Section 768.28, *Florida Statutes*.

(b) The Company shall defend, indemnify and hold the Client, and its directors, officers, employees and agents, harmless from and against any and all claims, suits and proceedings brought by any third party and all resulting liabilities, damages, judgments, settlements, losses, costs and expenses (including attorneys' fees and court costs) resulting from or arising out of the performance by the Company, its employees, or contractors of the Services hereunder .

3.5 Compliance with Laws. The Client shall comply with all applicable laws and regulations in the course of its performance under this Agreement.

4. LICENSE GRANT

4.1 License. The Company grants the Client a non-exclusive, royalty-free license, subject to all of the terms and conditions of this Agreement, to access the Subscription Services and to use the Software and the Documentation by Authorized Users via the Website. The Client shall acquire no rights in, and the Company grants no rights with respect to, the Software.

4.2 Access by Authorized Users. The Client represents and warrants that at all times Authorized Users will access and use the Website, the Subscription Services, the Software and the Documentation in compliance with the terms and conditions of this Agreement.

4.3 Restrictions. The Client shall not, and shall not permit any third party to, (i) use of any of the Subscription Services in excess of the number of Authorized Uses specified on the first page of this Agreement, (ii) share any of the Subscription Services through any timesharing service, service bureau, or network, (iii) decompile, disassemble, or otherwise reverse engineer or attempt to reconstruct or discover any source code or underlying ideas or algorithms of any portion of the Software, except to the extent permitted by applicable law, (iv) copy, modify, duplicate, create derivative works of, frame, mirror, republish, download, display, transmit or distribute all or any portion of the Website, the Software or the Documentation (except that Client has the right to copy, modify, duplicate, create derivative works of, republish, display, transmit and distribute the Client Data, Raw Data, and the reports), or (v) use all or any portion of the Website, the Software or the Documentation to develop any product or service that is competitive with, or substantially similar to, the Software and/or the Documentation. The Client shall cooperate with the Company, and shall render all reasonable assistance requested by the Company, to assist the Company in preventing

and identifying any use of or access to the Subscription Services, the Software or the Documentation, by the Client's personnel or otherwise, in violation of the terms and restrictions of the license granted herein or any other breach of this Agreement.

4.4 Benchmarking. Pursuant to Section 4.3, the Client agrees to allow the Company to use the Client Data in an aggregated form for general benchmarking purposes. The Company agrees not to use the Client Data for benchmarking without the express permission of the Client, such permission not to be unreasonably withheld. In return, the Client may receive benchmarking data derived from the Company's other client data in the same aggregated form.

4.5 Website Access and Use of the Subscription Services. The Client shall not knowingly access, upload, store, distribute or transmit any Viruses in connection with accessing the Website and/or its use of the Subscription Services.

## 5. FEES AND PAYMENT

5.1 Fees. In consideration of the Services provided by the Company hereunder, the Client shall pay to the Company the monthly fee in the amount of the "Fees" specified on the first page of this Agreement (the "Fees"). The Fees shall accrue on the first day of each billing period during the Term. The Company shall invoice the Client, in advance of the billing period, and such Fees shall be due and payable within thirty (30) days following the date of the Company's invoice.

5.2 Payment. All payments will be made in U.S. dollars to the Company at the address specified on the first page of this Agreement, or such other address as the Company may designate in writing from time to time.

5.3 Late Payment. Any payment that is not paid when due shall, in addition to all other remedies available to the Company, bear interest at a rate of one percent (1%) per month, or the maximum rate permitted by law, (whichever is less) for the number of days such payment is delinquent.

## 6. OWNERSHIP

6.1 The Company's Property. The Company retains all right, title and interest in and to (i) the Website, the Services, and the Software and the Documentation, and any and all modifications, enhancements, derivative works and improvements of the Services, the Website, and the Software and the Documentation, and (ii) any and all methods, techniques, know-how, algorithms, discoveries, inventions, materials, ideas and other work product that is conceived, originated, prepared or reduced to practice by the Company in connection with its performance of the Services (including, without limitation, methodologies employed in producing Client Data and report interfaces, but excluding the Raw Data), and all intellectual property and proprietary rights in all of the foregoing recognized anywhere in the world therein.

6.2 The Client's Property. The Client shall have ownership rights in the Client Data, Raw Data and the reports prepared for Client and shall have the right to use the same (in the form provided by the Company or in any other form the Client decides) in connection with its business.

## 7. CONFIDENTIALITY

7.1 Confidential Information. The parties acknowledge and agree that, in the course of their performance under this Agreement, each party (a "Receiving Party") will have access to Confidential Information of the other party (a "Disclosing Party"). Notwithstanding anything to the contrary, the

Software and the Documentation are the Confidential Information of the Company and all Client Data and Raw Data is the Confidential Information of the Client.

7.2 Confidentiality. With respect to Confidential Information received from a Disclosing Party during the Term and except where required by law or Court Order, the Receiving Party shall (i) maintain such Confidential Information in strict confidence and shall exercise the same degree of care to safeguard such Confidential Information as it uses to protect its own Confidential Information, but in no event exercising less than a reasonable degree of care, (ii) not use or reproduce such Confidential Information, except to the extent necessary to perform its obligations, or to exercise the rights granted to it hereunder, and solely for the purposes specified in the Agreement, (iii) not disclose any such Confidential Information, except to those of its employees and contractors with a need to know in order to perform its obligations, or to exercise the rights granted to it hereunder, and (iv) not disclose any such Confidential Information to any third party without the Disclosing Party's prior written approval and without first obtaining such third party's written agreement to maintain the confidentiality of the Confidential Information under terms and conditions at least as stringent as those set forth in this Section 7.2.

7.3 Exceptions. A Receiving Party shall not be obligated under Section 7.2 with respect to any information that it can document: (i) is or has become readily publicly available without restriction through no fault of such Receiving Party or its personnel, (ii) is rightfully received, without confidentiality obligations or restrictions on use or disclosure, from a third party lawfully in possession of such information and entitled to disclose such information, or (iii) was rightfully in such party's possession, without confidentiality obligations or restrictions on use or disclosure, prior to its disclosure by the Disclosing Party. Notwithstanding the requirements of Section 7.2, a Receiving Party may disclose such Confidential Information of the Disclosing Party to the extent it is required to do so under law or in a judicial or other governmental investigation or proceeding; provided, that the Receiving Party promptly notifies the Disclosing Party, to the extent permitted by law, of the requirement.

## 8. REPRESENTATIONS AND WARRANTIES

8.1 Mutual Representations and Warranties. Each party represents and warrants to the other that such party (i) is duly organized, validly existing and in good standing under the laws of the jurisdiction where it purports to be organized, (ii) has the full right, power and authority to enter into and fully perform its obligations under this Agreement, (iii) has taken all necessary corporate action to authorize and approve the execution and delivery of this Agreement.

8.2 The Company's Representations and Warranties. The Company represents and warrants to the Client that (i) the Services will be performed in a professional and workmanlike manner, (ii) it has all necessary rights to grant the license of the Subscription Services, the Software and the Documentation to the Client hereunder and (iii) the execution, delivery and performance of this Agreement by the Company does not conflict with any agreement or obligation to which it is a party or by which it may be bound. In addition, the Company represents and warrants that the Subscription Services will substantially conform to the Documentation. The foregoing warranty shall not apply to any third party software or if a failure of the Subscription Services to substantially conform to the Documentation is due, in whole or in part, to (a) any accident, abuse, attempted or actual modification by Client or the Company's misuse, improper installation or misapplication, of the Subscription Services or (ii) any malfunction of any communications hardware or software or internet connection used in conjunction with the Subscription Services.

8.3 Warranty Disclaimer. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 8.1 OR 8.2, THE SERVICES, THE SOFTWARE AND THE DOCUMENTATION ARE PROVIDED "AS IS" WITHOUT WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AND THE COMPANY DISCLAIMS ALL WARRANTIES INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF SATISFACTORY QUALITY, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE.

## 9. INDEMNIFICATION

9.1 Infringement Indemnity. The Company shall defend, indemnify and hold harmless the Client and its directors, officers, agents and employees (collectively, the "Client Indemnitees") against and from any claim, action or proceeding brought against the Client by a third party alleging that the Services or the use thereof by the Client as permitted in this Agreement infringes any valid United States patent or copyright or misappropriates any trade secrets of a third party and the Company agrees to pay all damages finally awarded against the Client Indemnitees resulting from such claim, action or proceeding (or settlements thereof).

9.2 Exceptions. The Company's obligations under Section 9.1 shall not apply to any claim that results from (i) any instructions, information or materials provided by the Client, (ii) any modifications to the Software and/or the Documentation made by Client, (iii) any unauthorized use of the Services by Client, (iv) any use of the Services by Client in combination with any software, technology, hardware, process, product or other property not provided by the Company or (v) continued use of the Services by the Client after written notice of the infringement. The Client shall indemnify the Company from any and all claims, liabilities, damages, settlements, costs and expenses related to a claim of infringement or misappropriation due to any action of the Client described in (i) through (iv) above. Should the Services, the Software or the Documentation become, or be likely to become in the Company's reasonable opinion, the subject of an infringement or misappropriation claim, the Company may, at its option and expense, (a) procure the right for the Client to continue using such Services, the Software and/or the Documentation, as the case may be, (b) replace or modify such Services, the Software and/or the Documentation, as the case may be, to make it non-infringing (subject to the reasonable satisfaction of Client, failing which Client may terminate this Agreement), or (c) if the neither of the foregoing remedies is reasonably practicable despite the Company's diligent efforts, terminate the this Agreement upon two (2) Business Days' prior notice to the Client without any liability or further obligation on the part of the Company (except for reimbursement of all Fees previously paid by Client). Nothing herein shall be construed to waive any of the Client's rights as set forth in Section 768.28, *Florida Statutes*. This Section 9 shall survive termination of this Agreement.

## 10. INSURANCE

10.1 Coverage. During the term of this Agreement, Company shall maintain and shall require any subcontractors to maintain Workmen's Compensation insurance in accordance with applicable law and liability insurance covering all aspects of its performance under this Agreement. Workmen's Compensation insurance shall be in amounts at least equal to the statutory minimum (but not less than \$500,000 per accident), and comprehensive general liability insurance and vehicular insurance covering all owned, non-owned and hired vehicles shall be in amounts of not less than \$2,000,000 for each occurrence involving injury to or death of one more persons, and/or property damage.

10.2 Cancellation and Certificates. Such insurance shall provide that any change in or cancellation of any such policies shall not be valid until the Client, has had thirty (30) days' notice in writing of such change or cancellation. Prior to performing any Services hereunder, Company shall procure and deliver to Client certificates of insurance executed by the insurance companies providing the aforesaid insurance and naming the Client, as additional insured.

## 11. LIMITATION OF LIABILITY

NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT OR OTHERWISE, TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE COMPANY SHALL NOT BE LIABLE, UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR (I) ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOST PROFITS OR LOST OR CORRUPTED DATA, (II) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS, TECHNOLOGY, SERVICES OR RIGHTS, OR (III) ANY AMOUNT IN EXCESS OF ONE HUNDRED TWENTY-FIVE PERCENT (125%) OF THE AMOUNT IN THE AGGREGATE PAID OR PAYABLE BY THE CLIENT HEREUNDER PRIOR TO THE DATE THE CAUSE OF ACTION GIVING RISE TO LIABILITY AROSE. The limitations in this Section 10 shall not limit the Company's liability for fraudulent misrepresentation, for infringement claims, or for death or bodily injury or property damage arising out of or resulting from Company's negligence or wilful misconduct. The Client acknowledges and agrees that the limitations of liability set forth in this Section 10 are reasonable and a fundamental part of this Agreement and that the Company would not enter into this Agreement without these limitations.

## 12. TERM AND TERMINATION

12.1 Term. This Agreement will commence on the Effective Date and continue in effect for the duration of the Pilot Term and the Initial Term, unless terminated earlier in accordance with Section 12.2. Upon expiration of the Initial Term, this Agreement will automatically renew for successive twelve (12) month periods (each, a "Renewal Term"), unless either party notifies the other party at least thirty (30) days prior to expiration of the Initial Term or the then-current Renewal Term, as the case may be, of its decision not to renew this Agreement.

12.2 Termination. Either party may terminate this Agreement upon written notice in the event such other party (i) for any reason after the completion of year one (1) under this Agreement (ii) commits a material breach of this Agreement and fails to cure such breach within thirty (30) days (ten (10) days in the event of a material breach of any of the Client's payment obligations hereunder) following notice thereof from the non-breaching party describing the breach in reasonable detail, (iii) ceases to do business in the ordinary course (without a successor), (iv) makes an assignment for the benefit of its creditors, commences any bankruptcy proceedings or other proceedings in the nature of bankruptcy proceedings, or has commenced against it any bankruptcy proceedings or other proceedings in the nature of bankruptcy proceedings that are not dismissed within ninety (90) days, or (v) is the subject of any proceedings relating to its liquidation, insolvency or for the appointment of a receiver or similar officer for it.

12.3 Suspension by Company/Termination by Client. In addition to its right to terminate this Agreement pursuant to Section 12.2 and any other right or remedy available to the Company, the Company may, at any time, suspend access to the Subscription Services upon notice if the Client breaches any of the terms or conditions of this Agreement. In addition to its right to terminate this Agreement pursuant to Section 12.2 and any other right or remedy available to the Client, the Client may



terminate this Agreement if the Subscription Services are suspended for more than five (5) consecutive days or more than ten (10) days (in the aggregate) during the Initial Term.

12.4 Effect of Termination. Upon expiration or any termination of this Agreement, (i) all licenses granted under this Agreement will automatically terminate immediately and such rights shall revert to the Company, (ii) the Client will immediately cease all access to and use of the Subscription Services and the Software, (iii) each party shall promptly return all Confidential Information (including all copies thereof) and other property of the other party in its possession and (iv) either the Client shall promptly pay to the Company the full amount of any accrued Fees as of the effective date of termination or expiration or the Company shall promptly pay to Client the full amount of any pre-paid Fees as of the effective date of termination or expiration, whichever case may be applicable. Notwithstanding the foregoing, it is acknowledged and agreed that upon termination, the Client shall have the right to retain any and all Raw Data, Client Data and reports provided to Client prior to the date of termination.

12.5 Survival. Termination of this Agreement does not relieve either party of any obligations accrued at the time of termination. The provisions of Sections 5.2, 5.3, 6, 7, 8, 9, 10, 12.4, 12.5, 13 and 14 shall survive expiration or termination of this Agreement for any reason.

### 13. FORCE MAJEURE

The Company shall have no liability hereunder for delay or failure in performance of its obligations under this Agreement if the delay or failure is caused by events or circumstances beyond the Company's reasonable control including, without limitation, acts of God, earthquakes, tsunamis, fires, floods, riots, wars, acts of terrorism, changes in laws or government requirements, strikes, lockouts or other serious labor disputes (whether involving the workforce of the Company or any other party), failure of a utility service or transport or telecommunications network, civil commotion, malicious damage, accident, breakdown of plant or machinery, storm or default of suppliers or sub-contractors. The Company shall use reasonable efforts under the circumstances to notify the Client of any such event and to resume performance as soon as reasonably practicable; provided, however, that notwithstanding the foregoing, the Client shall have the right to terminate as set forth in Section 12.3 in the event a force majeure suspends the Subscription Services for the time period described therein.

### 14. GENERAL

14.1 Assignment. Company shall not assign or delegate any of its rights or obligations under this Agreement without the Client's prior written consent and any purported assignment or delegation in the absence of such consent shall be deemed null and void; provided that the Company may assign and delegate its rights and obligations under this Agreement in connection with the sale of all or substantially all of the Company's business, or its merger or consolidation with another entity.

14.2 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of the parties.

14.3 Relationship of the Parties. The parties agree that they are each independent contractors and nothing in this Agreement will be deemed to establish a joint venture, partnership, agency or employment relationship between the parties. Neither party shall have any express or implied right or authority to assume or create any obligations on behalf of or in the name of the other party or to bind the other party to any other contract, agreement or undertaking with any third party.

- 14.4 Amendment. This Agreement may not be modified or amended, except by an instrument in writing executed by all parties hereto.
- 14.5 No Third Party Beneficiaries. Except for their permitted successors and assigns or as specifically otherwise provided in this Agreement, the parties hereto intend that no third party have any rights or claims by reason of this Agreement, nor shall any party have any rights or claims against any third party.
- 14.6 Notices. All notices and other communications hereunder shall be in writing, addressed to the party as set forth on the first page of this Agreement and delivered by facsimile (with a copy of the notice sent by certified mail), overnight courier service with tracking capabilities, or certified mail, return receipt requested, postage prepaid. A party may change its address for notices from time to time by providing notice to the other party pursuant to this Section 14.6. Notice shall be effective only upon receipt, except that notice shall be deemed received five (5) days after deposit in the mails. Notice by facsimile shall be deemed received the first business day following its transmission.
- 14.7 Headings; Construction. The headings of the Sections in this Agreement are intended solely for convenience of reference and shall be given no effect in the construction or interpretation of this Agreement. No party or its counsel shall be deemed to be the drafter of this Agreement and in the event this Agreement is ever construed by a court of law, such court of law shall not construe this Agreement or any provision thereof against any of the parties as the drafter of this Agreement.
- 14.8 Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be illegal or unenforceable, such provision shall be limited or eliminated to the minimum extent necessary so that the remainder of this Agreement will continue in full force and effect and enforceable.
- 14.9 Governing Law. This Agreement shall be interpreted and controlled by and construed and enforced according to the laws of the State of Florida without regard to conflicts of laws provisions thereof. The parties specifically submit themselves to the jurisdiction of the State Courts and of the Federal District Courts (if the same shall have jurisdiction) of the Northern District of the State of Florida, and each party agrees that such courts shall have the sole and exclusive jurisdiction over any and all disputes and causes of action arising out of or relating to this Agreement. Both parties agree that process may be served in the manner provided herein for giving of notices or otherwise as allowed by Florida or U.S. federal law. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover its costs and reasonable attorneys' fees.
- 14.10 No Waiver. Any waiver of any provisions of this Agreement or of any inaccuracy in or non-fulfilment of any of the representation, warranties or obligations hereunder or contemplated hereby, shall not be effective unless made in writing and signed by the party against whom the enforcement of such waiver is sought. A waiver given in any case shall only apply with respect to that particular act, omission or breach, and shall not be effective as to any further or subsequent act, omission or breach, regardless of whether they be of the same or similar nature.
- 14.11 Counterparts. This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which taken together shall constitute one and the same instrument. Delivery of a copy of this Agreement bearing an original signature by facsimile transmission or e-mail in PDF format will have the same effect as physical delivery of the document bearing the original signature.



ATTACHMENT "1"

STANDARD SUPPORT SERVICES TERMS MAINTENANCE

- 1 the Company shall provide support for the System by means of:
  - twice weekly dial in by the Company to the System to ensure the System is functioning correctly; daily automated data checking at each location
  - 24-hour telephone line for reporting suspected faults (this will consist of a message service out of Normal Business Hours); fault fixing remotely by dial in to the System if possible;
  - provision of an engineer at the Location if it is not possible to fix the fault by dialling in to the System.
  
- 2 The Company shall not be obliged to provide support:
  - if the Client or the Host has added to the System (or required the addition of) software or equipment which affects the operation of the System without the prior written consent of the Company; or
  - in respect of any fault arising as a result of vandalism, third party intervention, abuse or misuse of the System; or
  - in respect of any fault or error arising as a result of the failure by the Client or the Host to implement recommendations in respect of or solutions to faults previously advised by the Company.
  
- 3 The cost of replacement components if a fault is due to component failure shall be payable by the Client in addition to the Fees unless the System is still under warranty. All Systems supplied under the Services Agreement are warranted against all defects in material and workmanship for one (1) year from the date of installation. Should any System or component part prove defective within one (1) year, the Company will effect either a repair or replacement. The Company has the sole responsibility for granting a replacement product. Product warranties does not cover any damage due to storm, electrical surges or Acts of God.

PROVISION OF INFORMATION

- 4 The Company undertakes to provide the Client with access via the internet to the Website to access the Client Data.
- 5 The Company will supply the Client with user names and passwords to enable the Client to access the Client Data via the Website.
- 6 Access to the Client Data is designed to be available for 24 hours per day, 7 days a week, 365 days per year but the Client accepts that the provision of the Subscription Services is dependent upon communication and routing equipment which is beyond the direct control of the Company and that the Company shall have no liability to the Client should this Service not be continuously available, provided, however, that in the event that the Service is not available for more than five (5) consecutive days or more than ten (10) days (in the aggregate) during the Initial Term, the Client may cancel this Agreement .

- 7 The Company shall use all reasonable endeavours to upload information from the System to the Website on a daily basis so that Client Data generated on one day will be available to access via the Website the next Business Day. In the event that the Company is unable to upload the Client Data on a particular day for whatever reason, the Company will endeavour to do so the next Business Day and will continue with daily attempts until it is able to upload the Client Data.
- 8 The Company shall use its reasonable endeavours to check that all the Client Data generated by the System is accurate and to inform the Client within two (2) Business Days of any errors in such Client Data that are detected by the Company and which the Company will then correct.
- 9 The Company shall not be liable to the Client for failure to upload the Client Data to the Website; inaccurate Client Data; inability of the Client to access the Client Data; loss of the Client Data or unauthorised access to the Client Data as a result of:
  - failure of the internet;
  - failure of or interruption to the Client's or a Host's communication equipment or services or disconnection of the same; power failure at a Location(s); faults in, vandalism, abuse or misuse of or third party intervention in the System;
  - the Client losing its user names and/or passwords and/or disclosing the same to third parties; hacking by malicious third parties;
  - bugs or viruses on the System or the Website (if introduced by the Client) or on the Client's systems.
- 10 In the event that the System does not produce the Client Data or produces inaccurate Client Data or that the Client Data is lost for a particular day or days for whatever reason, the Company will use its software to estimate the Client Data for that particular day or days based on past Client Data and will upload the estimated Client Data as soon as reasonably practicable and advise the Client that such Client Data is an estimate.
- 11 The Company agrees to back up those of its systems upon which the Client Data is stored on a regular basis and to maintain back-up copies of its systems for a period of one month, or such longer period as may be required by law from time to time.