



MASTER SOFTWARE LICENSE AGREEMENT

between

Patriot Properties, Inc.

("Licensor")

having its principal place of business at:

123 Pleasant Street
Marblehead, Massachusetts 01945

and

City of Waukesha, Wisconsin

("Customer")

having its principal address at:

201 Delafield Street, Room 350
Waukesha, Wisconsin 53188

THIS MASTER SOFTWARE LICENSE AGREEMENT (the "**Agreement**") is dated effective as of the ____ day of _____ 2021 ("**Effective Date**") by and between Customer and Licensor. Customer and Licensor may each be referred to individually as a "**Party**" and together as the "**Parties**." The Schedules to this Agreement are attached or incorporated by reference.

1. DEFINITIONS.

The following definitions shall apply in this Agreement:

- 1.1. *Confidential Information.* All information disclosed by a party ("**Discloser**") to the other party ("**Recipient**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Customer Confidential Information includes Customer Data; Licensor Confidential Information includes the Software and associated services; and Confidential Information of each party includes the terms and conditions of this Agreement and all attached Schedules (including pricing), as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to Discloser, (ii) was known to Recipient prior to its disclosure by Discloser without breach of any obligation owed to Discloser, (iii) is received from a third party without breach of any obligation owed to Discloser, (iv) was independently developed by Recipient, or is not deemed to be confidential under applicable law, including, but not limited to, the Wisconsin Public Records Law, Wis. Stat. §19.31 to §19.37.
- 1.2. *Customer Data.* All data of Customer, whether proprietary or non-proprietary to Customer, converted for use with the Licensor Deliverables.
- 1.3. *Customer Materials.* All materials supplied by Customer in connection with this Agreement.
- 1.4. *Deliverables.* Those components, milestones, and/or materials, including, without limitation, the Software, documentation, maintenance modifications, and enhancements to be completed by one Party and delivered or otherwise provided to the other Party in accordance with the terms of this Agreement. Deliverables can mean either Deliverables required from Licensor ("**Licensor Deliverables**") or Deliverables required from Customer ("**Customer Deliverables**").
- 1.5. *Documentation.* The written description of the functions and use of the Software.
- 1.6. *Error.* (i) any error or defect resulting from an incorrect functioning of Software caused by the Software's failure to meet a Functional Specification; or (ii) any error or defect resulting from an incorrect or incomplete statement in Documentation caused by the failure of the Software and/or the documentation to meet a Functional Specification.
- 1.7. *Functional Specifications.* The functions and/or criteria for the Software described as documentation related to the Software or as described in the Schedules.
- 1.8. *Intellectual Property.* All interests of any kind including: (i) trade secrets, (ii) copyrights, (iii) derivatives, (iv) documentation, (v) patents, (vi) the Software, (vii) technical information, (viii) technology, and (ix) any and all proprietary rights relating to any of the foregoing.
- 1.9. *New Product.* Any change or addition to Software and/or related documentation that: (i) has a value or utility separate from the use of the Software and documentation; (ii) may be priced and offered separately from the Software and documentation; and (iii) is not made available to Licensor's customers generally without separate charge. In the event of any disagreement between the Parties with respect to whether a change or addition constitutes a New Product, the good faith determination of such issue by Licensor shall be final, binding, and conclusive. "New Product" does not include any web-based product described in section 2.5.
- 1.10. *Statement of Work.* The attached SCHEDULE A and/or Addendum(s) that provides the written description and specifications for the services to be provided by Licensor to Customer, including the Deliverables and milestone, delivery, and acceptance schedules.
- 1.11. *Software.* The Licensor software and any Third-Party Software supplied by Licensor pursuant to this Agreement as described in the attached SCHEDULE A.
- 1.12. *Software Acceptance Date.* The date of acceptance of the Licensor Deliverables by Customer as described in this Agreement or the date that Customer uses the Software in a live environment, whichever is sooner.
- 1.13. *Taxes.* All federal, state, local, or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, capital stock, franchise, profits, withholding, social security (or similar taxes), unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated, or other taxes of any kind, including without limitation any interest, penalty, or additions, whether or not disputed.

- 1.14. *Test Validation Criteria.* The acceptance criteria for the Licensor Deliverables, including, without limitation, the Software, set forth in the Statement of Work.
- 1.15. *Third-Party Data.* Data, information, or any other materials (in whatever form) not owned or generated by or on behalf of Customer.
- 1.16. *Third-Party Software.* Software which is proprietary to any third party (other than an affiliate of Licensor) which is or will be used by Licensor for the purposes of providing Software and/or services pursuant to this Agreement.
- 1.17. *Warranty Period.* The one-year period commencing on the installation of the Software.

2. LICENSE.

- 2.1. *License.* Licensor grants the Customer a license to the Software and Licensor Deliverables described in the attached SCHEDULE A in accordance with the terms and conditions of this Agreement. Licensor will perform the services described in this Agreement.
- 2.2. *Scope of License Limited.* The right of Customer to use the Software and associated documentation is for Customer's internal use only and limited to the field of use described in the attached SCHEDULE A. No title or ownership in the Software or documentation is transferred to Customer. Customer shall not copy or in any way duplicate the Software, except for necessary backup and archival procedures approved by Licensor in advance and in writing. Only Customer's employees and necessary contractors acting in the proper scope of their services to Customer may access or use the Software or documentation. Customer shall not adapt, modify, reverse engineer, decompile, or disassemble, in whole or in part, any of the Software and/or any documentation.
- 2.3. *Additional Software.* Customer may license additional Software hereunder by execution of a subsequent Schedule and/or Addendum. "Additional Software" shall not mean any web-based product to which Licensee migrates pursuant to section 2.5.
- 2.4. *Restrictions.* Customer shall not remove, edit, alter, abridge, or otherwise change in any manner any Licensor Intellectual Property notices. Customer may not, and may not permit others to reverse engineer, decompile, decode, decrypt, disassemble, or in any way derive source code from, the software or Service; modify, translate, adapt, alter, or create derivative works from the Service; copy (other than one back-up copy), distribute, publicly display, transmit, sell, rent, lease or otherwise exploit the Service; or distribute, sublicense, rent, lease, loan or grant any third party access to or use of the Service to any third party.
- 2.5. *Migration to Upgraded Product.* If, at any time within thirty-six (36) months after the Software Acceptance Date, Licensor makes available for retail sale a web-based product that is intended to perform the functions performed by the Software, then Licensor shall migrate the Customer to that web-based product without additional fee, this Agreement shall continue in force according to its terms, and all references herein to "Software" shall be deemed to refer to the web-based product. Customer shall execute any additional documentation reasonably requested by Licensor to effect the migration, provided it does not conflict with any of the terms of this Agreement. If the Patriot Software is migrated to a Licensor-hosted environment, a recurring hosting fee will be added to the Fee Schedule. Licensor will waive migration and upgrade fees for one such migration.

3. FEES, INSTALLATION CHARGES, AND TAXES.

- 3.1. *License Fees.* The license fees for the Software are set forth on the attached SCHEDULE B. Subsequent orders shall be at the fees in effect at the time of receipt by Licensor of any applicable subsequent Schedule and/or Addendum executed by Customer and Licensor. Fees resulting from the provision by Licensor to Customer of Third-Party Software are passed through by Licensor to Customer, and, in that context, such fees payable by Customer shall increase, and such increase shall be payable, as and to the extent of any such fee increases payable by Licensor.
- 3.2. *Installation and Services Fees.* Customer shall also pay for installation of Software and any other services required under that Agreement or requested by Customer. Other services will be performed at the then prevailing fees, plus any travel expenses required, including reasonable mileage, airfare, meals, lodging, and similar expenses. Meals will be billed at the applicable GSA per diem rate.
- 3.3. *Taxes.* Customer is additionally liable for any applicable federal, state, or local Taxes (exclusive of income or gross receipts Taxes properly payable by Licensor) and other fees or assessments incurred as a result of the use of the Software by Customer.
- 3.4. *Currency.* All Fees listed shall be interpreted as being in United States dollars (USD), unless otherwise stated.

4. DELIVERY AND ACCEPTANCE.

- 4.1. *Delivery.* Each Party shall timely perform delivery of its required Deliverables in accordance with the Statement of Work, including the delivery schedule specified therein. Customer shall pay or reimburse Licensor for all costs of shipping Software

to Customer, including freight, insurance, and special packaging charges, if any. The carrier, method of shipment, and other matters relating to shipment shall be determined by Licensor. Customer is responsible for movement into or within Customer's premises, site preparation per Licensor requirements, and other site expenses required for installation.

- 4.2. *Testing.* Testing of Licensor Deliverables shall be completed by Customer in accordance with the Test Validation Criteria within fifteen (15) days following initial delivery to Customer.
- 4.3. *Installation.* Within thirty (30) days following completion of testing of the Licensor Deliverables, Licensor shall install the Licensor Deliverables at the Customer's facilities for acceptance testing.
- 4.4. *Acceptance.* Within sixty (60) days following completion of installation, Customer shall either: (i) accept the Licensor Deliverables in writing; or (ii) reject the Licensor Deliverables and provide Licensor with a statement of Errors resulting in operation not in conformance with the Test Validation Criteria. Licensor will correct any Error and redeliver the Licensor Deliverables to Customer within thirty (30) days following receipt of the statement of Errors. Customer shall, within ten (10) days following such redelivery, accept or reject the redelivered Licensor Deliverables in accordance with the procedures set forth herein. Failure by Customer to provide a statement of acceptance or statement of Errors within either of the ten (10) day periods specified herein shall be deemed to be acceptance by Customer of the Licensor Deliverables.

5. PAYMENT.

- 5.1. *Fees for License of Software.* Payment of Software license fees, installation fees, and other fees on the initial License Summary will be made in installments as defined in SCHEDULE B.
 - 5.1.1. Fees for installation of the Software including data conversion, system implementation, training, and forms generation, as indicated on the attached SCHEDULE B, are payable within thirty (30) days following invoice by Licensor.
 - 5.1.2. The pricing during any renewal term may increase by up to three percent (3%) above the applicable pricing in the prior term. Except as expressly provided in the applicable Statement of Work, renewal of promotional or one-time priced subscriptions will be at Licensor's applicable list price in effect at the time of the applicable renewal. Notwithstanding anything to the contrary, any renewal in which subscription volume for any Software or service(s) has decreased from the prior term will result in re-pricing at renewal without regard to the prior term's per-unit pricing.
 - 5.1.3. If any Third-Party Software is obtained directly from Licensor, Customer will pay Licensor fifty (50%) percent of all fees at the time Customer signs this agreement, twenty-five percent (25%) of fees after products are installed at Customer's facility and twenty-five percent (25%) upon Customer's use of the Third-Party Software or the date of Acceptance, whichever comes first. Payments for all Third-Party Software provided by Licensor as described in the attached SCHEDULE B shall be payable at least thirty (30) days prior to due date for payment by Licensor to Licensor's provider. These fees, if applicable, shall be detailed in SCHEDULE B.
- 5.2. *Fees for Subsequent Licenses.* Payment of license fees, installation fees, and other fees to Licensor on any subsequent Schedule and/or Addendum shall be made as specified in such Schedule and/or Addendum.
- 5.3. *Ancillary Charges and Out of Pocket Expenses.* All additional or ancillary charges (e.g., additional training charges) and all out of pocket expenses of Licensor (e.g., travel expenses) which are payable by Customer hereunder shall be due and payable within thirty (30) days following invoice by Licensor.
- 5.4. *Failure of Payment.* In the event payment is not made as specified in this Agreement, Customer shall pay interest at the rate of one and one-half percent (1.5%) per month (or the highest applicable legal rate, whichever is lower) on the outstanding overdue balance for each month or part thereof that such sum is overdue; provided, however, that if Customer is a governmental agency or authority subject to a "Prompt Payment" or similar statutory requirement for the transaction contemplated in this Agreement, such statutory requirement shall control to the extent the same is inconsistent with the requirements of this section 5.4.

6. WARRANTY, EXCLUSIONS, AND DISCLAIMER.

- 6.1. *Software Warranty.* Licensor warrants that the Software shall conform to the Functional Specifications and will be free of Errors during the Warranty Period. Licensor's sole obligation and responsibility to Customer under the foregoing warranty is to remedy, at no cost to Customer, any such Error reported to Licensor during the Warranty Period. Notwithstanding the foregoing or any other term or provision of this Agreement, with respect to Third-Party Software provided by Licensor hereunder, Licensor makes no warranties, but shall, to the extent legally permitted, pass through to Customer all warranties provided by the original licensor/manufacturer.
- 6.2. *Software Warranty Exclusions.* The foregoing warranties do not apply to any of the following:

- 6.2.1. Damage arising from any cause beyond Licensor's reasonable control, including, without limitation, damage due to the improper operation or use of Software by Customer, abuse or misuse of Software other than as designed or intended, malfunctions caused by alteration or tampering, or any reason specified in section 15 of this Agreement.
 - 6.2.2. Damage resulting from uninstallation and reinstallation of Software after its initial installation.
 - 6.2.3. Malfunction or breakdown of Software due to attachment to, or addition or use of, software not supplied by Licensor with the Software, or because of attachment of the Software to hardware or software by anyone other than Licensor, or as a result of hardware associated problems.
 - 6.2.4. Damage, malfunction, or breakdown of Software due to improper operating environment, including, without limitation, temperature, humidity, dust, or static charge.
 - 6.2.5. Destruction or damage, in whole or in part, of Software by any Person other than Licensor.
 - 6.2.6. Any harm or damages caused by any Third-Party Software or Third-Party Data providers.
- 6.3. **SOFTWARE WARRANTY DISCLAIMER.** EXCEPT FOR THE EXPRESS WARRANTIES STATED IN THIS SECTION 6 OF THIS AGREEMENT, LICENSOR DISCLAIMS AND CUSTOMER WAIVES ALL WARRANTIES ON THE SOFTWARE FURNISHED HEREUNDER, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

7. FUNCTIONAL SPECIFICATIONS.

Customer understands that such Functional Specifications shall be defined in accordance with Licensor standard applications and that any application and/or communication and/or functions not currently supported by Licensor shall be considered “customized” and, as such, may incur additional costs and delivery schedules beyond those stated and agreed to by Licensor.

8. TRAINING.

Licensor shall provide training in the operation and maintenance of the Software as described in attached SCHEDULE A. Customer may request additional training time and/or additional personnel to be trained, provided that any such additional training shall be chargeable to Customer at Licensor’s then current fee for the requested training, plus reasonable travel expenses if such training occurs anywhere other than Licensor’s facilities.

9. THIRD-PARTY SOFTWARE LICENSES.

- 9.1. *Integration with Third Party Applications.* Customer shall execute all documents reasonably requested by Licensor and will abide by all reasonable requirements with respect to all Third-Party Software licensed or sublicensed by Licensor to Customer under this Agreement, or necessary to the performance of the Software hereunder in accordance with the Functional Specifications, and Customer agrees to maintain in effect all required licenses and approvals of all applicable third parties. Licensor cannot guarantee the continued availability of Software and/or service features and may cease providing them without entitling you to any refund, credit, or other compensation, if for example and without limitation, the provider of Third-Party Data and/or Third-Party Software ceases to make that data and/or application available for interoperation with the corresponding Software and/or service features in a manner acceptable to Licensor.

10. RESTRICTIONS UPON DISCLOSURE OF CONFIDENTIAL INFORMATION.

- 10.1. *Protection.* Recipient shall use commercially reasonable care, but in no event less than the same degree of care it uses to protect its own most confidential and proprietary information, to prevent the unauthorized use, disclosure, publication, or dissemination of Discloser’s Confidential Information. Recipient shall provide Discloser’s Confidential Information to its employees and necessary contractors only on a “need to know” basis, and always subject to the terms of this Agreement. Recipient agrees to accept and use Discloser’s Confidential Information solely in connection with Recipient’s participation in, and solely with respect to, this Agreement. Recipient shall inform its employees and necessary contractors of these confidentiality obligations and shall take such steps as may be reasonably requested by Discloser to prevent unauthorized disclosure, copying, or use of Discloser’s Confidential Information. Recipient acknowledges that, in the event of a breach by Recipient of its obligations under this section 10, in addition to any other right or remedy available to Discloser, at law or in equity, Discloser will suffer irreparable injury, and shall be entitled to preliminary and final injunctive relief (without bond except as otherwise required by applicable law) in order to prevent any further or other breach or any unauthorized use of Discloser’s Confidential Information. Recipient shall notify Discloser immediately upon discovery of any prohibited use or disclosure of any of Discloser’s Confidential Information or any other breach of these confidentiality requirements (including by any third parties), and shall

fully cooperate with Discloser to assist Discloser in regaining possession of its Confidential Information and to prevent further unauthorized use or disclosure of the same.

- 10.2. *Limited Disclosure.* Recipient may disclose Confidential Information of Discloser if and to the extent required by any law, including but not limited to the Wisconsin Public Records law, Wis. Stat. §§19.31 through 19.37, judicial or administrative governmental request, requirement, or order, provided that Recipient shall take reasonable steps to provide Discloser sufficient prior notice in order to enable Discloser to contest such request, requirement, or order. Recipient shall, except as otherwise expressly provided by the terms of this Agreement, return all tangible Discloser Confidential Information, including, without limitation, all computer programs, documentation, notes, plans, drawings, and copies thereof, to Discloser immediately upon Discloser's request.
- 10.3. *Ownership.* All Discloser Confidential Information, including, without limitation, any and all adaptations, enhancements, improvements, modifications, revisions, or translations thereof created by Discloser or Recipient, shall be and remain the property of Discloser, and no license or other rights to such Confidential Information is granted or implied hereby. Except as otherwise expressly provided in this Agreement, all Discloser Confidential Information is provided "AS IS" and without any warranty, express, implied, or otherwise, regarding its accuracy or performance.

11. INTELLECTUAL PROPERTY INDEMNITY.

- 11.1. *Indemnification of Intellectual Property Infringement Claims.* In the event of any actual or threatened claims by a third party that the Licensor Deliverables infringe upon any Intellectual Property of such third party, Licensor will indemnify Customer with respect to such claims. Customer shall immediately notify Licensor of any such claim. For claims related to Third-Party Software, no indemnity is provided by Licensor, but Licensor shall, to the extent legally permitted, pass through to Customer any infringement protections with respect to Third-Party Software. The foregoing indemnity shall be ineffective if any of the Licensor Software has been modified, altered, or otherwise changed by Customer (or on behalf of Customer by any Person other than Licensor). Licensor will have no liability or obligation under this section 11 if any claim of infringement is based upon: (i) the combination, operation, or use of the Software with any component other than Licensor Intellectual Property, if such claim would have been avoided but for such combination, operation, or use; and/or, (ii) any derivative of any Licensor Intellectual Property created by any person other than Licensor. Licensor shall have sole control over the selection of counsel and the defense and settlement of any legal proceeding or other claim and Customer shall provide Licensor with all reasonable assistance in the defense of the same.
- 11.2. *Indemnification by Customer.* Customer will indemnify Licensor from any damages directly arising as a result of Customer's infringement upon a third party's intellectual property rights, or arising from Customer's violation of this Agreement ("Claim Against Licensor"), including reasonable attorney fees and court costs, provided Licensor promptly gives Customer written notice of the Claim Against Licensor.
- 11.3. *Remedy.* In the event of a third party claim that the Licensor Deliverables infringe the intellectual property rights of a third party, Licensor shall have the right to: (i) modify the allegedly infringing Licensor Deliverables to be non-infringing, provided that such modification does not adversely impact the functionality of the Software in any material respect; (ii) obtain a license or other rights to enable Customer to continue to use the applicable Software as contemplated in this Agreement, or (iii) to terminate this Agreement and return to Customer any unearned fees paid by Customer to Licensor.

12. RIGHTS IN SOFTWARE, DATA, AND MATERIALS.

- 12.1. *Licensor Ownership.* As between Licensor and Customer, Licensor shall be the sole owner of all right, title, and interest in and to the Software, all Licensor Deliverables, documentation, any suggestion, enhancement request, recommendation, correction or other feedback provided by Customer, and any and all copies or derivatives created by either Party, exclusive only of the Customer Materials. Customer hereby irrevocably grants, transfers, and assigns to Licensor, without reservation, all worldwide ownership rights, title, and interest, including, without limitation, any and all Intellectual Property which Customer may have or acquire, by operation of law or otherwise, in and to any or all of the Software, the Licensor Deliverables, documentation, and in and to any other Intellectual Property of Licensor, along with the good will of the business appurtenant to the use of any of the same. Customer further hereby irrevocably transfers and assigns to Licensor any and all moral rights Customer may have in and to such Software, the Licensor Deliverables, documentation, and in and to any other Intellectual Property of Licensor, and hereby forever waives and agrees never to assert any moral rights it may have during or after termination or expiration of this Agreement. Customer shall, at the request of Licensor, execute any and all documentation necessary to formally transfer such rights to Licensor. Customer shall promptly notify Licensor in writing if it becomes aware of any violation, infringement, or unfair competition related to the Licensor Intellectual Property. Customer agrees to allow Licensor full access to all relevant hardware, software, and material to determine compliance.

12.2. *Customer Ownership.* As between Licensor and Customer, Customer shall be the sole owner of all right, title, and interest in and to all Customer Materials. Licensor hereby irrevocably grants, transfers, and assigns to Customer, without reservation, all worldwide ownership rights, title, and interest, including, without limitation, any and all Intellectual Property rights, which Licensor may have or acquire, by operation of law or otherwise, in and to any or all of the Customer Materials. Licensor further hereby irrevocably transfers and assigns to Customer any and all moral rights Licensor may have in such Customer Materials, and hereby forever waives and agrees never to assert any moral rights it may have or obtain, during or subsequent to the termination or expiration of this Agreement. Licensor shall, at the request of Customer, execute any and all documentation necessary to formally transfer such rights to Customer.

13. SUPPORT AND MAINTENANCE SERVICES

- 13.1. *Maintenance Term.* The initial maintenance term will be one (1) year and will commence on the installation of a production ready version of Software. The term of maintenance services shall be automatically extended for successive one (1) year periods unless either Party gives the other Party not less than ninety (90) days prior to the conclusion of the then current term of maintenance services. Licensor may terminate the term of these maintenance services in the event Customer fails to make any payment when due to Licensor after ten (10) days' notice of such failure or in the event of the termination of Customer's license of Software. No termination shall relieve Customer of its payment obligations.
- 13.2. *Scope and Definitions.* Licensor shall provide maintenance and support services necessary to ensure that the Software and Licensor Deliverables operate in conformity with Functional Specifications and the documentation as described in this Agreement. The following terms shall apply to this section 13 and SCHEDULE C.
- 13.2.1. Critical Defect. An Error in the Software and Licensor Deliverables or documentation which renders the Software and Licensor Deliverables unable to perform a Functional Specification and for which a workaround is not available.
- 13.2.2. Non-Critical Defect. A defect in the Software and Licensor Deliverables or documentation that materially impacts the operation of the Software and for which a workaround is not available.
- 13.2.3. Telephone Support. The provision of general information and diagnostic advice and assistance concerning the use and operation of the Software and Licensor Deliverables via telephone. Telephone support is intended to be used by a limited number of people designated by Customer to communicate with Licensor about defects or problems. It is not a substitute for training of personnel by Customer.
- 13.2.4. Basic Maintenance Period. The Basic Maintenance Period commences on Monday and continues through Friday of each week (8 a.m. to 6 p.m., Eastern Time), except on the following recognized holidays ("Holidays"): New Year's Day, Martin Luther King Day, Presidents' Day, Memorial Day, Independence Day, Labor Day, Columbus Day / Indigenous Peoples' Day, Veterans Day, Thanksgiving Day, the day after Thanksgiving, Christmas Eve, and Christmas Day.
- 13.3. *Covered Maintenance.*
- 13.3.1. General. Maintenance services and telephone support will be performed by Licensor during the Basic Maintenance Period. Maintenance services do not include the costs of accessories and expendable supplies necessary to operate the Software and Licensor Deliverables.
- 13.3.2. Upgrades. Customer will receive all updated, patches and enhancements to the Software and Licensor Deliverables (except any New Product), including all related update releases and associated documentation.
- 13.3.3. Hardware Additions. Covered maintenance services includes consulting services in support of moving databases to, or installing the Software in, any new PCs or servers added by Licensee within three (3) years after the Software Acceptance Date. After that time, consulting services in support of migration will be a covered maintenance service, but performance of migration services for Customer will be billable at the rate specified in the then-current fee schedule.
- 13.3.4. Online Support and Telephone. Telephone support includes: (i) remote diagnostics; (ii) service desk and dispatch; (iii) question and answer consulting; and (iv) non-chargeable user error remedies. Remote diagnostics equipment is required at Customer locations for remote support, which equipment is to be obtained by Customer at its sole expense. Licensor may choose to request a copy of the client database to load in Licensor's offices in an attempt to either recreate the process or run the application to complete a process if time is of the essence.
- 13.3.5. Exclusions. Maintenance services do not include maintenance required by: (i) operator error or improper operation or use of the Software and Licensor Deliverables by Customer; (ii) modifications, repairs, or additions to the Software and Licensor Deliverables performed by persons other than Licensor, or damage to Software and Licensor Deliverables by Customer's employees or third persons; (iii) training services. Any maintenance service or related service or training

other than the maintenance services described above will be charged at Licensor's then current billable call maintenance rates in effect.

13.3.6. **Response Times.** Licensor will use its commercially reasonable efforts to respond within four (4) business hours (but only during the Basic Maintenance Period) of notice from Customer of the need for maintenance services or notice of a request for Online Support or Telephone Support. Any such notice from Customer shall, to the extent possible, identify all Critical Defects, and, in connection with the provision of any maintenance service, online support, and/or telephone support, Customer shall, at its own expense, provide its full good faith support and cooperation with Licensor's efforts at resolution. Non-Critical Defects will be corrected as soon as practicable or in a following update or release.

13.3.7. **Billable Call Maintenance.** Any maintenance service or related service or training other than covered maintenance services, as described in this section 13.3, will be charged at Licensor's then current billable call maintenance rates in effect. Such rates apply to time spent performing maintenance, including travel time. The minimum charge for billable call maintenance is one-half of one hour (1/2 hour). Should billable call maintenance services require travel to the Customer's site, Customer will also be invoiced for actual expenses of travel, including, without limitation, as applicable, mileage, air fare, meals, lodging, and similar expenses; provided, however, that, in the event Customer is a governmental agency or authority, travel expenses shall be limited in amount by applicable federal or state statutory requirements; and provided Customer approves of the necessity for travel in advance. All charges for billable call maintenance shall be due and payable within thirty (30) days following invoice by Licensor.

14. LICENSE TERMINATION OR EXPIRATION.

- 14.1. Licensor may terminate Customer's license to the Licensor Deliverables if Customer commits any material breach of the terms and conditions of this Agreement, including non-payment of any fees due to Licensor, if Customer does not cure any such default within ten (10) days after notice is given to Customer.
- 14.2. In addition to any other rights of termination specified herein, either Party may terminate this Agreement upon sixty (60) days prior written notice to the other in the event of the other's failure to cure a material breach within thirty (30) days after receipt of the terminating Party's written notice of default concerning the same.
- 14.3. Upon termination, Licensor shall return to Customer, at Customer request, all documents and items of any nature whatever, supplied to Licensor by the Customer or developed by Licensor in accordance with this Agreement, except for any software products developed by Licensor, which remain the property of Licensor.

15. EXCUSABLE DELAYS.

Notwithstanding any other term or provision of this Agreement, Licensor shall not be liable for delays in delivery, failure to deliver, or otherwise to perform any obligation hereunder when such delay or failure arises from causes beyond the reasonable control of Licensor, including, without limitation, such causes as acts of God or public enemies, labor disputes, supplier or material shortages, embargoes, rationing, acts of local, state or national governments or public agencies, utility or communication failures, fire, flood, storms, earthquake, settling of walls or foundations, epidemics, riots, terrorism, civil commotion, strikes, or war.

16. LIMITATION OF LIABILITY.

IN NO EVENT SHALL LICENSOR'S AGGREGATE LIABILITY UNDER THIS AGREEMENT EXCEED THE LICENSE FEES PAID BY CUSTOMER TO LICENSOR DURING THE SIX (6) MONTH PERIOD PRIOR TO THE ACCRUAL OF THE CLAIM. THIS LIMITATION DOES NOT APPLY TO OPERATING COST(S) OF LICENSOR'S MAINTENANCE OR SUPPORT OBLIGATIONS.

17. LIMITATION ON DAMAGES.

LICENSOR SHALL NOT BE LIABLE IN ANY EVENT FOR DAMAGES RESULTING FROM LOSS OF DATA, LOSS OF PROFITS, AND/OR LOSS OF USE OF PRODUCT, OR FOR ANY INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION OF LICENSOR'S LIABILITY SHALL APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR TORT, INCLUDING NEGLIGENCE. THIS LIMITATION DOES NOT APPLY TO OPERATING COST(S) OF LICENSOR'S MAINTENANCE OR SUPPORT OBLIGATIONS.

18. ALLOCATION OF RISKS.

CUSTOMER UNDERSTANDS AND AGREES THAT THE FEES CHARGED BY LICENSOR SPECIFICALLY REFLECT THE ALLOCATION OF RISKS AND EXCLUSION OF DAMAGES PROVIDED FOR IN THIS AGREEMENT.

19. MISCELLANEOUS PROVISIONS.

- 19.1. *Dispute Resolution.* The parties agree to give one another written notice of disputes arising out of this Agreement and will attempt to resolve disputes in a collaborative and cooperative manner in order to achieve mutual agreement through discussion and negotiation, with or without the assistance of a mediator appointed for that purpose.
- If the parties are unable to resolve their disputes within thirty (30) days of a party delivering written notice of an issue or dispute, the parties may agree to appoint a mutually agreed upon mediator to help them resolve the dispute, or by mutual agreement appoint an arbitrator to resolve the issue or dispute, but nothing in this Agreement precludes, restricts, inhibits or delays either party from at any time pursuing or enforcing its legal and equitable rights and remedies in any forum.
- 19.2. *Binding upon Successors and Assigns.* This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties hereto.
- 19.3. *Severability.* If any provision of this Agreement shall be invalid or unenforceable, such provision shall be deemed limited by construction in scope and effect to the minimum extent necessary to render the same valid and enforceable, and, in the event no such limiting construction is possible, such invalid or unenforceable provision shall be deemed severed from this Agreement without affecting the validity of any other term or provision hereof.
- 19.4. *Entire Agreement.* This Agreement, together with the Schedules and/or Addendum(s), constitutes the entire understanding and agreement of the Parties with respect to the subject matter of this Agreement, and supersedes all prior and contemporaneous agreements, understandings, inducements, and conditions, express or implied, written, or oral, between the Parties with respect thereto. The express terms hereof control and supersede any course of performance or usage of trade inconsistent with any of the terms of this Agreement. This Agreement may be executed electronically and in any number of counterparts, which will constitute one and the same agreement.
- 19.5. *Amendment and Waivers.* Any term or provision of this Agreement may be amended, and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively) only by a writing signed by the Party to be bound thereby. The waiver by a Party of any breach or default shall not be deemed to constitute a waiver of any other breach or default. The failure of any Party to enforce any provision shall not be construed as or constitute a waiver of the right of such Party to subsequently enforce such provision.
- 19.6. *Notices.* Whenever any Party desires or is required to give any notice, demand, consent, approval, satisfaction, statement, or request with respect to this Agreement, each such communication shall be in writing and shall be effective only if it is delivered by delivery service, over-night delivery service or facsimile (followed by another permitted form of delivery) and addressed to the recipient Party at its notice address provided on the cover page of this Agreement. Such communications, when personally delivered, shall be effective upon receipt. Any Party may change its address for such communications to another address in the United States of America by giving notice of the change to the other Party in accordance with the requirements of this section 19.6.
- 19.7. *Choice of Law; Construction of Agreement.* This Agreement will be construed under the laws of the State of Wisconsin, and has been negotiated by the respective Parties and the language shall not be construed for or against any Party. Venue for any lawsuit arising from this Agreement shall be in Wisconsin Circuit Court for Waukesha County, and the Parties consent to personal jurisdiction there and waive all jurisdictional defenses. The titles and headings are for reference purposes only and shall not in any manner limit the construction of this Agreement which shall be considered as a whole.
- 19.8. *Further Assurances; Cooperation.* Each Party shall execute such further instruments, documents, and agreements, and shall provide such further written assurances, as may be reasonably requested by the other Party to better evidence and reflect the transactions described in and contemplated by, and to carry into effect the intents and purposes of this Agreement.
- 19.9. *Non-Solicitation.* For a period ending two (2) years following the date of termination or expiration of this Agreement, Customer shall not solicit the employment or services of, nor employ or otherwise retain, any employee or former employee of Licensor who has been directly or indirectly involved in the development, licensing, installation, or support of any Licensor software product.
- 19.10. *Independent Contractor Status.* It is the intention of the Parties that their relationship is that of independent contractor and this Agreement shall not create any other relationship, whether partnership, joint venture, agency, or otherwise, between the respective Parties. Neither Party has any authority, whether actual, express, implied, or apparent, to bind or otherwise obligate

the other Party in any capacity. Licensor shall be entitled to list Customer in any designation of its customers in advertising or other published materials of Licensor.

- 19.11. *No Third-Party Beneficiary Rights.* No provision of this Agreement is intended or shall be construed to provide or create any third-party beneficiary right or any other right of any kind in any Person other than the Parties and their proper successors and assigns, and all terms and provisions shall be personal solely between the Parties to this Agreement and such proper successors and assigns.
- 19.12. *Survival.* The provisions of section 2, sections 10 through 12, and sections 14 through 19 shall survive the expiration or termination of this Agreement.
- 19.13. *Fees and Costs.* In the event of any litigation or arbitration between the Parties in connection with or arising out of this Agreement, or to enforce any right or obligation of either Party under this Agreement, or for a declaratory judgment, or for the construction or interpretation of this Agreement or any right or obligation under or impacted by this Agreement (in each case, a "Proceeding"), the Party which prevails in any such Proceeding shall be entitled to recover from the other Party all of such prevailing Party's fees and costs, including, without limitation, attorneys' fees, court costs, and costs of expert witnesses and of investigation, incurred at or in connection with any level of the Proceeding, including all appeals.
- 19.14. *Cooperative Procurement:* This agreement may be used as a cooperative procurement vehicle by any jurisdiction that is eligible. Licensor reserves the right to negotiate and customize the terms and conditions set forth herein, including but not limited to pricing, scope and circumstances of that cooperative procurement.

IN WITNESS WHEREOF, the Parties have executed this Agreement by their duly authorized representatives, effective as of the last date of signing below.

City of Waukesha, Wisconsin

By Shawn N. Reilly, Mayor
Date: _____

Attested by Gina L. Kozlik, City Clerk-Treasurer
Date: _____

To certify funds availability:

Bridget M. Souffrant, Finance Director
Date: _____

Patriot Properties, Inc.



By James McCathern, Chief Executive Officer
Date: 12/16/21

SCHEDULE A : Statement of Work

1. STRATEGY

The purpose of this project is to implement the Computer-Assisted Mass Appraisal (“CAMA”) System (“AssessPRO” or “AssessPRO AP5”) on behalf of the City of Waukesha, Wisconsin. The latest released version of AssessPro AP5 application will allow Customer to modernize and improve existing administrative processes using tools designed with property assessment industry best practices. The project Scope of Services includes all deliverables and associated professional services described in each section and subsection.

In support of this strategy, Licensor shall furnish all staffing and materials to accomplish the work in a timely manner in accordance with the scope of work. Licensor shall also ensure strict conformity with all applicable Federal, State, and local laws, each of which is incorporated by reference, and shall be responsible for obtaining all necessary approvals required for the performance of such work. Customer shall provide remote and onsite access to necessary servers and data and shall provide working facilities to Licensor employees when on site work is required. This accommodation shall include desk or meeting space and access to printing and telecommunications.

2. TERM

Upon execution of the Agreement, Licensor shall commence work in accordance with the agreed upon schedule to be ratified following the kickoff meeting. The initial term of this Agreement shall begin immediately upon Software Acceptance Date and shall continue for a period of two (2) years. At the end of the Term, the Agreement shall automatically renew for subsequent periods equal to the Initial Term, unless terminated by written notice by either party at least ninety (90) days prior to expiration.

3. SOFTWARE MODULES

3.1. *Included:* The following Software modules are included in this Agreement.

Module Name	Description of Software
AssessPro AP5	AssessPro AP5 Server Basic Software License
Report Viewer	Crystal Report License with all ad hoc and state required reports included
MobilePro	Field Application: Tablet / Mobile Software
GISPRO	AssessPro online GIS Viewer (no Esri licenses included)
Core Logic/Marshall Swift Cost	Marshall Swift Web Cost Service for Commercial Properties
Multiple Regression	Patriot Multiple Regression Module (no third-party software needed or included)

4. SCOPE OF SERVICES

Licensor shall furnish Customer a list of services and timelines related to this project in accordance with the Scope of Services as listed below.

- 4.1. Licensor shall provide Customer with the latest released version of AssessPRO AP5 CAMA system for Real Estate, Personal Property (including SketchPro), GIS Viewer, Report Viewer, MobilePro field application, online GIS Viewer, a custom SQL View to link to the City GIS application, Marshall Swift Web Cost Service and Multiple Regression module as of the date of the execution of this Agreement. The implementation of AP5 by the Licensor will include all core modules including Sketch, Analysis, Reports, Report Viewer, Wisconsin state required reports, e-files, and extracts, Standard Valuation Modules. The project price includes custom extracts to the City Tax Billing and Collection Tyler Munis application in use as well as an extract or export of specific CAMA data to the City of Waukesha, Wisconsin property search website. The project scope also includes linking to any oblique or street level imagery in use by the Customer.
- 4.2. Kickoff/Project Plan Review - Licensor will prepare the information needed for the kickoff meeting. At a minimum, this documentation shall include a review of the goals, scope, and timeline of the project. Timeline/scheduling shall be subject to Customer’s sole approval. Customer will provide facilities and ensure attendance of Customer conversion team. Licensor will ensure attendance of Project Manager either onsite or in a virtual meeting as agreed upon by the parties.
- 4.3. Immediately following the kickoff meeting, Customer will assign a person(s) as Point of Contact (POC) that will work with the Licensor’s Project Manager on communications including distribution of information provided by the Licensor, requests for meetings and planning or testing sessions. The POC will be responsible for data validation, providing responses to requests for information from the Licensor and for train-the-trainer sessions as required.

- 4.4. Licensor will work with Customer to define the requirements for each modification based on the Statement of Work (SOW). A revised detailed SOW will include written approval by both Customer and Licensor prior to initiating the work. Both parties reserve the right to propose additional modifications to the Agreement via change orders utilizing available budgeted funds.
- 4.5. Licensor shall work with Customer as necessary to identify data clean up or database changes that are required to be performed by Customer prior to conversion of real and personal property data.
- 4.6. Licensor will review and provide data clean up recommendations to Customer based on sample data provided by Customer on a mutually agreed upon date. Customer shall be responsible for all data cleanup of Vision legacy data prior to conversion of real property and personal property data dating from Assessment years 2019 through 2021, delivered based on the mutually agreed upon format and schedule, including a data cleanup results report. After each pass of data is received, Customer will provide Licensor with detailed control totals consisting of summary reports that include parcel counts and summary values by property class. Customer will also review and validate each pass of data converted with assistance provided by the Licensor.
- 4.7. Licensor will provide both on-site and web training to Customer staff, subject to the following:
 - 4.7.1. Training course list includes:
 - 4.7.1.1. AP5 Overview
 - 4.7.1.2. Filter and Grids
 - 4.7.1.3. Security
 - 4.7.1.4. Data Entry
 - 4.7.1.5. Sketch Pro
 - 4.7.1.6. Calculation and Valuation Classes (Land, Building, SFYI, Commercial, Income, Comparable Sales)
 - 4.7.1.7. Reporting
 - 4.7.1.8. Task Management
 - 4.7.1.9. Wisconsin Reporting
 - 4.7.1.10. Analysis Module
 - 4.7.1.11. System Processes (Tax Roll, Batch Calculations, Transfer Values)
 - 4.7.1.12. Train-the-Trainer
 - 4.7.1.13. IT Administration
 - 4.7.2. Licensor will have training staff available onsite or virtually during critical periods, mainly around the time the AP5 application goes into a production environment and when Assessment and Year End Rolls are being run. Licensor will also be available to assist in data validation review when conversion passes are delivered and to gather requirements for any required interfaces or extracts.
 - 4.7.3. Both parties agree that, if this Agreement and/or the Software Support and License Agreement is in effect between Licensor and Customer, Licensor agrees to deliver unlimited additional training via scheduled one hour web sessions provided it is scheduled at mutually agreeable times by Licensor and Customer. Once the project is completed, Licensor can provide a quote for any requested additional onsite training sessions.
 - 4.7.4. Prior to on-site or virtual training Customer is to provide Licensor with a list of all Customer personnel to be trained for each session and coordinate with internal train-the-trainer POC. Licensor will provide training agenda which is subject to Customer's approval.
- 4.8. Licensor will provide telephone and email support five (5) days a week from 8:00am – 5:00pm EST. excluding weekends and holidays. Weekend and holiday support will be provided by the Licensor at specified critical timelines such as Assessment Roll, during the project and subsequent Reassessments when the AP5 Application is in a production environment.
- 4.9. Licensor will convert Customer's existing portfolio of "Vision Sketches in the legacy CAMA System" sketches for use in SketchPro. The current portfolio of approximately 20,000 real estate parcels will be converted with descriptive data, freeform text, area calculations, parcel identification and account information 100% intact compared to current form, and all sketch square footage calculations will be maintained within at least 98% of current calculations.
- 4.10. Licensor shall provide applicable documentation, including database design, detailed operating manuals of the applications for the use of Customer's employees, and assist in the development and production of workflow schematics to assist in the training and operation of using Licensor's systems.

- 4.11. Licensor warrants that all converted data will calculate to within 5% of Customer's previously calculated values, with at least 80% of the properties calculating within 2% as the previous calculated value. Licensor will balance parcels outside of the tolerance level using Methods such as Override and Lump Sum. All balancing methods will be subject to the approval of Customer before they are implemented.
- 4.12. The AssessPRO implementation shall begin in January of 2022 and shall proceed according to the project schedule and milestones. The implementation of said project shall take approximately nine (9) months duration, but not to exceed twelve (12) months, commencing from the date of its execution by Customer, unless sooner terminated by Customer pursuant to the terms of this Agreement. If the implementation of said project takes longer than twelve (12) months, the scheduled Software Support and Maintenance Fees will not begin until the implementation is completed.

5. ASSUMPTIONS

Project Assumptions:

- 5.1. Approximately 20,000 Real parcels
- 5.2. Approximately 1,000 Personal Property Accounts
- 5.3. Approximately 15 users (site license, no additional cost for added users)
- 5.4. Current CAMA system is a legacy "Vision CAMA" System
- 5.5. Conversion of prior (3) years of data (begins 2019) plus through current year (2021)
- 5.6. Conversion of all electronically stored sketches to SketchPro format
- 5.7. Export to the Customer Tax Collection system, Tyler Munis
- 5.8. Export to the Customer website, as currently operating.
- 5.9. A custom SQL View will be provided to provide current Assessment data into the City GIS system

SCHEDULE B : Pricing and Payment Schedule

1. FEES

Description	Recurrence	Fee(s)
Software License ✓ All Core CAMA modules and features listed in SCHEDULE A section 3.1. ✓ 1 SAP Crystal Reports License	One-Time	\$50,000
Vision CAMA System Database Conversion	One-Time	\$35,000
Project Management & Implementation	One-Time	\$20,000
Training	One-Time	\$10,000
Mobile Pro	One-time	\$15,000
GIS Pro	One-Time	\$15,000
Marshall Swift Web Cost Service	One-Time	\$15,000
Multiple Regression	One-Time	\$20,000
One-Time Total		\$185,000
Software Support and Maintenance Fee ✓ Covering the period of January 1 through December 31, 1/1/23 – 12/31/23 Future increases capped at 3% annually	Annually, after year one	\$23,000

2. PROJECT PAYMENT

- 2.1. The total initial project cost is \$185,000 and will be invoiced on a project milestone delivery basis.
- 2.2. The first year of post-implementation Software Support and Maintenance Fee is \$23,000 and begins on January 1, 2023, assuming the AP5 application is in production. Future annual Software Support and Maintenance Fees shall not increase by more than three percent (3%) in any single year beginning with the January 1, 2024, Software Support and Maintenance Fee cycle.
- 2.3. All payments are subject to budget approval by City administration, to the Customer budget in each Customer fiscal year. In the event of non-appropriation for Licensor’s Software and/or services per this Agreement, the Agreement will be considered terminated under the terms of section 14.
- 2.4. Licensor shall submit support and maintenance invoices annually to Customer on or before January 1. Customer shall pay Licensor annually within thirty (30) days of invoice receipt.

3. PROJECT SCHEDULE

TBD during the kickoff meeting with project commencement in January 2022 and project completion by December 2022.

SCHEDULE C : Service Level Agreement

1. DESCRIPTION OF SERVICES

1.1. *Support Services*

- 1.1.1. During the term of this Agreement, Licensor will provide the services described herein so as to maintain the Software in good working order, keeping it free from material defects so that the Software shall function properly and in accordance with the accepted level of performance as set forth in the Schedule.
- 1.1.2. Licensor will make available to Customer a telephone number for Customer to call requesting service. The Support Center operates during business hours, 8:00am to 6:00pm EST, Monday through Friday, excluding Holidays. This service telephone line can also be used to notify Licensor of problems associated with the Software and related documentation.

1.2. *Remedial Support*

Upon receipt by Licensor of notice from Customer through the Licensor Support Center of an error, defect, malfunction or nonconformity in the Software, Licensor shall respond as provided below:

1.2.1. **Critical Defect:**

Response: Licensor will provide a response by a qualified member of its staff to begin to diagnose and to correct a Critical Defect problem as soon as reasonably possible, but in any event a response via telephone will be provided within four (4) business hours and an emergency software fix or an acceptable work-around will be provided within eight (8) business hours. Licensor will continue to provide best efforts to resolve Critical Defects and will provide problem resolution within five (5) business days of the reported issue. If a resolution to a Critical Defect is not provided within five (5) business days of the reported issue, then Licensor shall refund to Customer a credit equal to ten percent (10%) of the annual Software Support and Maintenance Fee for each day in excess of five days that a resolution is not provided.

1.2.2. **Non-Critical Defect:**

Response: Licensor will provide a response by a qualified member of its staff to begin to diagnose and to correct a Non-Critical Defect problem as soon as reasonably possible, but in any event a response via telephone will be provided within four (4) business hours and an emergency software fix or an acceptable work-around will be provided within five (5) business days. If a resolution to a Non-Critical Defect is not provided within five (5) business days of the reported issue, then Licensor shall refund to Customer a credit equal to five percent (5%) of the annual Software Support and Maintenance Fee for each day in excess of five days that a resolution is not provided.

1.2.3. **Feature Request:**

Definition: Produces a noticeable situation in which the use is affected in some way which is reasonably correctable by a documentation change or by a future, regular release from Licensor.

Response: Licensor will provide, as agreed by the parties via Change Order, a resolution for Feature Requests in future software releases.

1.3. *Services*

During the term of this Agreement, Licensor will maintain the Software by providing software updates and enhancements to Customer as the same are offered by Licensor to its licensees of the Software ("Updates"). All software updates and enhancements provided to Customer by Licensor pursuant to the terms of this Agreement shall be subject to the terms and conditions of the Agreement between the parties. Updates will be provided on an as-available basis and include the items listed below:

- 1.3.1. Bug fixes.
- 1.3.2. Enhancements to market data service software provided by Licensor to keep current with changes in market data services or as Licensor makes enhancements.
- 1.3.3. Enhancements to keep current with the current hardware vendor's OS releases, as available from Licensor, provided that the current hardware vendor's OS release is both binary and source-compatible with the OS release currently supported by Licensor; and
- 1.3.4. Performance enhancements to Software.
- 1.3.5. Updates do not include:

- a. Platform extensions including product extensions to (i) different hardware platforms; (ii) different windowing system platforms; (iii) different operating system platforms; and
- b. New functions such as (i) new functionality in the market data delivery infrastructure; (ii) new market data feeds; (iii) new applications; and (iv) new presentation tools.

Updates will be provided in machine-readable format and updates to related documentation will be provided in soft copy form. All such deliveries shall be made available to Customer at a specific Licensor FTP location. Duplication, distribution and installation of Updates are the responsibility of Customer. If requested prior to 5:00pm on the current business day, Licensor will provide assistance for the installation of Updates on the next business day.

Licensor will provide support services for previous releases for a minimum period of six (6) months following the general availability of a new release or software update. After this time, Licensor shall have no further responsibility for supporting and maintaining the prior releases.

Licensor assumes no responsibility for the correctness of, performance of, or any resulting incompatibilities with, current or future releases of the Software if Customer has made changes to the system hardware/software configuration or modifications to any supplied source code which affect the performance of the Software and which were made without prior notification and written approval by Licensor. Licensor assumes no responsibility for the operation or performance of any Customer-written or third-party application.

1.4. *Services Not Included*

Services do not include any of the following: (i) custom programming services; (ii) support of any software that is not Software; (iii) training; (iv) out-of-pocket and reasonable expenses, including hardware and related supplies. Services, as described in this section 1.4, if required by Customer, would be executed via approved Change Order.

2. SERVICE LEVEL AGREEMENT MANAGERS

- 2.1. Licensor and Customer will each appoint an appropriate person for ongoing development and management of the Agreement. SLA Manager responsibilities are as follows:
 - 2.1.1. Serve as the Point of Contact (POC) for problems or concerns related to the SLA itself and the delivery of services described in the SLA.
 - 2.1.2. Maintain ongoing contact with the other party's SLA Manager.
 - 2.1.3. Serving as the primary POC in the escalation process.
 - 2.1.4. Coordinating and implementing modifications to service delivery and to the SLA Schedule.
 - 2.1.5. Periodically assessing the effectiveness of mechanisms selected for service tracking and reporting.
 - 2.1.6. Planning and coordinating service reviews.
 - 2.1.7. Facilitating and participating in conflict resolution processes regarding service effectiveness
 - 2.1.8. Assessing and reporting on how the Licensor and Customer can further strengthen their working relationship.

3. LOCATIONS

- 3.1. *Customer Provided Network Location(s)*
 Address: _____

4. RESPONSIBILITIES

- 4.1. *Customer Responsibilities*
 - 4.1.1. Properly stage all Equipment in the Production and Testing environments at the Customer Provided Network Location(s) specified in SCHEDULE C section 3.1.
 - 4.1.2. Arrange for all labor, tools, and test equipment necessary to completely install and test the Equipment at the Customer Provided Network Location(s) specified in SCHEDULE C section 3.1.

- 4.1.3. Provide Licensor with a Customer contact list including names, cell and office phone numbers and pager numbers if available of key contacts for the routine service and emergency repair of the Equipment at the Customer Provided Network Location(s) specified in SCHEDULE C section 3.1.
- 4.1.4. Make necessary arrangements to work cooperatively with Licensor in the isolation of troubles at the Customer Provided Network Location(s) specified in SCHEDULE C section 3.1.
- 4.1.5. Bear all costs associated with third party vendor efforts in disaster recovery of the Equipment and Covered Software at the Customer Provided Network Location(s) specified in SCHEDULE C section 3.1.
- 4.1.6. Provide Licensor with any necessary agency authorization, such as access badges, as may be required for Licensor to fulfill its obligations under this Service Level Agreement Schedule.
- 4.1.7. Report all troubles with the Software as outlined in SCHEDULE C section 1.
- 4.1.8. Request assistance from the Licensor with "First Level Services".
- 4.1.9. Assure proper machine configuration, audit controls, and operating methods.
- 4.1.10. Establish adequate backup plans, based on alternate procedures.
- 4.1.11. Implement procedures and checkpoints to satisfy requirements for security and accuracy of input and output as well as restart and recovery in the event of a malfunction.
- 4.1.12. Customer will be responsible for all hardware, including but not limited to, workstations, servers, IVR equipment, printers, and scanners. Customer will run any Licensor supplied installation files to install any necessary files on a workstation or server that are required to use the Software.
- 4.1.13. Customer shall provide notification at least sixty (60) days prior to upgrading or replacing infrastructure that are part of a normal end of life replacement plan that requires the assistance of the Licensor. Upgrades include but are not limited to (i) server upgrade or replacement, (ii) IVR upgrade or replacement, (iii) test environment or production environment changes. Emergency support due to hardware failures do not require advanced notice. However, emergencies created due to hardware and infrastructure failures fall under Billable Call Maintenance.

4.2. *Licensor Responsibilities*

- 4.2.1. Licensor will provide a central telephone number and email address to be used by Customer to report all troubles, schedule visits, request service, and to request Licensor Technical Support as outlined in sections 1 and 2 of this Schedule.
- 4.2.2. Licensor will provide Customer with installation files when necessary that will allow Customer the ability to install any necessary files on a workstation that are required to use the Software.
- 4.2.3. Licensor will provide Customer with updates and patches for any defect or enhancement made to the Covered Software even if the defect or enhancement was not reported by Customer.
- 4.2.4. Licensor will perform "First Level Services" on the Customer Test Environment and the Customer Production Environment for Covered Software for the Customer or the Customer's designated vendor at the Customer Provided Network Location(s) specified in SCHEDULE C section 3.1.
- 4.2.5. Licensor performed "First Level Services" on the Covered Software is defined as follows:
 - a. Execute approved SQL Scripts for updates and patches.
 - b. Install updates to Software.
 - c. Install patches to Software.
 - d. Modify IVR scripts if affected by updates and patches.
 - e. Support and diagnostic services as outlined in SCHEDULE C section 1.
 - f. Report any Customer-side defects causing Software performance issues.