

# **Exhibit 12**

**MASTER SERVICES AGREEMENT**

**FOR**

**INFORMATION TECHNOLOGY OUTSOURCED SERVICES**

**BETWEEN**

**LEE COUNTY, FLORIDA, U.S.A.**

**AND**

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**MASTER SERVICES AGREEMENT**  
**FOR**  
**INFORMATION TECHNOLOGY OUTSOURCED SERVICES**

**THIS AGREEMENT** (“Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2018, by and between Lee County, a political subdivision of the State of Florida, hereinafter referred to as the “County” and \_\_\_\_\_, a \_\_\_\_\_ corporation authorized to do business in the State of Florida, whose address is \_\_\_\_\_, and whose federal tax identification number is \_\_\_\_\_, hereinafter referred to as “Service Provider.”

**RECITALS:**

**WHEREAS**, the County is a political subdivision of the State of Florida established to provide governmental services for the use and benefit of the residents of Lee County, Florida; and

**WHEREAS**, the Service Provider is in the business of providing comprehensive computing management services to large private-sector and public-sector entities; and

**WHEREAS**, the County has identified the need to procure outsourced information technology services and has issued a request for proposals for outsourced information technology services, Request for Proposal No. \_\_\_\_, advertised on \_\_\_\_, 2018 (the “Solicitation”); and

**WHEREAS**, the Service Provider has reviewed the scope of services sought by the County’s Solicitation and described in this Agreement and represents and warrants to the County that it is qualified, willing and able to provide all such products and services in accordance with the terms and provisions of this Agreement; and

**WHEREAS**, the County has received and evaluated responses to its Solicitation and has determined Service Provider to be the most qualified to provide the outsourced information technology services sought by the County; and

**WHEREAS**, the Service Provider and County desire to enter into this Agreement, pursuant to which Service Provider will plan, manage and operate the County’s administrative systems environments all in accordance with the terms and conditions of this Agreement and as more fully set forth and described in the Schedules attached hereto.

**OPERATIVE PROVISIONS**

**NOW, THEREFORE**, for and in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the County and the Service Provider, intending to be legally bound, covenant and agree as follows:

## Article 1

### RECITALS AND RELATIONSHIP

- 1.1 **Recitals.** The recitals set forth above are true and correct and are incorporated herein by reference in their entirety.
- 1.2 **Relationship.** The Service Provider accepts the relationship of trust and confidence established between it and the County by this Agreement. The Service Provider covenants with the County to furnish its best skill and judgment and to cooperate with the County in furthering the interests of the County. The Service Provider agrees to provide efficient, competent On-site services and management and to use its best efforts to deliver its services in the best and soundest way and in the most expeditious and economical manner consistent with the interests of the County.

## Article 2

### DEFINITIONS

The following definitions shall apply to the terms used in this Agreement.

- 2.1 “Affiliate” means, with respect to any specified person or entity, any other person or entity that directly or indirectly through one or more intermediaries, Controls or is Controlled by, or is under common Control with, the specified person or entity.
- 2.2 “Agreement” shall mean this Agreement and any Schedules, Exhibits, or other written amendments to this Agreement.
- 2.3 “Agreement Term” shall mean that period of time beginning with the Effective Date and continuing until the Expiration Date.
- 2.4 “Appendices” or “Schedules” means any appendix, schedule, exhibit, agreement, Service Agreement, or other document either (i) attached to this Master Agreement and incorporated by reference herein, (ii) attached and incorporated into a Service Agreement which is incorporated by reference herein; or (iii) executed by the Parties at any time hereafter and incorporated into this Master Agreement, or any Service Agreement, pursuant to the provisions of this Master Agreement or the Service Agreement.
- 2.5 “Business Day” means any day during which County Administration is generally conducting business.
- 2.6 “Change Order” means a mutual written agreement between, and executed by, the Parties (1) authorizing changes in the scope of Services and tasks, compensation, methods of payment, time and schedule of performance, or any other project resources; or (2) authorizing the Service Provider to perform additional or supplemental work, with all labor charges outlined. All Change Orders shall be processed in accordance with the Change Order Process defined herein.
- 2.7 “Commencement Date” means the date established by the County’s notice to proceed.

- 2.8 “Commercially Reasonable Efforts” means a prompt, diligent, and cost-effective effort, made in a professional manner, using qualified, experienced individuals.
- 2.9 “Commercially Reasonable Pricing” means the industry-specific average level of pricing used by other experienced outsourcing companies providing services similar to the Services. Commercially Reasonable Pricing always assumes the use of prompt, diligent, cost-effective efforts, made in a professional manner, using qualified, experienced individuals.
- 2.10 “Configure” shall mean to set up hardware or software for operation in a particular way.
- 2.11 “Control” and its derivatives means the power to cause, either directly or indirectly, the direction of the management and policies of a person or entity, whether through the ownership of securities, by Contract, or otherwise.
- 2.12 “County Data” means all County information, irrespective of where it is stored, such as records, notes, computer files, databases, reports, etc., specifically prepared, developed or managed by the Service Provider, whether in written or electronic form.
- 2.13 “County Equipment” means any hardware or equipment owned by County.
- 2.14 “County Software” means any Software owned by or licensed to County and used in conjunction with any of the Services.
- 2.15 “Dedicated Staff” shall mean staff that works exclusively on Lee County Technology Services projects, dedicated to the support of the Lee County enterprise. Please see definition for On-site staff.
- 2.16 “Defect” shall mean any Defective Performance, excluding events totally beyond Contractor’s control that do not arise, in whole or in part, from the negligence or intentional misconduct of Contractor or any of its agents or employees.
- 2.17 “Demand Management” shall mean the prioritization and fulfillment of both strategic projects and day-to-day activities.
- 2.18 “Effective Date” shall mean the date the Lee County Board of County Commissioners awarded the Solicitation to the Service Provider.
- 2.19 “End User” shall refer to the recipient of the services provided by the Service Provider within this Agreement.
- 2.20 “Exempt Information” refers to the relevant information described in Article 5 of this Master Agreement.
- 2.21 “Expiration Date” shall mean the date on which this Agreement expires or is otherwise terminated.
- 2.22 “Facilitate” shall mean to assist in the fulfillment of a technical solution or goal.
- 2.23 “Incident” shall mean any situation where any equipment or software normally in operation is no longer in service due to a breakdown.

- 2.24 “Install, Move, Add and Change (IMAC) New Configuration or Reconfiguration” shall mean to install new equipment, add hardware or software to existing equipment, or cascade personal computers (PCs) from one area to another. Add is defined as adding hardware or software to existing equipment. A move, change or new configuration or reconfiguration is defined as existing equipment that is moved from one location to another or existing software that is moved from one machine to another. Installations, moves, adds and changes are generally scheduled tasks.
- 2.25 “Intellectual Property Rights” means patents (and the rights relating thereto), copyrights and copyright registrations (and the rights relating thereto), trade secrets (and the rights relating thereto), trademarks, service marks, and trademark and service mark registrations (and the rights and goodwill relating thereto), and Confidential Information (and the rights relating thereto).
- 2.26 “Local Area Network” (LAN) shall mean a network that connects computers/devices that are close to each other, usually in the same building, linked by a cable or a wireless network connection.
- 2.27 “Location” means County’s data processing facilities, including, but not limited to, the facilities located throughout the County.
- 2.28 “Losses” means all losses, liabilities, damages and claims, and all related costs and expenses (including any and all reasonable legal fees and reasonable costs of investigation, litigation, settlement, judgment, appeal, interest and penalties).
- 2.29 “Maintenance” shall mean the upkeep of hardware or software, to keep the hardware or software in an existing state of repair or service.
- 2.30 “Master Agreement” or “Agreement” or “Contract” means this Master Services Agreement for Information Technology Outsourced Services and, where the meaning so requires, all Schedules incorporated by reference herein.
- 2.31 “Network Infrastructure” shall mean a data communications system, which includes the backbones, routers, switches, wireless access points, access methods and protocols used for connectivity between computing devices.
- 2.32 “Non-Recurring Initiative” shall mean a discrete unit of non-recurring work that is not described or provided for in any Service Tower, not an inherent, necessary or customary part of the day-to-day Services in any Service Tower and not required to be performed by the Service Provider to meet its obligations under an Agreement for services. All Non-Recurring Initiatives require County written approval before proceeding.
- 2.33 “Normal Hours of Support” shall mean a working day, Monday through Friday, excluding County holidays, starting at 7:00AM EST and ending at 5:30PM EST. The County Libraries are open until 9:00PM Monday through Saturday.
- 2.34 “On-site” shall refer to Dedicated Staff physically performing work on County premises (Locations), within the boundaries of the County.
- 2.35 “Operating System” shall mean the master control programs that run the computer system.

- 2.36 “Parties” means County and Service Provider; “Party” means either County or Service Provider.
- 2.37 “Pass-Through Expenses” means the actual invoiced amounts charged to Service Provider by third parties that the County has agreed to pay directly or for which it has agreed to reimburse Service Provider. Pass-Through Expenses shall not include any Service Provider profit, administrative fee or overhead charges.
- 2.38 “Performance Indicators” shall mean the measures defined in the various Towers of Service.
- 2.39 “Problem Escalation” shall mean the agreed procedure for alerting and notifying increasingly senior members of the Service Provider’s management of the non-resolution of problems.
- 2.40 “Repair” shall mean to restore or mend hardware or the functionality of software, including by replacement of a component part or defective software.
- 2.41 “Response” shall mean technical staff assigned to a support request that arrives On-site, or makes contact with the End User via telephone to gather additional information regarding the request, and establishes an estimated time to repair or complete the service.
- 2.42 “Response Time” shall mean the length of time between the initiation of a County Service Request for a technical or non-technical issue and the point at which the Service Provider responds to such a Service Incident, initiated via phone, email or other methods.
- 2.43 “Service Agreement” shall mean all agreements entered into between the parties pertaining to any of the seven Service Towers referenced in this Agreement.
- 2.44 “Service Agreement Commencement Date” means the date on which Service Provider begins providing Services under a Service Agreement.
- 2.45 “Service Agreement Term” shall refer to both the original term of the applicable Service Agreement and any renewal of the Service Agreement.
- 2.46 “Service Incident” shall mean any situation where any equipment or software normally in operation is no longer in service due to a breakdown.
- 2.47 “Service Level Agreement” (SLA) shall mean a contract between a service provider (either internal or external) and the End User that defines the level of service expected from the service provider. SLAs are output-based in that their purpose is specifically to define what the customer will receive.
- 2.48 “Service Level,” “Service Level Measurement,” “Service Level Standard,” and “Service Level Credits” defined as specifics regarding how the Service Level Agreement commitments are monitored and measured.
- 2.49 “Service Provider Equipment” means the computer, communications and other equipment owned or leased by Service Provider and used by Service Provider to provide the Services. Equipment includes, without limitation, all associated accessories and peripheral devices used in the provision of Services.

- 2.50 “Service Provider Facilities” means the facilities owned or leased by Service Provider and from which the Service Provider will provide any Services as specifically identified in a Services Agreement.
- 2.51 “Service Provider Personnel” means employees of Service Provider and its subcontractors assigned to perform Services or who will have access to County computer systems, either through on-site or remote access.
- 2.52 “Service Provider Software” means any Software owned by or licensed to Service Provider and used in conjunction with any of the Services.
- 2.53 “Service Request” shall mean a request submitted by County to Service Provider for effort related to any activity considered under the scope of services for a particular Service Tower.
- 2.54 “Service Tower” means a self-contained subset of the technological services to be provided under this Agreement that can be identified, measured, priced and benchmarked.
- 2.55 “Services” shall mean those services more particularly described in this Agreement and all associated Service Agreements.
- 2.56 “Shared Staff” shall mean Service Provider staff that works on projects for other clients in addition to projects for the County.
- 2.57 “Software” means any computer software and associated documentation that relates to Services provided under a Service Agreement, and includes any County Software, Service Provider Software and Third Party Software.
- 2.58 “Support” shall mean to provide assistance in using, maintaining or operating information technology systems.
- 2.59 “Systems” means the hardware and Software operating together as a system.
- 2.60 “Target Resolution Time” shall mean the measurement of time it takes to resolve an End User’s issue or answer their question. It is measured from the time a Service Incident record is created, until the time that the End User is advised their problem has been resolved.
- 2.61 “Term” shall refer to both the original term of the Master Agreement and any renewal of the Master Agreement.
- 2.62 “Termination Date” shall mean the date on which the termination of this Agreement is effective.
- 2.63 “Third Party” means any party, person, service provider, company or entity not a party to this Contract.
- 2.64 “Third Party Contracts” means any contract that is a Third Party Software License or Third Party Service contract.



- 2.65 “Third Party Service Contracts” means, collectively, (i) the agreements between County and a third party pursuant to which the third party is providing to County, immediately before a Service Agreement Effective Date, any services included within the Services, and (ii) the agreements between Service Provider and a third party pursuant to which the third party is providing to County or Service Provider, at any time during the applicable Service Agreement Term, any services included within the Services.
- 2.66 “Third Party Software” means any Software that is owned by a party other than Service Provider or County and used to provide the Services.
- 2.67 “Third Party Software License” means a license agreement that authorizes County or Service Provider to use Third Party Software.
- 2.68 “Tower” means a Service Tower as identified in each Service Agreement. Each Service Agreement will address a Tower.
- 2.69 “VIP” or “VIP List” shall mean a predefined list of End Users established by the County for the purposes of establishing elevated service priorities for key County staff.
- 2.70 “Virus” shall mean files, programs or program code designed to cause any action not authorized including, for example, to affix themselves to, bury themselves within, or send instructions to, other files, programs or program code in order to cause malfunctions, errors or destruction or corruption of data when affixed or at a later time.
- 2.71 “Wide Area Network” (WAN) shall mean a network in which computers are connected to each other over a long distance.
- 2.72 “Wireless LAN” shall mean a network in which a mobile user can connect to a local area network (LAN) through a wireless (radio) connection.
- 2.73 “Work-week” means forty hours of time expended by a single individual.

## **Article 3**

### **WORKING RELATIONSHIP**

#### **3. SERVICES**

- 3.1.1 **Service Towers.** The Services to be provided by Service Provider are divided into seven (7) Service Towers. The Service Towers consist of the following:
- 3.1.1.1 Tower One: Information Technology (IT) Governance and Management. This Tower extends throughout the entire County organization and involves strategy and decision making relative to IT. This Tower ensures that IT initiatives are aligned with the overall strategy and plans of the County organization. This Tower also involves tactical planning and execution of specific projects identified by the County’s strategy and decision making relative to IT.

- 3.1.1.2 Tower Two: Infrastructure Services. This Tower involves operation, maintenance and support of the enterprise technology infrastructure which includes the collection of hardware, software, networks, data centers, facilities and related equipment used to develop, test and deliver information technology services to the County.
- 3.1.1.3 Tower Three: Cyber Security Services. This Tower encompasses cyber security controls and systems, along with the development and ongoing administration of a cyber security network. This Tower spans the entirety of the technology environment, helping to secure a proper security posture that reduces risk and provides for appropriate counter measures and mitigation approaches.
- 3.1.1.4 Tower Four: Telecommunications Services. This Tower involves the maintenance and support of telephone services and Wide Area Network (WAN) environment. Within this Tower is the support and maintenance of the fiber network owned and issued by the County. Telecommunication services for the County supports the Board of County Commissioners (BoCC) and all other constitutional officers in the County.
- 3.1.1.5 Tower Five: Application Services. This Tower involves the deployment, maintenance and support of software applications which enable business and data management services. Application development, application maintenance and application support are the three sub-Tower components. System administration and upkeep of enterprise resource planning (ERP) system(s) is not included in the Services provided under this Agreement.
- 3.1.1.6 Tower Six: End User Technology Services. This Tower involves direct support of the County's End Users and End User computing devices such as desktops, laptops and tablets. Key aspects of this Tower include help desk, field services and asset management.
- 3.1.1.7 Tower Seven: Disaster Recovery and Emergency Operations. This Tower encompasses disaster recovery and business continuity for all, or most, of the County's critical business applications and related infrastructure. Included in this Tower is the support of the Emergency Operations Center (EOC) in the event of a disaster.
- 3.1.2 **Service Agreements.** A Service Agreement shall be issued by the County, pursuant to this Agreement, for each Service Tower. The terms of this Agreement are incorporated by reference into each Service Agreement issued by the County and shall form an integral part of each such Service Agreement. In the event of a conflict or discrepancy between the terms of this Agreement and any Service Agreement issued pursuant to the terms of this Agreement, the terms of this Agreement shall control.
- 3.1.2.1 **Use of Service Agreements.** This Master Agreement contains general contractual terms for the Services to be provided to County by Service Provider. Separate Service Agreements shall be entered into between the Parties for the discrete Services related to each individual Service Tower.

- 3.1.2.2 **Contents of Service Agreements.** Each Service Agreement shall describe the specific services to be provided by the Service Provider for a Service Tower, the compensation to be paid and provisions for payment, the term for performance, the applicable Service Level Measurements and Service Level Standards (if any), and such other provisions that are specific to the Service Agreement. A form of Service Agreement Contract is attached hereto and incorporated herein as Schedule “A.” Schedule “A” describes the information to be contained and the requirements that apply to all Service Agreements unless the parties expressly agree otherwise in writing in a specific Service Agreement.
- 3.1.2.3 **Service Agreements a part of Master Agreement.** Except as may otherwise be provided in a Service Agreement, each Service Agreement shall unambiguously incorporate by reference, and shall be subject to, the terms and conditions of this Master Agreement. The parties expressly intend that, by virtue of the execution of this Master Agreement, each and every provision of this Master Agreement shall be viewed as being incorporated into each and every Service Agreement. No Services shall be provided by Service Provider for a Service Tower unless and until the appropriate discrete Service Agreement has been duly signed and delivered by the County. Each Service Agreement shall generally be in the form, and shall contain the information and terms, described in Schedule A.
- 3.1.3 **Initial Service Agreements.** As of the Effective Date of this Master Agreement, County and Service Provider are entering into discrete Service Agreement contracts No. 1 through 7 (copies of which are attached hereto as Schedules D through J).
- 3.1.4 **Non-Recurring Initiatives.** The Service Provider shall provide Non-Recurring Initiative support at the County’s request as described herein:
- 3.1.4.1 Non-Recurring Initiatives Hour Bank. The Service Provider shall include within its service fee established by each Service Agreement an annual hour bank of 400 hours per year. This hour bank shall be utilized to perform Non-Recurring Initiatives initiated in writing by the County and duly executed by the Service Provider. Hours expended by the Service Provider addressing Non-Recurring Initiatives shall be charged against the hour bank. At the end of each calendar year during the term of this Agreement, any unused hours shall be rolled over and added to the hour bank established for the next year. In the event of a termination of the Agreement between the County and the Service Provider, any unused hours will be credited against any sums due the Service Provider. The Service Provider shall be responsible for maintaining an accurate record as to the number of hours expended from the hour bank on Non-Recurring Initiatives. The Service Provider shall be responsible for turning in to the County, on a monthly basis, all hours expended by the Service Provider on Non-Recurring Initiatives and the Non-Recurring Initiatives for which such hours have been expended.
- 3.1.4.2 Initiating Non-Recurring Initiatives. Non-Recurring Initiatives are commenced by the County’s issuance to the Service Provider of a written Non-Recurring Initiative. The Non-Recurring Initiative will define a formal scope of work that defines the key activities to be completed, milestones, acceptance criteria, schedule and estimated hours. The scope of work will be mutually agreed upon in writing and jointly developed by the County and the Service Provider before the work commences.

- 3.1.4.3 **Existing Non-Recurring Initiatives.** The Non-Recurring Initiatives in progress and planned as of the Commencement Date are specified in Schedule K Application Project Listing attached hereto and incorporated herein (the “On-Going Non-Recurring Initiatives”). If the Service Provider desires to make any change to a Non-Recurring Initiative that is underway as of the Commencement Date, or those that are planned and listed in Schedule K, then Service Provider shall submit to County a written proposal describing such change and the potential impact of such change, and the County may, in its sole discretion, approve or reject such proposal. Notwithstanding anything contained herein to the contrary, Service Provider shall be responsible for the completion of all On-Going Non-Recurring Initiatives existing as of the Commencement Date unless the County has agreed in writing to amend or change the same in the form of a Change Order executed by both Parties.
- 3.1.5 **Qualified Resources.** Except as otherwise expressly provided in a Service Agreement, Service Provider shall provide, at its expense, all of the personnel, Equipment (except that which is owned or retained by the County, including but not limited to, processing equipment and monitoring tools), Software, services and other resources necessary to provide the Services. Service Provider shall not implement any action or decision regarding such resources that would have an adverse effect on the Services (including, without limitation, changes in Equipment, Software and systems configurations), Service Level Measurements, Service Level Standards, or County costs and expenses without the prior written consent in the form of a Change Order executed by both Parties. Service Provider will provide and have On-site, its Project Manager at the commencement and for the duration of the applicable Service Agreement Term, and will timely provide additional trained and qualified personnel to meet the Service Levels as specified in accordance with this Master Agreement and each Service Agreement.
- 3.1.6 **Inherent Services.** Throughout each Service Agreement Term, Service Provider shall provide the services described in the Service Agreements, as such Service Agreements may be amended and supplemented from time to time. There may be services not specifically described in this Master Agreement or a Service Agreement which are implicit in the Services as described. If such services are determined to be reasonably required for the proper performance and provisions of the Services, such services shall be deemed to be implied by and included within the scope of the Services at no additional cost to the same extent and in the same manner as if specifically described in the applicable Service Agreement. Service Provider shall provide the Services in accordance with all of the terms of this Master Agreement and the applicable Service Agreement. If such inherent services result in a substantial increase in Service Provider resources as agreed to by both parties, either of personnel or other resources, such increase may be addressed pursuant to the Change Order procedure.

- 3.1.7 **Knowledge Transfer and Best Practices.** Service Provider shall implement a knowledge transfer process which ensures that Service Provider Personnel share the knowledge they have gained while performing the Services with County and the County's authorized End Users. The knowledge transfer process shall be designed to efficiently pass important knowledge, information and practices from Service Provider and Service Provider Personnel to County and County's authorized users. At a minimum, such knowledge transfer processes shall include Service Provider meetings with County and designated County authorized users at least once every twelve (12) months, or more frequently as County may request, to (a) explain how the County IT environment operates in connection with the provision of the Services; (b) explain how the Services are provided; and (c) make proposals to County to provide such training, documentation and other materials as County may require for County to understand and operate the County IT environment, and understand and provide the Services after the expiration or termination of the Agreement. As part of the regular performance reviews, Service Provider shall report to the County Manager or designee on Service Provider-observed opportunities for the introduction of best practices into County's processes. Beginning in the second year of the Agreement, and annually thereafter, Service Provider shall work with the County Manager or designee to develop and present a yearly briefing to County (1) on Service Provider's recommended best practice improvements to targeted County processes, (2) on how the use of such best practices is intended to align County's technology investments with its objectives and (3) on how to optimize County's return on its technology investments/services. Service Provider shall provide the Services using the appropriately skilled Service Provider Personnel and without regard to the unit, line of business or division within Service Provider to which such Service Provider Personnel are assigned.
- 3.1.8 **Technology and Process Evolution.** As part of the Services, Service Provider acknowledges and agrees that: (a) the current information technology and business processes utilized by Service Provider in the performance of the Service Agreements shall continue to evolve and change over time; and (b) it shall continuously undertake, deploy, implement and support the evolution of County technology and related business process throughout the Term.
- 3.1.9 **Leading Standards.** Throughout the Term, Service Provider shall remain consistent with the practices generally followed by other providers of services similar to the Services and with the objectives and needs of County. Service Provider shall provide the Services using current information technology resources and processes that are designed to allow County to take advantage of advances in the industry. Without limiting the generality of the foregoing, all Service Provider Equipment and Service Provider Software used to provide the Services will be kept at levels supportable by the respective manufacturers, and such Service Provider Equipment will be upgraded or replaced as required to meet the Service Levels and manufacturer-recommended requirements.

- 3.1.10 **Monitoring Trends.** As part of the Services and with respect to the Services, Service Provider shall use reasonable efforts to proactively and periodically monitor and analyze new information technologies, business processes, shared service strategies and emerging trends that may have interest or applicability to County and/or that reasonably could be expected to have a positive impact on County, including in the areas of increased efficiency, increased quality and/or reduced costs (“Enhanced Technology”). Service Provider shall meet with County to formally brief County regarding such new processes, technologies, processes, strategies and trends. Such briefing shall include Service Provider’s assessment of the business impact, performance improvements and cost savings associated with such processes, technologies, strategies and trends. If requested by County, Service Provider shall develop and present to County proposals for: (a) implementing such new processes, strategies and trends as part of the Technology and Process Evolution described in this Article 3; or (b) changing the direction of County’s then-current information technology strategy, processes and procedures.
- 3.1.11 **Commercially Reasonable Pricing.** Pricing proposed by Service Provider for Services shall be Commercially Reasonable Pricing and, to the extent third party products or services are not included, such products and services will be treated as Pass-Through Expenses so as to provide County the benefit of any specialized pricing available to Service Provider.
- 3.1.12 **Service Agreement Term.** No Service Agreement Term shall extend beyond the Term of this Master Agreement, or any renewal.
- 3.1.13 **Acceptance.** County shall have ten (10) Business Days or such other period as the County may reasonably require to accept or reject any deliverables (“Acceptance Period”). In the event the County rejects any deliverables within the Acceptance Period, Service Provider will perform any necessary rework at no additional cost to the County within a delivery time acceptable to the County and agreed to in writing. Upon completion, Service Provider shall resubmit the deliverables for acceptance. If Service Provider fails to provide deliverables that are acceptable to the County after the initial rework, the County may reject the work and bring in a third party to complete the work at the Service Provider’s cost. The County may cancel the requested work/deliverables and receive a refund equal to the work performed. In the event of a dispute, the Service Provider and the County Manager or designee shall meet to discuss resolution in good faith. In the event County fails to accept or reject the deliverables within the agreed upon time period, Service Provider shall provide written notice to the County Manager or designee of the County’s failure to provide such acceptance or rejection and the County shall reply within three (3) Business Days of the status and any additional time required.

## 3.2 COOPERATION

- 3.2.1 **Cooperation.** Service Provider agrees to use Commercially Reasonable Efforts to comply with County's reasonable requests for cooperation and assistance for the County and the County’s third party service providers, subject to Change Order procedures. The parties acknowledge and agree that, beyond the satisfaction of Service Level Standards, performance under this Agreement will require the continued definition and setting of numerous priorities and the balancing of competing tasks and schedules. Service Provider and the County agree that they will each use good faith and reasonable efforts to define, plan, coordinate and execute the different priorities, tasks and schedules agreed to by the parties within the scope of this Agreement.



- 3.2.2 **3.2.2 Meetings, Reports.** Service Provider personnel shall keep County personnel fully and regularly informed about Service Provider activities as provided herein. Service Provider and County representatives shall meet as frequently as County representatives reasonably deem necessary. Service Provider shall prepare and deliver to County the reports described in each Service Agreement (“Reports”) by the respective deadlines specified in each Service Agreement. At no charge to County, Service Provider shall make minor modifications to the Reports or provide supplemental Reports as reasonably requested by County from time to time and as agreed upon by the Parties. Service Provider’s Program Manager shall provide a regular monthly status report to the County Manager or designee no later than by the 5<sup>th</sup> Business Day of the following month.
- 3.2.3 **Use of County Facilities and Equipment.** (a) During the Term of a Service Agreement, County shall have the option, but not the obligation, to make available to Service Provider furnished space in County’s office facilities as reasonably determined by County to be suitable for Service Provider to carry out functions associated with the Services (the “County Facilities”) and certain County Equipment identified in each Service Agreement that will continue to be owned by County. (b) Service Provider shall: (i) use the space in the County Facilities for the sole purpose of providing the Services; (ii) comply with the leases and other agreements applicable to the County Facilities; (iii) comply with all policies and procedures governing access to and use of County Facilities; and (iv) return such space to County in the same condition it was in on the Service Agreement Effective Date, ordinary wear and tear excepted. Except to the extent included in the Services and charges described in the applicable Service Agreement (e.g., supplies and consumables used in providing the Services), County shall provide the County Facilities at no charge to Service Provider; provided, however, that Service Provider shall be responsible for costs associated with any County Facilities leased by County. Service Provider shall remain responsible for any required personal computers and peripherals, long distance charges and all other expenses incurred by Service Provider’s On-site account management team; (c) Service Provider shall: (i) use the County Equipment for the sole purpose of providing the Services; (ii) comply with any directions from County concerning the location of the County Equipment; (iii) provide, or arrange for third parties to provide, maintenance of the County Equipment; and (iv) return such equipment to County, upon termination of the applicable Service Agreement, in the same condition it was in on the Service Agreement Effective Date, ordinary wear and tear excepted. Service Provider shall be responsible for costs associated with any facilities provided by Service Provider pursuant to the provisioning of remote services. County shall at all times maintain ownership of any and all County Equipment and County Software. Service Provider shall have no cost responsibility of or ownership, leasehold or proprietary interest in existing County Equipment or County Software. However, if the Parties agree that Service Provider shall provide one or more supplies to County, the cost to County of such supplies shall be treated as a Pass-Through Expense. County Facilities shall at all times be compliant with all applicable Federal, State and local laws, regulations, and ordinances relating to occupational, safety, health and environment.
- 3.2.4 **Dedicated Facilities.** During any time Services are performed at the County Facilities, Service Provider shall provide the Services using hardware, software and related resources dedicated solely to supporting County. Unless otherwise expressly provided in a Service Agreement, all Services provided from the offsite Service Provider’s Facilities may be provided using shared Equipment and Software Service.

- 3.2.5 **Assumption of Equipment Leases.** If specified in a Service Agreement, County shall assign to Service Provider County's obligations and any corresponding rights under the applicable leases for equipment used to provide the Services as described in the Services Agreement or County may sell equipment owned by it to Service Provider (the "Transferred Equipment"). Service Provider shall obtain consents to such assignments and releases of County's liability under such leases as promptly as practicable. Any assignment of County's interests in the Transferred Equipment is made "AS IS, WHERE IS," WITHOUT WARRANTIES OF ANY KIND (EXCEPT AS EXPRESSLY STATED IN SUCH SERVICE AGREEMENT), AND SPECIFICALLY WITHOUT ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Notwithstanding the foregoing, Service Provider shall not have any obligation to purchase or assume any such equipment leases. Any assumption hereunder shall be governed by an applicable Service Agreement.
- 3.2.6 **Service Agreement Proposals.** During the Term of this Master Agreement, regardless of whether one or more Service Agreements are in effect, Service Provider shall cooperate with County in providing proposals at Service Provider expense for Service Agreements for information technology and telecommunications Services reasonably requested by County from time to time. Service Provider shall use Commercially Reasonable Efforts to provide Service Agreement proposals featuring Commercially Reasonable Pricing at the earliest date practicable.
- 3.2.7 **Amendment of Master Agreement.** From time to time during the Term, County or Service Provider may propose changes to the Master Agreement. Any change to this Master Agreement must be signed by each party and memorialized in a written amendment that specifically identifies this Master Agreement, the section of this Agreement that is the subject of the amendment, and the new or amended provision.
- 3.2.8 **Modification of Services under a Service Agreement.** If County desires to propose a change in or addition to the Services under a Service Agreement, it shall deliver a written notice to the Service Provider Program Manager describing the proposal. Service Provider shall respond to such proposal as promptly as reasonably possible by preparing, at Service Provider's expense, and delivering to the County Manager or designee a written document ("Change Order"), indicating: (i) the effect of the proposal, if any, on the amounts payable by County; (ii) the effect of the proposal, if any, on Service Level Measurements in light of related Service Level Standards; and (iii) any other information requested or reasonably necessary for County to make an informed decision. If Service Provider desires to propose a change in or addition to the Services or other aspects of this Agreement, it may do so by preparing at its expense a Change Order for the County. A Change Order, once submitted to County, shall constitute an offer by Service Provider to implement the proposal described therein on the terms set forth therein. No change in or addition to the Services or any other aspect of this Agreement shall become effective without the written, signed approval of the County and Service Provider. If County elects to accept the offer set forth in the Change Order, as evidenced by the written, signed approval of the County, any changes in the Services described in the Change Order shall thereafter be deemed "Services," any other changes described in the Change Order shall be deemed to have amended this Agreement, and the Parties shall agree on any further modifications to the Agreement required to reflect the Change Order.



- 3.2.9 **Other Provisioning of Services.** County shall have the right to Contract with one or more third parties (or use internal resources) to perform any services that are in addition to, within or outside the scope of, the Services. If County contracts with a third party to perform any such service, Service Provider shall cooperate with County and such third party to the extent reasonably required by County including provision of (i) assistance and support services to such third party at the rates specified in the applicable Service Agreement, and (ii) access to the technical environment operated by Service Provider as reasonably necessary for such third parties to perform their work. County shall require such third parties to comply with Service Provider's reasonable requirements regarding operations. Service Provider shall be obligated to support and maintain such third party service provider's work product at County's request and cost, if additional costs are incurred by Service Provider, provided the third party service provider complies with any written, reasonable requirements for system operations provided to County by Service Provider and agreed to by County.
- 3.2.10 **Regulatory Environment.** As part of the Services, Service Provider shall identify the impact, if any, of changes in applicable laws or regulations as it pertains to Service Provider's provision of the Services. Service Provider shall notify County Manager or designee when it becomes aware of such changes and shall work with County to identify the impact of such changes on how County uses the Services. County shall notify Service Provider should it become aware of such changes. Service Provider shall promptly make any resulting modifications to the Services as reasonably necessary. Service Provider shall be responsible for, and shall pay for, the cost of any such changes relating to Service Provider's business. County shall be responsible for the cost of any such changes relating to County's business to the extent such changes require computer resources in excess of the resources otherwise provided by Service Provider as part of the Services. Service Provider shall be responsible for any fines and penalties imposed on County or Service Provider arising from any noncompliance by Service Provider, its subcontractors or agents with the laws and regulations in respect of the Services. In the event that there is a change in the federal or state legislation of the county, state, or city where the Services are performed, or in the interpretation of such legislation after the effective date of this Agreement, the Service Provider shall immediately comply with such laws. Such changes, including any increase or decrease of costs, shall be addressed in accordance with the Change Order procedure described in this Agreement.
- 3.2.11 **Regulatory Licenses, Permits.** Service Provider shall be responsible, at its sole expense, for obtaining all applicable governmental or regulatory licenses, authorizations, and permits required in connection with the performance of Services and shall have financial responsibility for, and shall pay, all fees and taxes associated with such licenses, authorizations, and permits.
- 3.2.12 **Third Party Contracts.**
- 3.2.12.1 Each Service Agreement shall provide for the treatment of all Third Party Contracts, as follows:
- (i) all or certain of the Third Party Contracts may be assigned by County to Service Provider,
  - (ii) all or certain of the Third Party Contracts may be retained by County and, as necessary, any required Third Party Consents shall be obtained by County (with Service Provider assistance), Service Provider or both, as specified in the Service Agreement, and (iii) the respective obligations of the Parties with respect to the Third Party Contracts shall be set forth in the Service Agreement. Service Provider shall provide reasonable assistance to County to obtain any Third Party Consents. If any such Third Party Consent cannot be obtained, Service Provider shall adopt, subject to the prior approval of the County, such alternative approaches as are necessary to provide the Services without such Third Party Consent.

3.2.12.2 Subject to obtaining any required Third Party Consents, as of the applicable Service Agreement Effective Date, County shall grant to Service Provider, for the sole purpose of providing the Services, the same rights of use of the Third Party Contracts used by County immediately before the applicable Service Agreement Effective Date.

3.2.12.3 On or before the applicable Service Agreement Effective Date, in the event the Service Agreement requires Service Provider to assume any Third Party Contract, County shall, with Service Provider's reasonable assistance, obtain from each third party to a Third Party Contract existing on the applicable Service Agreement Effective Date any required consents by such third party to (i) the assignment to and assumption by Service Provider of Third Party Contracts, and (ii) a complete release of County with respect to all obligations arising under such Third Party Contracts on and after the applicable Service Agreement Effective Date (collectively, the "Third Party Consents"). Service Provider shall pay all transfer, upgrade and other fees necessary to obtain any Third Party Consents with respect to Third Party Contracts, and County's liability for any such payments is only to Service Provider as expressly set forth in the applicable Service Agreement. Unless otherwise specified in a Service Agreement and where possible, any assigned Third Party Contract shall include the right of County to re-acquire the rights under the Third Party Contract upon any termination or expiration of a Service Agreement.

3.2.12.4 With respect to any Third Party Contract which is not identified in a Service Agreement and was not made known to Service Provider during the due diligence and negotiations preceding the execution of a Service Agreement (an "Unidentified Third Party Contract"), the following shall apply: (A) the Unidentified Third Party Contract shall be added to the appropriate Service Agreement as soon as it has been identified; (B) County shall, with Service Provider's reasonable assistance, obtain any required Third Party Consents with respect to any Unidentified Third Party Contract that is a Third Party Service Contract as soon as possible after it has been identified; and (C) County shall pay all transfers, upgrade and other fees necessary to obtain such Third Party Consent with respect to the Unidentified Third Party Contracts. During the Term, County shall either retain financial responsibility for license, maintenance or other financial obligations with respect to such Unidentified Third Party Contracts or Service Provider shall charge such amounts to County on a Pass-Through Expense basis.

### 3.2.13 **Audit.**

3.2.13.1 **Record Keeping and Audit Rights.** Service Provider shall maintain complete and accurate records and supporting documentation for all financial and non-financial transactions under all Service Agreements sufficient to permit a complete audit of such financial and non-financial transactions relating to the Services provided. Such records shall include data and documentation of third party charges invoiced to and paid by Service Provider. Service Provider shall retain such records throughout the Term and for no less than five (5) years or as otherwise required by Article 5 thereafter (including any records received by Service Provider from County or County's previous Service Provider).

- 3.2.13.2 **Audit Procedure.** Service Provider shall provide County, at County's request, with paper and electronic copies of documents and information reasonably necessary to verify Service Provider's compliance with this Master Agreement and each Service Agreement. Regulatory audits as well as audits required by litigation, Freedom of Information Act requests, EU General Data Protection Regulations (GDPR), disputes with third parties, or audits as a result of a breach by the Service Provider can be as frequently as required. County and its authorized agents and representatives shall have access to such records for audit purposes during normal business hours during the Term and hereafter for the period during which Service Provider is required to maintain such records. Service Provider shall, at no additional cost to County, provide to County, County's internal and external auditors, inspectors, regulators and such other representatives as the County may designate at any time access to the facilities at which Service Provider is providing the Services, Service Provider Personnel providing the Services, and all data and records relating to the Services, for the purpose of performing audits and inspections of County and its business, to verify the integrity of County Data, to examine the systems that process, store, support and transmit that data, and to examine Service Provider's charges and performance of the Services under this Master Agreement and any Service Agreement.
- 3.2.13.3 **Malfeasance.** Notwithstanding the foregoing, if County has reason to suspect any dishonest acts on the part of Service Provider in providing the Services under this Agreement, County shall be entitled to undertake such audit of Service Provider as County reasonably deems appropriate without the foregoing notice or other restrictions. If, in any audit, County determines that any dishonest acts occurred, Service Provider shall reimburse County for any costs incurred in such audit and County may conduct a follow-up audit when reasonably deemed appropriate by County. Service Provider shall respond promptly to any conclusions and recommendations reported as part of an audit.
- 3.2.13.4 **Payments.** If an audit reveals that Service Provider has overcharged County for Services during the audited period in an amount equal to or in excess of three percent (3%), Service Provider shall reimburse County for the cost of the audit in addition to the amount of any overcharges that are due County. If the audit reveals that Service Provider has overcharged County in an amount equal to or in excess of ten percent (10%), Service Provider shall reimburse County for the cost of the audit in addition to the amount of any overcharges that are due County and pay an additional amount equal to twenty-five percent (25%) of the overcharged amount. The calculation of overcharges shall be calculated based upon each Service Agreement, and not on a cumulative basis. Service Provider shall pay such amount to County within thirty (30) calendar days following County's written request.
- 3.2.13.5 **Survival.** This Article shall survive the expiration or earlier termination of the Term and shall continue to the fifth (5th) anniversary of the expiration or termination of the Master Agreement.
- 3.2.13.6 **Third Party Beneficiary.** The Lee County Clerk of Court shall be an intended third party beneficiary of this Agreement with respect to the right to audit the records of the Service Provider.

### 3.3 SERVICE LEVELS

- 3.3.1 **Service Level.** Within each Service Agreement, the Parties shall specify such reasonable quantitative levels of performance (“Service Level Standards”) for certain specified Services as are deemed useful. Service Level Measurements and Service Level Standards shall be specified as described in Schedule A. With respect to each Service which has one or more associated Service Level Measurements, Service Provider shall provide such Service throughout the Term in such a manner that the associated Service Level Measurements shall meet or exceed the associated Service Level Standards. Service Provider shall be responsible for meeting or exceeding Service Level standards effective February 25, 2019, 12:01 AM.
- 3.3.2 **Review of Service Levels.** Within six (6) months after the initiation of Services under a Service Agreement, and every three (3) months thereafter (until such a time as the Parties mutually agree that a less frequent review period is necessary), the parties shall jointly review the Service Level Standards and adjust them to reflect any improved performance capabilities associated with advances in the technology and methods used to perform the Services. Throughout the Term, at least annually, Service Provider shall identify and notify County of Commercially Reasonable Efforts to improve its performance as measured by the Service Level Measurements and reduce its costs.
- 3.3.3 **Measurement and Monitoring Tools.** As part of the Services throughout the Term, and at no additional cost to County, Service Provider shall implement any measurement and monitoring tools and procedures necessary to measure its performance of the Services and compare such performance to that required by the Service Agreements (including the calculation of Service Level Measurements, the comparison of Service Level Measurements to Service Level Standards, and the calculation of associated Service Level Credits, if any). Upon County's written request, Service Provider shall provide County or its auditors with any information and access to the measurement and monitoring tools necessary to verify compliance by Service Provider with the Service Agreements. It is the sole responsibility of the Service Provider to measure and accurately report on the SLA for each Tower of service. Service Provider shall commence its calculation of all Service Level Measurements, and the reporting of such to the County, no later than February 25, 2019.
- 3.3.4 **County’s Validation.** The County has the right and Service Provider agrees to provide access and authorization to the County to independently track, audit and validate the service level performance and service level reporting of the Service Provider. If errors, omissions or other irregularities with the performance reporting (by Service Tower) are identified by the County, the Service Provider will be given fifteen (15) calendar days from the date on which the Service Provider was formally notified in writing to remediate any issues and provide updated performance reporting information. If the Service Provider fails or is unable to respond during this remediation period, Service Towers that were identified by the County as having errors, omissions or irregularities will default to a state of “Missed” for the reporting period and will be subject to applicable penalties.

- 3.3.5 **Root-Cause Analysis and Resolution.** Promptly, but in no event later than five (5) calendar days (unless otherwise agreed in writing) after Service Provider's discovery of, or if earlier, Service Provider's receipt of a written notice or corrective action request from County regarding Service Provider's failure to provide any of the Services in accordance with the Service Levels, Service Provider shall, as applicable under the circumstances: (i) perform a problem analysis process undertaken to identify and quantify the underlying cause(s) of a SLA failure or some other failure, and document the necessary corrective actions to be taken to prevent recurring problems and/or trends (a "Root Cause Analysis") to identify the cause of such failure; (ii) provide County with a written report detailing the cause of, and procedure for correcting, such failure; and (iii) provide County with satisfactory evidence that such failure will not recur. The correction of any such failures shall be performed in accordance with the time frames set forth in the applicable Service Agreement and entirely at Service Provider's expense unless it has been determined, by mutual agreement of the Parties or through the Dispute Resolution process specified in this Agreement, that County (or one of its other providers, agents or third party service providers) was the predominant contributing cause of the failure and Service Provider could not have worked around the failure without expending a material amount of additional time or cost. In such event: (iv) Service Provider shall be entitled to temporary relief from its obligation to timely comply with the affected SLA, but only to the extent and for the duration so affected; and (v) County shall reimburse Service Provider for Service Provider's reasonable, direct and documented expenses to correct such failure, but only to the extent County caused such failure, unless the Parties otherwise mutually agree. For purposes hereof, the preexisting condition of County's properties, systems, processes and methodologies shall not be deemed a contributing cause of any failures. The foregoing does not limit other remedies available to County under this Agreement for such Service Level failures.
- 3.3.6 **Failure to Meet Service Levels.** (a) Service Provider acknowledges that its failure to meet one or more Service Level Standards may have a material adverse effect on the business and operations of County. Accordingly, if Service Provider fails to meet a Service Level Standard, County shall recover the applicable amount specified in each Service Agreement ("Service Level Credits"); (b) Service Provider shall provide a deduction in an amount equivalent to the calculated monthly Service Level Credit from the next succeeding invoice or other amounts due to Service Provider, or, in the alternative, any service level credits due County shall be allocated to the hour bank referred to in paragraph 3.1.4.1 of this Agreement. The County shall make the foregoing election within ten (10) calendar days of determining that Service Level Credits are owed it; (c) Regardless of whether County recovers Service Level Credits owed with respect to any failure, County shall also have any remedies available to County under this Master Agreement or any Service Agreement, at law or in equity, including the right to terminate this Master Agreement or any Service Agreement for cause, less any Service Level Credits allocated to County. Each time Service Provider fails to meet a Service Level Standard, Service Provider shall: (i) promptly investigate the cause(s) of the failure and deliver to County a written report identifying such cause(s) in the form requested by County or as specified in a Service Agreement; (ii) use all Commercially Reasonable Efforts to correct the problem and to begin meeting such Service Level Standard(s) as soon as practicable; and (iii) at County's request, advise County of the status of such corrective efforts; (d) All Service Level Standards and applicable Service Level Credits remain in effect notwithstanding Service Provider's use of Commercially Reasonable Efforts to correct any performance problem; and (e) if any failure to meet a Service Level Standard is directly and solely attributable to a Force Majeure Event or negligent actions or negligent omissions of County or a breach by County of this Master Agreement or a Service Agreement, County shall not be entitled to a Service Level Credit.



- 3.3.7 **Performance Standards.** (a) With respect to any Service or obligation that does not have an associated Service Level Standard, Service Provider shall perform such Service with a level of quality, timeliness, and cost efficiency that meets (i) the level of performance by County or any third party providing such services for County immediately before the applicable Service Agreement Effective Date, and (ii) the level of performance expected for an experienced outsourcing company providing services similar to the Services using prompt, diligent, cost-effective efforts in a professional manner using qualified, experienced individuals (“Performance Standards”). Each time Service Provider fails to meet any Performance Standards, Service Provider shall: (i) promptly advise the County and investigate the causes; and (ii) use all Commercially Reasonable Efforts to correct the problem and to begin performing such obligation in the required manner as soon as practicable but in any event within thirty (30) calendar days of such failure. All Performance Standards remain in effect notwithstanding Service Provider’s use of Commercially Reasonable Efforts to correct any performance problem. (b) Regardless of whether there exists an associated Service Level Standard, Service Provider shall perform all Services and obligations promptly, diligently and cost-effectively, in a professional manner, using qualified, experienced individuals and use Commercially Reasonable Efforts to perform the Services and obligations in an effort to reduce charges payable by County hereunder while still meeting the required levels of quality and performance.
- 3.3.8 **Continuous Improvement.** Service Provider acknowledges that the quality of the Services provided in certain Service Agreement Towers can and will be improved during the Term and agrees that the Service Levels in such Service Agreement Towers will be enhanced periodically in recognition of the anticipated improvement in service quality and advancement of technology. The Service Provider shall improve the quality of the services provided in such areas so as to meet or exceed the Required Service Levels and will do so at no additional charge to County. The Required Service Levels can only be modified upon the mutual written agreement of the Parties through the Change Order procedure.

### 3.4 SUBCONTRACTING

- 3.4.1 **Approval required.** Service Provider shall not delegate or subcontract any of its material obligations under this Master Agreement or any Service Agreement by way of a material subcontract (“Material Subcontract”) without the prior written consent of the County, which may be withheld in County’s sole discretion. Notwithstanding the preceding sentence, but subject to the provisions set forth below, Service Provider may use, in the ordinary course of business, third party service providers or products pursuant to subcontracts which, when combined with any related subcontracts, involve the payment of no more than \$50,000 in any twelve (12) month period. A subcontract involving the payment of more than \$50,000 in any twelve (12) month period shall be a “Material Subcontract.” Notwithstanding any other provision in this Section, all subcontractors shall be required to execute documents binding the subcontractor to confidentiality and non-disclosure agreements that are at least as protective as this Agreement with respect to the confidentiality of County Confidential Information. The availability of a subcontractor to provide Services shall be evaluated as if the owners, directors, officers and employees of the subcontractor were employees of County and, as such, subject to all of County’s rules and regulations. Service Provider shall provide to County a report listing all current subcontracts on a quarterly basis.

- 3.4.2 **Approval Process.** If Service Provider desires to enter into a Material Subcontract, it shall submit to County in writing a proposal specifying the tasks Service Provider proposes to subcontract, the reason for using a subcontractor, the identity and qualifications of the proposed subcontractor, and any other information reasonably requested by County or necessary to fully inform the County's approval of the subcontractor. If the use of such subcontractor is approved by the County, Service Provider shall include in such subcontract provisions naming County as an intended third-party beneficiary, Confidentiality, Audit and Performance Standards provisions substantially similar to those contained herein, and any other provisions necessary for Service Provider to fulfill its obligations under this Master Agreement or any Service Agreement and provide the County with a copy of each Material Subcontract. Such subcontract provisions shall also include the option of County to assume each Material Subcontract in the event County terminates this Master Agreement or a Service Agreement. In addition, Service Provider shall not disclose any County Confidential Information to such subcontractor until such subcontractor has agreed in writing to assume the Confidentiality obligations described herein.
- 3.4.3 **Revocation.** County may revoke approval of a subcontractor previously approved, or object to Service Provider's use of a subcontractor for which County's approval was not required, if the subcontractor's performance has been materially deficient, good-faith doubt exists concerning the subcontractor's ability to render future performance, or there have been material misrepresentations by or concerning the subcontractor. Upon such revocation, Service Provider shall prevent such subcontractor from performing the Services.
- 3.4.4 **Liability.** Service Provider shall remain liable for obligations performed by subcontractors to the same extent as if a Service Provider employee had performed such obligations, and for purposes of this Master Agreement such work shall be deemed work performed by Service Provider. If a subcontractor breaches a Material Subcontract, or is alleged to have breached a Material Subcontract, Service Provider shall notify County and provide County with such information relating to the alleged breach as County may reasonably request.

### 3.5 PERSONNEL

- 3.5.1 **Project Manager.** County and Service Provider shall each designate an individual as the primary contact for such party with respect to all matters relating to this Master Agreement. County and Service Provider shall also designate an individual as the primary contact for such party with respect to each Service Agreement. The County may designate an individual Contract Manager for one or more Service Tower Agreements. County and Service Provider may change these designations from time to time, providing such advance notice as the circumstances require to avoid adverse impact upon the Services.
- 3.5.2 **Employment.** Service Provider shall invite the employees of any existing outsourcing service providers to interview for potential employment with Service Provider.
- 3.5.3 **Service Provider Positions.**

The Service Provider shall assign employees necessary to effectively deliver services to the County as described herein. While individual roles will vary based on the technologies supported and duties assigned, the following position descriptions ("Service Provider Positions") apply to all Service Towers:

- 3.5.3.1 Service Lead – This individual should have demonstrated managerial experience in their area of practice and an understanding of IT operations management (ITIL) certified, project management and public sector budgeting and funding models. This individual typically possesses a Bachelor's or Master's degree in a related area of study and may also possess some industry technical certifications. This individual will have significant supervisory duties of other staff, and is accountable for the delivery of services in their assigned Service Tower. Desired experience is 7-10 years in such role within Information Technology.
- 3.5.3.2 Level 3 – Such individual serves as the highest level technical resource in the Service Provider organization. This individual is often the escalation point for complex issues and works with vendors as necessary to resolve issues and perform Root Cause Analysis where applicable. This individual may have some minor supervisory duties of other staff, but that is not this individual's primary focus. This individual typically possesses industry certifications for the technologies they support or equivalent industry experience. Desired experience is 5-7 years in a similar role.
- 3.5.3.3 Level 2 – This individual serves as a skilled technical resource in the Service Provider organization. This individual is often the initial escalation point for issues working to resolve them without assistance from Level 3 resources. This individual does not have supervisory duties of other staff. This individual may possess some industry certifications for the technologies they support or equivalent industry experience. Desired experience is 2-3 years in a similar role.
- 3.5.3.4 Level 1 – This individual serves as the initial technical resource in the Service Provider organization and is often the first point of contact for support. This individual is focused primarily on End User support and as such should have good interpersonal and communication skills. This individual typically does not possess industry certifications for the technologies they support. Desired experience is 1-3 years in a similar role.
- 3.5.3.5 Service Provider shall reasonably consider any concerns expressed by County with respect to terminating or transferring any employees assigned to provide Services under this Agreement. Before assigning an individual to fill a Service Provider Position, Service Provider shall notify County of the proposed assignment, shall introduce the individual to appropriate County representatives, and shall provide County with a resume and such other information as County may reasonably request. If County objects to the proposed assignment within ten (10) Business Days after being notified thereof, Service Provider shall discuss such objections with County and attempt to resolve them on a mutually agreeable basis. If County continues to object to the proposed assignment, Service Provider shall not assign the individual to that position and shall promptly propose another individual to fill the Service Provider Position.



3.5.4 **Minimum Proficiency Levels and Training for Service Provider Personnel.** Service Provider agrees that Service Provider Personnel assigned to the County for the purposes of performing this Agreement must have experience in the areas and technologies for which they are responsible under this Agreement. All costs and expenses associated with providing, equipping, training and retaining Service Provider Personnel are the responsibility of the Service Provider. In the event that, as a result of the actions or inaction of any member of the Service Provider Personnel (including subcontractors or Affiliates), additional work is required to perform the Services under this Agreement, Service Provider shall perform all such work at no additional charge to County. County shall not be required to pay for Services provided by any Service Provider Personnel who do not possess the required levels of experience and expertise. The Service Provider shall provide the County with an annual personnel training plan that identifies the types, levels and frequency of training, both planned for the upcoming year and completed in the prior year.

3.5.5 **Service Provider Employees Assigned to County Account.**

3.5.5.1 Under any Service Agreement, County shall have the right to notify Service Provider if County determines that the continued assignment to the County account of any Service Provider employee is not in the best interests of the County. Upon receipt of such notice, Service Provider shall have a ten (10) Business Day period to investigate the matters stated therein, discuss its findings with County, and attempt to resolve such matters in a manner acceptable to County. Upon County's subsequent written request, Service Provider shall promptly remove any Service Provider employee, including the Service Provider's Contract Manager or Service Agreement Managers, from the County account and, if appropriate or necessary, replace such Service Provider employee with an equivalent replacement in a prudent manner so as not to interrupt or adversely affect the Services.

3.5.5.2 Under this Master Agreement or any Service Agreement, County shall have the right to notify Service Provider if County determines that the continued assignment to the County account of any Service Provider Contract Manager ("Master Agreement Manager"), or Project Manager ("Service Agreement Manager") is not in the best interests of the County. Upon receipt of such notice, Service Provider shall have a ten (10) Business Day period to replace such Service Provider employee with an equivalent replacement so as not to interrupt or adversely affect the Services. Before assigning an individual to fill a Service Provider Contract Manager, or Project Manager Position, Service Provider shall notify County of the proposed assignment, shall introduce the individual to appropriate County representatives, and shall provide County with a resume and such other information as County may reasonably request. If County objects to the proposed assignment within ten (10) Business Days after being notified thereof, Service Provider shall discuss such objections with County and attempt to resolve them on a mutually agreeable basis. If County continues to object to the proposed assignment, Service Provider shall not assign the individual to that position and shall within a ten (10) Business Day period propose another individual to fill the Service Provider Position.

- 3.5.5.3 If Service Provider fails to meet the Performance Standards or Service Level Standards persistently or continuously, and if County reasonably believes such failure is attributable in whole or in part to Service Provider's assignment, reassignment, or other changes in the human resources allocated by Service Provider to the delivery of the Services, County will notify Service Provider of such belief. Upon receipt of such notice from County, Service Provider (i) will promptly meet with County to discuss the matters raised by County in its notice and Service Provider's positions with regard to such matters; and (ii) will diligently work to eliminate, with respect to the Services, any such Service Provider human resource practices identified and agreed to by the Parties as adversely impacting the delivery of the Services by Service Provider.
- 3.5.6 **Designation of Service Provider Key Employees.** As of the Commencement Date and from time to time as County and Service Provider may agree during the Term, but no less frequently than annually, County and Service Provider shall designate certain employees of Service Provider as key employees (collectively, the "Service Provider Key Employees," and, individually, each "Service Provider Key Employee"). Without County's prior written consent, Service Provider shall not: undertake any action with respect to any Service Provider Key Employee that would result in the alteration or reduction of time expended by such Service Provider Key Employee in performance of Service Provider's duties under this Agreement. The foregoing does not prohibit or restrict Service Provider Key Employee from participating in general corporate duties applicable to other similarly situated employees nor does the foregoing prohibit or restrict Service Provider Key Employee from exercising employee benefits in accordance with Service Provider guidelines/policies (e.g., taking vacation in accordance with Service Provider guidelines/policies).
- 3.5.7 **Reassignment and Replacement.** Service Provider shall not reassign or replace any Service Provider Key Employees from the Commencement Date unless: (1) County consents in writing to such reassignment or replacement or (2) the individual (a) voluntarily resigns from Service Provider, (b) is unable to work due to his or her disability or (c) takes a leave of absence from Service Provider for illness or under the Family and Medical Leave Act. Subparts (1) and (2) are collectively referred to as "Approved Reassignments."

Except for a replacement or reassignment of the Service Provider Key Employees due to the occurrence of an Approved Reassignment, Service Provider shall not reassign or replace any Service Provider Key Employee, if such reassignment or replacement would materially disrupt County's operations, until the completion of any projects to which the Service Provider Key Employee is assigned. No Approved Reassignment of a Service Provider Key Employee shall occur without at least sixty (60) calendar days' prior written notice to County. If any time from the Commencement Date, any Service Provider Key Employee becomes incapacitated, disabled, takes a leave of absence, voluntarily terminates his/her employment with Service Provider, is terminated by Service Provider, or is transferred, reassigned or redeployed with the consent of County, within forty-eight (48) hours (unless additional time is granted by County), Service Provider shall replace such person with another person approved by County. Service Provider shall permanently replace such person with another person approved by County within thirty (30) calendar days of the assignment of a temporary person. The permanent replacement employee shall be equivalent to or exceed the original employee relative to skill set, training and job duties assigned.

If the Service Provider fails to provide a satisfactory replacement employee within (30) thirty calendar days, the County shall be entitled to a credit of \$15,000 per Service Provider Key Employee per month against sums owed the Service Provider until a satisfactory replacement

is provided and approved by the County. If said position goes unfilled by a qualified employee for more than ninety (90) calendar days, the County shall have the option to begin the Dispute Resolution process during which the \$15,000 shall still accrue.

- 3.5.8 **Assignment of On-Site Personnel.** The Service Provider shall provide dedicated Service Provider Personnel to work directly at County sites to deliver the Services within this Agreement. Accordingly, (a) such personnel are required to have primary residence within reasonable proximity to Lee County, Florida for the purpose of performing their primary work activities and effectively responding to after-hours and emergency support issues; (b) the Service Provider is solely responsible for any and all costs associated with the assignment of On-site Dedicated Staff; and (c) the required On-site positions and staffing levels shall be mutually agreed upon between the Service Provider and the County and shall not change more than once every twelve (12) months unless otherwise approved in writing by the County. Any On-site Service Provider Personnel changes shall follow the provisions of the Reassignment and Replacement section of this Agreement.
- 3.5.9 **Succession Plans Required.** Service Provider shall maintain active succession plans for each of the Service Provider Key Employee positions, including plans to effectively transfer knowledge from the Service Provider Key Employee in the event that it becomes necessary to replace such Service Provider Key Employee.
- 3.5.10 **Turnover Rate and Data for Service Provider Personnel.** To ensure consistency of Services delivery and minimize Service Provider Personnel learning curves, Service Provider shall make reasonable efforts to minimize the turnover in Service Provider Personnel so as to not exceed a ten percent (10%) turnover rate per year. If County determines that the turnover rate of the Service Provider Personnel is unacceptable and so notifies Service Provider, the Service Provider shall within ten (10) business days: (i) provide County with data concerning Service Provider's turnover rate; (ii) meet with County to discuss the reasons for the turnover rate; and (iii) submit a plan for reducing the turnover rate for County's review and written approval. Notwithstanding any transfer or turnover of Service Provider Personnel, Service Provider shall remain obligated to perform the Services without degradation and in accordance with the Service Levels and the other terms and conditions of this Agreement.
- 3.5.11 **Independent Contractor Relationship.** Service Provider's relationship to County in the performance of this Agreement is that of an independent contractor. The personnel performing Services under this Contract shall at all times be under Service Provider's exclusive direction and control and shall be employees or subcontractors of Service Provider and not employees of County. Service Provider shall be fully liable for all acts and omissions of its employees, subcontractors, and their suppliers and shall be specifically responsible for sufficient supervision and inspection to assure compliance in every respect with the requirements of this Agreement and any Service Agreements. There shall be no contractual relationship between any subcontractor or supplier of Service Provider and County by virtue of this Agreement. No provision of this Agreement shall be for the benefit of any party except County and Service Provider and their respective assignees or beneficiaries. It is the Parties' intention that Service Provider is an independent contractor and not the County's employee for all purposes, including, but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, Florida revenue and taxation law, Florida Worker's Compensation law and Florida Unemployment Insurance Law. The Service Provider will retain sole and absolute discretion in the judgment of the manner and means of carrying out the Service Provider's activities and responsibilities

hereunder. The Service Provider agrees that it is a separate and independent enterprise from the County, that it has made its own investment in its business, and thus it will utilize a high level of skill necessary to perform the work. This Agreement shall not be construed as creating any joint employment relationship between the Service Provider and the County, and the County will not be liable for any obligation incurred by the Service Provider, including but not limited to unpaid minimum wages and/or overtime premiums.

3.5.12 **Service Provider Employees.** During this Agreement and any extension Service Provider Personnel are permitted to apply for County IT employment positions.

3.5.13 **Non-Hiring of Service Provider Employees.** Except as specifically provided in this Agreement or any Service Agreement, during the term of this Agreement and any extension hereof, neither party, nor any related or affiliated organization over which a party has control, shall offer to hire, hire or in any way employ or compensate, any employee of, or persons who have been employed during any term hereof by, the other party without the prior written consent of the other party. Notwithstanding the foregoing, the following exceptions shall apply:

(a) At the termination of this Master Agreement and for six (6) months prior to the end of the Term or any Renewal, County may solicit, interview, offer to hire, hire or employ Service Provider employees who are, at the time of termination, permanently assigned to, or who previously worked at, the County's site;

(b) Either Service Provider or the County may hire or solicit for hiring any employee who is no longer employed by the other and whose employment with the other had ended for a period of one (1) month or more prior to the date of the offer of employment by such other party and;

(c) The County may hire any Service Provider employee who is fully assigned to the County and works at the County's site, if deemed in the best interests of the County or employee under consideration. The parties can waive the covenant not to compete relating to employees.

3.5.14 **SERVICE PROVIDER SHALL INDEMNIFY, DEFEND AND HOLD THE COUNTY HARMLESS FROM ALL LOSSES, INJURIES OR DAMAGES, AND WAGES OR OVERTIME COMPENSATION DUE ITS EMPLOYEES IN RENDERING SERVICES PURSUANT TO THIS AGREEMENT, INCLUDING PAYMENT OF REASONABLE ATTORNEY'S FEES AND COSTS IN THE DEFENSE OF ANY CLAIM MADE UNDER THE FAIR LABOR STANDARDS ACT OR ANY OTHER FEDERAL OR STATE LAW.**

3.5.15 **MIGRATION OF SERVICES:** If any migration of Services is to occur under a Service Agreement, they will occur pursuant to migration plans approved by the County pursuant to Schedule B.3.5.15

3.5.16 **Physical Location of Employees.** All of Service Providers employees providing Services under this Agreement shall be located in the United States.

3.5.17 **Background Check.**

Service Provider, at its expense, must conduct a background check for each of its employees, as well as for the employees of its subcontractors, who will provide services to the County or who will have access to County computer systems, either through on-site or remote access. The minimum background check process for all Service Provider Personnel shall include, but not be limited to, the following checks:

1. Social Security Number (SSN) validation and address history
2. State criminal and sex offender registry search
3. National Crime Information Center search
4. FBI fingerprint check using Integrated Automated Fingerprint Identification System
5. County Felony and Misdemeanor search
6. National Sexual Offender Registry search

The background check must be conducted prior to initial access by Service Provider Personnel. The Service Provider shall provide proof of a satisfactory background check to the County Manager or designee prior to assignment of any Service Provider Personnel. The County retains the right to reject assignment of any Service Provider Personnel based on the results of a background check.

Service Provider Personnel who separate employment from the Service Provider for any reason whatsoever, and for any length of time, must undergo another background check prior to renewed access to the County. Background checks must be repeated not less than every five (5) years. At the County's discretion, background checks for Service Provider Personnel holding sensitive positions (e.g., working with or around children, or within high-security areas) may be required more frequently. The County shall have the ability to audit the Service Provider's background check process to ensure compliance with County standards, at any time. Additionally, all Service Provider Personnel have the responsibility to self-disclose any misdemeanor or felony convictions that occur while assigned to the County within three (3) Business Days of the conviction or upon return to a County assignment. The conviction must be reported to the Service Provider, who shall then notify the County Manager or designee.

If at any time it is discovered that any Service Provider Personnel has a criminal record that includes a felony or misdemeanor, the Service Provider is required to inform the County and the County will assess the circumstances surrounding the conviction, time frame, nature, gravity, and relevancy of the conviction to the job duties to determine whether that Service Provider employee will be placed or remain on a County assignment. The County may withhold consent at its sole discretion. Failure of the Service Provider to comply with the terms of this paragraph may result in the termination of its Agreement with the County.

- 3.5.18 **Conduct.** Service Provider agrees that all of its officers, employees and representatives shall conduct themselves in a professional manner and shall communicate with County employees and members of the public in a civil manner whenever conducting County business. All aspects of Service Provider's performance, including complaints received from the public, may impact the County's decision to renew or terminate this Agreement in accordance with the provision contained here. Service Provider will remove or suspend, or further investigate their employees for any act of violence, sexual harassment, substance abuse, or act of bigotry/prejudice.

## Article 4

### COMPENSATION

- 4.1 **Payment** Subject to the other provisions of this Master Agreement, County shall pay to Service Provider the amounts set forth in each Service Agreement as payment in full for the Services under such Service Agreement performed by Service Provider during the Term (the “Charges”). Except as otherwise expressly set forth in this Master Agreement, County shall not be obligated to pay any amounts to Service Provider for its performance of the Services and its other obligations under this Master Agreement other than the amounts set forth in the Service Agreements. Without limiting the foregoing, County shall not be required to reimburse Service Provider for any expenses Service Provider incurs in performing the Services and such obligations, including, without limitation, travel and lodging, document reproduction and shipping. If a Service Agreement Term is renewed pursuant to the applicable terms of such Service Agreement, the Charges last set forth in such Service Agreements shall continue to apply during the renewal period(s).
- 4.2 **Pass-Through Expenses.** (a) Service Provider shall review for accuracy each third party invoice for any Pass-Through Expenses and shall pay when due to such third party all valid amounts set forth on such invoice. Service Provider shall include the amount of such payment on its next invoice to County and shall include with such invoice a copy of the third party invoice. Service Provider shall not charge County any profit, administrative fee, or overhead charge with respect to such Pass-Through Expenses. Pass-Through Expenses must be approved in advance by County Manager or designee. (b) Service Provider shall use all Commercially Reasonable Efforts to minimize the amount of Pass-Through Expenses, including, with respect to any materials or supplies supplied by Service Provider to County, providing to County the benefit of any specialized pricing/economies of scale available to Service Provider. Third Party Pass-Through purchases must follow County procurement rules. County shall have the right to: (i) obtain such materials or services directly from a third party; (ii) designate the third party source for such materials or services; (iii) designate the particular materials or services Service Provider shall obtain; (iv) request Service Provider to identify and consider multiple sources for such materials or services; and (v) review, approve or reject the Pass-Through Expense for such materials or services before Service Provider enters into a subcontract for such materials or services. County shall be responsible for all approved Pass-Through Expenses and Service Provider shall be responsible for all non-approved Pass-Through Expenses. No Pass-Through Expenses shall be submitted to the County for reimbursement more than ninety (90) calendar days after the date such expenses were incurred.
- 4.3 **Travel Reimbursables.** For reimbursement of any travel costs or travel-related expenses permitted under this Agreement, Service Provider agrees to comply with Section 112.061, Florida Statutes. County shall not be liable for any such expenses that have not been approved in advance, in writing, by the County Manager or designee.



- 4.4 **Charges Pursuant to Service Agreement Modifications.** (a) To the extent the proposed change or addition can be accommodated within the existing level of resources then being used by Service Provider to provide the Services and without degradation to existing performance in relation to Service Level Standards (unless otherwise agreed by the County in writing), the Charges payable by County under the applicable Service Agreement shall not be increased. (b) To the extent the proposed change or addition will lower Service Provider's cost to provide the Services thereafter, the applicable Charges payable by County shall be equitably adjusted to reflect such projected cost savings. (c) To the extent the proposed change or addition will require the addition or subtraction of resources for which a pricing basis exists under this Master Agreement, the resulting change to the Charges payable by County hereunder shall be recalculated higher or lower in accordance with that pricing basis.
- 4.5 **Interest.** Without waiving any other right, balances of any kind past due in excess of thirty (30) calendar days shall bear interest at the statutory interest rate established by Florida law.
- 4.6 **Invoices.** Service Provider shall issue to County, on a monthly basis in arrears, one (1) consolidated invoice for all amounts due under each Service Agreement with respect to Services rendered in the previous month, less any service credits. Each invoice shall separately state Charges for each category of Service, reimbursable expenses and taxes payable, and shall otherwise be in such detail as County may require for its internal accounting needs.
- 4.7 **Process of Invoices.** Subject to the section entitled "Setoff and Withholding," each properly documented and approved invoice shall be due and payable within thirty (30) calendar days after the date such invoice is received by the County Manager or designee. County reserves the right to correct any error that may be discovered in any invoice that may have been previously paid to Service Provider and to adjust the same to meet the requirements of the Master Agreement or any Service Agreement. To the extent County is entitled to a credit pursuant to this Master Agreement or any Service Agreement, Service Provider shall provide County with such credit on the first invoice delivered after such credit is earned.
- 4.8 **Proration.** All periodic charges under this Master Agreement (excluding charges based upon actual usage or consumption of Services) shall be computed on a calendar month basis and shall be prorated for any partial month. Any charges associated with each Service Agreement shall be equally prorated monthly over the term of the Contract. All periodic charges under any Service Agreement (excluding charges based upon actual usage or consumption of services) shall be computed on a calendar month basis and shall be prorated for any partial month to be paid in arrears.
- 4.9 **Refunds.** If either party should receive a refund, credit or other rebate for goods or services paid for by the other party, the recipient of such refund, credit or rebate shall promptly notify the other party and shall pay such amount to the other party (or, if applicable, provide a credit on the next delivered invoice) within thirty (30) calendar days after receipt thereof.
- 4.10 **Royalties.** If Service Provider uses any design, device or materials covered by letters, patent or copyright, it is mutually understood and agreed without exception that the Charges shall include all royalties or costs arising from the use of such design, device or materials in any way involved in the work.

- 4.11 **No Charge for Re-performance.** At no additional cost or expense to County, Service Provider shall re-perform (including any required backup or restoration of data from scheduled backups or, if not available on such backups, restoration by other means with County's reasonable cooperation) any Services that result in incorrect outputs due to an error or breach by Service Provider, and the resources required for such performance shall not be counted in calculating the Charges payable or resources utilized by County hereunder.
- 4.12 **Sharing Opportunities.** Each party may identify potential savings opportunities with respect to the Services and/or potential opportunities for improving the quality of the Services (each, an "Opportunity"). If either party identifies an Opportunity, the Parties shall discuss such Opportunity, including the likelihood that such Opportunity will result in savings to County and/or improved quality as to the Services and, if approved by County, Service Provider shall further research the Opportunity and present a written proposal to County within a mutually agreed time frame. Service Provider's proposal shall include, as applicable, the estimated current costs, the recommended changes, the anticipated savings and/or improvements in the Services that will be achieved and a proposed Change Order (including a project plan) setting forth each party's responsibilities if the Opportunity is to be realized. In the case of improved quality of Services, a mutually agreed value shall be ascribed to such improved Services and used as the basis for any gain sharing as hereinafter described. Subject to the County's procurement rules, policies and procedures, if County agrees with Service Provider's proposal, the Parties shall execute the Change Order, and the Parties thereafter shall proceed to implement the Opportunity. The parties shall specify in the Change Order the gain sharing formula (if any) that will be applicable in order to compensate Service Provider with respect to the Opportunity. The County shall not be obligated to pay for any gain sharing opportunities unless such gain sharing opportunities are memorialized in a Change Order executed by both parties.
- 4.13 **Revenue Sharing.** The County and Service Provider may agree to provide joint services and products to other municipalities and entities and share in the fees and revenues collected for such services and products. Such revenue sharing ventures shall only be conducted in accordance with the following.
- 4.13.1 Under no circumstances can either the County or Service Provider propose services or products to other municipalities or entities, that would obligate the other party to deliver or provide such services or products, without the written prior consent of both parties.
- 4.13.2 For each such venture, a Memorandum of Understanding shall be executed between the authorized representatives of the County and Service Provider that lists all the terms and conditions for such venture.
- 4.14 **Setoff and Withholding.** Notwithstanding any other provision of this Master Agreement, a party who is owed any amount by the other party may, at its option, set off that amount as a credit against any amounts it otherwise owes to the other party. If County disputes in good faith any portion of an invoice, County shall pay the undisputed dollar amount of such invoice when due and may, at its option, withhold the disputed portion pending resolution of the dispute by mutual agreement or pursuant to the subpart entitled "Dispute Resolution." To the extent allowed by law, no interest shall become due on amounts to be paid by County which are disputed by County in good faith. If County withholds any payment pursuant to this section, County shall notify Service Provider of the basis for such withholding. Upon resolution of the dispute, County shall pay to Service Provider such portion, if any, of the disputed amount determined to be owing to Service Provider.



#### 4.15 Taxes

- 4.15.1 Service Provider shall pay any real property taxes or personal property taxes on property it owns or any other taxes, fees or costs related to Equipment used as a part of any Service Agreement. If County purchases any Equipment from Service Provider on the expiration or earlier termination of a Service Agreement, all unpaid personal property taxes shall be paid by Service Provider, with such Service Provider paying the taxes allocable to the period before the date County purchases the Equipment.
- 4.15.2 Absent applicability (and perfection, if necessary) of any exemption, Service Provider shall pay any sales, use, excise, value-added, services, consumption, and other taxes and duties imposed on any goods and services acquired, used or consumed by Service Provider in connection with the Services.
- 4.15.3 The parties shall cooperate with each other to enable the parties to determine accurately their respective tax liabilities, if any, and to reduce such liabilities to the extent permitted by law. Service Provider shall provide to County any resale certificates, exemption certificates, information regarding out-of-state or out-of-country sales or use of Equipment and services, and such other similar information as County may reasonably request.

### Article 5

#### INTELLECTUAL PROPERTY RIGHTS AND CONFIDENTIALITY

##### 5.1 PUBLIC RECORDS EXEMPTION

- 5.1.1 **Definition.** “Exempt Information” means information which is exempt from the provisions of Florida Statute Section 119.07 (1) and Section 24(a), Article I of the Florida State Constitution. Exempt Information includes, without limiting the generality of the foregoing, Service Provider Software, County Data, County Software, and information: (i) relating to the disclosing party’s current or planned software (whether in object code or source code form) or hardware products or services, technical and non-technical information, formulae, tools, patterns, compilations, programs, devices, techniques, drawings, methodologies and processes; (ii) relating to the disclosing party’s business, policies, strategies, operations, finances, plans or opportunities, including the identity of, or particulars about, the disclosing party’s clients, customers or Service Providers; or (iii) marked or otherwise identified as exempt, or sensitive including, without limiting the generality of the foregoing, information acquired by inspection or oral disclosure provided such information was identified as exempt at the time of disclosure or inspection.

- 5.1.2 **Exceptions.** Notwithstanding the foregoing, Confidential Information does not include information that the receiving party can establish: (a) has become generally available to the public or commonly known in either party's business other than as a result of a breach by the receiving party of any obligation to the disclosing party; (b) was known to the receiving party prior to disclosure to the receiving party by the disclosing party by reason other than having been previously disclosed in confidence to the receiving party; (c) was disclosed to the receiving party on a non-confidential basis by a third party who did not owe an obligation of confidence to the disclosing party with respect to the disclosed information; (d) was independently developed by the receiving party without any recourse to any part of the Confidential Information; or (e) in the case of County, any information related to the Services which County has publicly disclosed in connection with this competitive negotiations process for information technology and telecommunications services, including, without limitation, information of an operational, technical or financial nature related to County.
- 5.1.3 **Use of Exempt Information.** (a) During the Term, the receiving party may: (i) disclose Exempt Information received from the disclosing party only to its employees, officers, directors, attorneys, and subcontractors who have a need to know such information exclusively for the purpose of performing this Master Agreement and who have executed a nondisclosure agreement containing provisions no less restrictive than those contained herein, or who are subject to other equivalent means to ensure confidentiality; (ii) reproduce the Exempt Information received from the disclosing party only as required to perform this Master Agreement; and (iii) disclose Exempt Information as required by law, provided the receiving party gives the disclosing party prompt notice prior to such disclosure to allow the disclosing party to make a reasonable effort to obtain a protective order or otherwise protect the confidentiality of such information. (b) Except as otherwise specifically provided in this Master Agreement, the receiving party shall not during the Term and after expiration or earlier termination hereof: (i) disclose, in whole or in part, any Exempt Information received directly or indirectly from the disclosing party; or (ii) sell, rent, lease, transfer, encumber, pledge, reproduce, publish, transmit, translate, modify, reverse engineer, compile, disassemble or otherwise use the Exempt Information in whole or in part.
- 5.1.4 **Care.** The receiving party shall exercise the same care in preventing unauthorized disclosure or use of the Exempt Information that it takes to protect its own information of a similar nature, but in no event less than reasonable care.
- 5.1.5 **Return of Exempt Information.** Immediately upon the disclosing party's request, and at the expiration or earlier termination of this Master Agreement or any applicable Service Agreement, pursuant to Florida Division of Library record retention, the receiving party shall return or destroy all materials containing Exempt Information, including, without limitation, all originals, copies, reproductions and summaries, and all copies of Exempt Information present on magnetic media, optical disk, volatile memory or other storage device, in a manner that assures the Exempt Information is rendered unrecoverable.

- 5.1.6 **Ownership of County Data.** All County Data shall remain the property of County. The County Data shall not be used by Service Provider other than in connection with providing the Services, disclosed, sold, assigned, leased or otherwise provided to third parties by Service Provider, or commercially exploited by or on behalf of Service Provider, its employees or agents. Service Provider will not delete or destroy any County Data or media on which County Data resides without prior written authorization from the County. At no cost to County, Service Provider shall upon request promptly return to County, in the format and on the media in use as of the date of request, all or any requested portion of any County Data it may possess or control. Upon completion or termination of the Agreement, all County Data to the extent requested by the County, shall be delivered to the County or to any subsequent provider within to ten (10) calendar days in a format acceptable to the County (or subsequent provider) and, when multiple acceptable formats exist, as agreed upon between the parties. Service Provider shall deliver these materials at no additional cost or expense to the County to allow the County to conduct operations uninterrupted and to be available for general access and reporting going forward.

Where possible, Service Provider shall deliver the materials in a non-proprietary format. If unavoidable to supply in a proprietary format, then a perpetual license shall be granted by Service Provider to the County to access and use, and report on the County's materials.

In the event of a dispute regarding payment, the parties shall negotiate in good faith to resolve. Under no circumstances shall Service Provider withhold access to any County Data so as to adversely affect the County or any of the County's operations.

- 5.1.7 **Public Records.** Service Provider specifically acknowledges its obligations to comply with Section 119.0701, Florida Statutes, with regard to public records, and shall:

- 5.1.7.1 Keep and maintain public records that ordinarily and necessarily would be required by the Service Provider in order to perform the services required under this Agreement;
- 5.1.7.2 Upon request from the County, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law;
- 5.1.7.3 Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law; and
- 5.1.7.4 Meet all requirements for retaining public records and transfer, at no cost to the County, all public records in possession of Service Provider upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the County in a format that is compatible with the information technology system of the County.

**IF THE SERVICE PROVIDER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE SERVICE PROVIDER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 239-533-2221, 2115**

**SECOND STREET, FORT MYERS, FL 33901,  
publicrecords@leegov.com; <http://www.leegov.com/publicrecords>.**

- 5.1.8 **Security.** Service Provider will comply with the security procedures that are in effect during the Term of this Master Agreement for the security of County's facilities and County Data, as provided to Service Provider in writing. Since Service Provider personnel may have the ability to defeat systems security provisions on devices containing attorney-client privileged or attorney work product materials, Service Provider covenants that it shall not access such County Data or assert waiver of these protections by virtue of its access.
- 5.1.9 **Safeguarding County Data.** Safeguarding Procedures. Service Provider shall establish and maintain environmental, safety and facility procedures, data security procedures and other safeguards against the destruction, loss, unauthorized access or alteration of County Data in the possession or under the control of Service Provider that are (i) no less rigorous than those maintained by County as of the Commencement Date (or implemented by County in the future to the extent deemed necessary by County), including the security and control requirements under this Agreement, (ii) no less rigorous than those maintained by Service Provider for its own information of a similar nature, (iii) no less rigorous than accepted security standards in the industry (such as ISO/IEC 27001:2013, 17799 and/or BS 7799) and (iv) adequate to meet the requirements of County's privacy, security and records retention policies and applicable laws. After the Commencement and as requested by County, Service Provider shall evaluate the then-current County security policy and shall prepare and submit for County review and approval recommendations with respect to changes or modifications to such policy. Service Provider shall maintain and enforce the then-current County security policy until any changes or modifications are approved in writing by County for implementation. County shall have the right to establish backup security for County Data and to keep backup copies of the County Data in County's possession at County's expense, if County so chooses. If requested, Service Provider shall provide County with downloads of County Data, as requested by County, to enable County to maintain such backup security or backup copies of County Data. Service Provider shall remove all County Data from any media taken out of service and shall destroy or securely erase such media in accordance with County standards and the Policy and Procedures Manual. No media on which County Data is stored may be used or re-used to store data of any other customer of Service Provider or to deliver data to a third party, including another Service Provider customer, unless securely erased in accordance with the County standards and the Policy and Procedures Manual. In the event Service Provider discovers or is notified of a breach or potential breach of security relating to County Data, Service Provider shall, in addition to any other obligations it may have under this Agreement, expeditiously (a) notify County of such breach or potential breach, (b) investigate (with County's participation, if so desired by County) such breach or potential breach and perform a risk assessment, Root Cause Analysis and corrective action plan thereon, (c) provide a written report to County of such risk assessment, Root Cause Analysis and action plan (d) remediate the effects of such breach or potential breach of security, (e) provide County with such assurances as County shall request that such breach or potential breach will not recur and (f) provide periodic updates during the investigation to County and provide County the Root Cause Analysis reports. Nothing in this Agreement will be construed as a limitation on County's right to use County Data for its own purposes.

- 5.1.10 **Reconstruction Procedures.** As part of the Services, Service Provider shall be responsible for developing and maintaining procedures for the reconstruction of lost County Data which are (i) no less rigorous than those maintained by County as of the Commencement Date (or implemented by County in the future to the extent deemed necessary by County) and (ii) no less rigorous than those maintained by Service Provider for its own information of a similar nature. Service Provider shall restore all destroyed, lost or altered County Data using generally accepted data restoration techniques. In addition, if Service Provider, its Affiliates or subcontractors or other Service Provider Personnel has caused the destruction, loss or alteration of any County Data, Service Provider shall be responsible for the Loss and cost of restoring such data. Service Provider shall at all times adhere to the procedures and safeguards specified in this Section and shall correct (including any required back-up or restoration of data from scheduled backups, or if not available on such backups, restoration by other means with County's reasonable cooperation), at no charge to County, any destruction, loss or alteration of any County Data attributable to any error or breach of this Agreement due to Service Provider or Service Provider Personnel. Service Provider shall promptly correct any errors or inaccuracies in the County Data and the reports (1) caused by Service Provider, its Affiliates or subcontractors or (2) as required to comply with applicable Service Levels.
- 5.1.11 **Electronic Incident Reporting.** For purposes of this provision, "Electronic Incident" means any unauthorized action by a known or unknown person which, if successfully completed, attempted, or threatened, could reasonably be considered one of the following: an attack, penetration, denial of service, disclosure of Proprietary or Confidential Information, misuse of system access, unauthorized access or intrusion (hacking), Virus intrusion, scan of the Systems, networks, technology, content or websites of County (or another County Authorized User) or Service Provider (or its Affiliates or subcontractors), or any other activity that could adversely affect Proprietary or Confidential Information. Service Provider shall report to County all known or suspected Electronic Incidents. If an Electronic Incident occurs, Service Provider shall, as soon as possible, notify County as specified in the Policy and Procedures Manual and provide the following information, to the extent known to or ascertainable by Service Provider: the nature and impact of the Electronic Incident; actions already taken by Service Provider; Service Provider's assessment of immediate risk; and corrective measures to be taken, evaluation of alternatives and next steps. Service Provider shall continue providing appropriate status reports to County regarding the resolution of the Electronic Incident and prevention of future such Electronic Incidents. In consultation with Service Provider, County may, in its reasonable discretion, require that Service Provider's ability to access, process, or store County Proprietary or Confidential Information be suspended, connectivity with Service Provider be terminated, or other appropriate action be taken pending such resolution, provided that upon any such action by County, Service Provider shall be temporarily relieved of its obligations under this Agreement to the extent it is unable to perform under such circumstances and so notifies County at the time of such suspension by County.

5.1.12 **County Personal Data**

- 5.1.12.1 **Compliance with Privacy Laws.** Service Provider shall comply with the provisions of and the obligations imposed on Service Provider under applicable Privacy Laws. In addition, Service Provider shall provide County with such assistance as County may reasonably require to fulfill the responsibilities of County and the other County Authorized User under such Privacy Laws. Service Provider also shall comply with the other data privacy policies of County, as well as the data privacy policies of any self-regulatory organizations to which County or the other County Authorized User belong which are applicable to Service Provider in its role as a data processor and third party service provider to County and the other County Authorized User in relation to County Personal Data. No County Personal Data may be transmitted or stored outside of the United States of America without the written authorization of the County Manager or designee.
- 5.1.12.2 **Return of Personal Data.** All or any requested portion of County Personal Data acquired by Service Provider shall be promptly returned to the County upon request and at no cost to the County, in the format and on the media in use as of the date of the request, unless and to the extent such County Personal Data is required by Service Provider to discharge its obligations hereunder or under applicable Privacy Laws.
- 5.1.12.3 **Service Provider Responsible for Third Parties.** Service Provider shall be responsible for the acts and omissions of any Affiliates, subcontractors or Third Party Service Providers it has engaged to process (within the meaning of the applicable Privacy Laws) County Personal Data on Service Provider's behalf in the same manner and to the same extent as it is responsible for its own acts and omissions with respect to such County Personal Data.
- 5.1.12.4 **Personal Data Security.** Without limiting Service Provider's obligations under this Agreement or respective Service Agreements with respect to data security, Service Provider shall:
- (i) regarding the state of technological development and the cost of implementing any measures, provide a level of security (including appropriate technical and organizational measures (e.g., encryption)) appropriate to: (A) the harm that might result from unauthorized or unlawful processing of such County Personal Data, or accidental loss, destruction or damage of such County Personal Data; and (B) the nature of the County Personal Data;
  - (ii) take commercially reasonable steps to ensure the reliability of Service Provider Personnel who have access to the County Personal Data;
  - (iii) provide County with such information, assistance and cooperation, and execute such documents and additional terms, as County may reasonably require from time to time to establish Service Provider's and/or County's compliance with the obligations relating to security contained in the Privacy Laws; and
  - (iv) inform County as soon as reasonably practicable of any particular risk to the security of any of Service Provider's computer networks of which it becomes aware and of the categories of County Personal Data and individuals that may be affected.



- 5.1.13 **Data and Privacy.** Service Provider shall comply with all applicable data and privacy laws and regulations, including without limitation, the Florida Information Protection Act of 2014, Florida Statutes Section 501.171, and shall ensure that County data transmitted and stored in connection with this Agreement is not transmitted or stored outside of the continental United States. Service Provider may not sell, market, publicize, distribute, or otherwise make available to any third party any personal identification information (as defined by Florida Statutes Section 817.568 or Section 817.5685) that Service Provider may receive or otherwise have access to in connection with this Agreement unless expressly authorized in advance by County. If requested by County, Service Provider shall ensure that all hard drives or other storage devices and media that contain County Data have been wiped in accordance with the then-current best industry practices, including without limitations DOD 5220.22-M, and then an appropriate data wipe certification is provided to the satisfaction of the County Manager or designee.
- 5.1.14 **Indemnity. THE SERVICE PROVIDER SHALL INDEMNIFY, DEFEND, SAVE AND HOLD HARMLESS COUNTY FROM ANY AND ALL LOSS RESULTING FROM A BREACH BY SERVICE PROVIDER OR ITS EMPLOYEES, AGENTS OR CONTRACTORS OF THE TERMS OF ARTICLE 5 OF THE AGREEMENT.**
- 5.1.15 **Injunctive Relief.** The parties represent and agree that neither damages nor any other legal remedy is adequate to remedy any breach of this article, and that the injured party shall therefore be entitled to injunctive relief to restrain or remedy any breach or threatened breach of this Article.
- 5.1.16 **Survival; Severability.** The provisions of this section shall survive termination or expiration of this Agreement or any determination that this Agreement or any portion hereof is void, voidable, invalid or unenforceable.
- 5.1.17 **Service Provider Confidential Information.** Any materials submitted to the County that Service Provider contends constitutes or contains trade secrets or is otherwise exempt from production under Florida Public Record Laws (including Florida Statutes Chapter 119) (“Trade Secret Materials”) must be separately submitted and conspicuously labeled “EXEMPT FROM PUBLIC RECORD-TRADE SECRET.” In the event that a third-party submits a request to County for records designated by the Service Provider as a Trade Secret Materials, County shall refrain from disclosing the Trade Secret Materials, unless otherwise ordered by Court of competent jurisdiction or authorized in writing by Service Provider. Service Provider shall indemnify and defend County and its employees and agents from any and all claims, causes of action, Losses, fines, penalties, damages, judgments, and liabilities of any kind, including attorneys’ fees, litigation expenses, court costs, relating to the non-disclosure of any Trade Secret Materials in response to a records request by a third-party caused by the act or omission of the Service Provider.

- 5.1.18 **County Proprietary Rights.** Service Provider acknowledges and agrees that County retains all rights, title, interest in and to all materials, data, documentation, and copies thereof furnished by County to Service Provider under this Agreement, including all copyright and other proprietary rights therein, which Service Provider as well as its employees, agents, subconsultants, end suppliers may use only in connection with the performance of its obligations under this Agreement. All rights, title, and interest in and to certain ideas, designs, and methods, specifications, and other documentation related thereto developed by Service Provider specifically for County (collectively the “Developed Works”) shall be and remain the property of County. Accordingly, neither Service Provider nor its employees, agents, subconsultants, or suppliers shall have any proprietary interest in such Developed Works. Developed Works may not be utilized, reproduced, or distributed by or on behalf of Service Provider, or any employee, agent, subconsultants, or supplier thereof, without prior written consent of County, except as required for the Service Provider’s performance hereunder.

## 5.2 INTELLECTUAL PROPERTY RIGHTS

- 5.2.1 **County Software.** Each Service Agreement shall identify the County Software, if any, that Service Provider is authorized to use to perform the Services and specify the rights of Service Provider to use the County Software for the benefit of the County.
- 5.2.2 **Third Party Software.** Each Service Agreement shall identify any Third Party Software, and, unless otherwise stated in such Service Agreement, Service Provider shall, to the extent necessary to provide the Services: (i) maintain (and upgrade as necessary) licenses and maintenance agreements for Third Party Software Licenses used by County on the Service Agreement Effective Date; (ii) obtain licensed authorization for use and disclosure of Third Party Software by and to Service Provider’s employees or agents; and (iii) install fixes, modifications, releases or versions of Third Party Software which are identified by the licensor of Third Party Software as required to make the Third Party Software function as intended. Service Provider shall not use in performing the Services any Third Party Software unless the fully informed consent of the County has been tendered and such Third Party Software was commercially available to County when selected.
- 5.2.3 **Work Product.** (a) Service Provider shall be the sole and exclusive owner of all work product owned by it as of each applicable Service Agreement Effective Date (“Service Provider Work Product”). (b) County shall be the sole and exclusive owner of any reports, manuals and other work product prepared by Service Provider pursuant to a Service Agreement and of any enhancements to and modifications of County Software implemented pursuant to a Service Agreement (“County Work Product”). In addition, as between County and Service Provider, to the extent possible, County shall be the sole and exclusive owner of any enhancements to and modifications of Third Party Software implemented pursuant to a Service Agreement. All County Work Product described in this subsection (b) shall be considered instantly vested and fully owned by County as fully and completely as if a proper, enforceable work for hire under the copyright laws. If any such County Work Product is not considered a work made for hire under applicable law, Service Provider hereby irrevocably assigns to County all of Service Provider’s right, title and interest in and to such County Work Product. Service Provider shall execute any documents and take any other actions reasonably requested by County to accomplish the purposes of this Section. If for any reason County fails to obtain ownership of the County Work Product and such ownership is vested in Service Provider or its employees or agents, Service Provider agrees to (i) promptly and legally transfer such work product to County wherever possible and (ii) wherever not possible, promptly grant to County a perpetual, exclusive, royalty-free and world-wide license to use the County Work Product for any

purpose, and to assign and sublicense its license rights.

- 5.2.4 **Use of Concepts.** Nothing in this Master Agreement shall restrict a party from the use of any ideas, concepts, know-how, methods or techniques relating to information technology and telecommunications services that such party, individually or jointly, develops or discloses under this Master Agreement or any Service Agreement or obtains from third parties, except to the extent that such use infringes the other party's patent rights, copyrights or other intellectual property rights or involves a disclosure or use of the other party's Confidential Information.
- 5.2.5 **Non-Infringement.** Both Parties shall perform their respective obligations under this Master Agreement and all Service Agreements in a manner that does not infringe, or constitute an infringement or misappropriation of, any patent, copyright, trademark, trade secret or other proprietary rights of any third party. Service Provider represents that, to its knowledge, as advised by counsel, the Service Provider Software and the Services performed by Service Provider do not, and will not, infringe any patent, copyright, trade secret or any other intellectual property interest owned or controlled by any other person.
- 5.2.6 **Viruses.** Service Provider shall use all Commercially Reasonable Efforts to ensure that no Viruses are coded or introduced into the systems used to provide the Services. If a Virus is introduced either by Service Provider or as a result of the negligent performance of the Services by Service Provider, Service Provider shall at its expense eliminate the Virus and assume all liability for Losses caused by the Virus.
- 5.2.7 **Disabling Code.** Service Provider shall not knowingly insert into any Software any code that would have the effect of disabling any Software, Equipment or Services. With respect to any disabling code that may be part of the Software, Service Provider shall not invoke such disabling code at any time for any reason. If, at any time, the licensor of any Third Party Software shall invoke or threaten to invoke any disabling code in Third Party Software licensed to Service Provider which could adversely affect the Services, Service Provider shall use its best efforts to preclude such action on the part of such licensor.

## Article 6

### INSURANCE AND INDEMNIFICATION

- 6.1. **INSURANCE COVERAGES REQUIRED.** Service provider shall, at all times during the duration of this Agreement, and to the extent required thereafter, provide and maintain on a primary and non-contributory basis, the following types of insurance protecting the interest of Service Provider and County with limits of liability no less than those set forth below or otherwise maintained by the Service Provider, whichever limits of liability are greater:
- 6.1.1. **Commercial Liability Insurance.** Service Provider shall maintain Commercial General Liability Insurance which shall include coverage on an "occurrence basis" and afford the following coverages:
- 6.1.1.1. Premises-Operations;
- 6.1.1.2. Products/Completed Operations Hazard;

- 6.1.1.3. Contractual Insurance;
- 6.1.1.4. Independent Contractors;
- 6.1.1.5. Personal Injury;
- 6.1.1.6. Advertising Injury;
- 6.1.1.7. Premises Medical Payments;
- 6.1.1.8. Broad Form Property Damage;
- 6.1.1.9. Additional Insureds; and
- 6.1.1.10. Independent Contractors

The Commercial General Liability Insurance to be maintained by Service Provider must be endorsed with a broad form property damage endorsement (including completed operations). The County shall be named as an additional insured on the Service Provider's comprehensive general liability policy on a form no more restrictive than ISO Form CG 20 10 (additional insured-owners, lessees, or contractor). The policy must be endorsed to waive the insurer's right to subrogate against the County. The limits of liability associated with the Service Provider's comprehensive general liability insurance shall not be less than the following:

Four Million and No/100 Dollars (\$4,000,000.00) each occurrence; and

Six Million and No/100 Dollars (\$6,000,000.00) aggregate. Use of umbrella and excess liability policy permitted to meet the minimum required coverage.

Notwithstanding anything contained herein to the contrary, the insurance coverages under the general liability policy to be furnished by the Service Provider must be afforded on a policy form no more restrictive than the last edition of the commercial general liability policy filed by the Insurance Services Office, Inc. (ISO).

- 6.1.2. **Workers Compensation/Employers Liability Insurance.** Such insurance shall be no more restrictive than that provided by the latest edition of the standard Workers Compensation Policy, as filed for use in Florida by the National Counsel on Compensation Insurance (NCCI), with the exception of endorsements required by NCCI or the State of Florida. The policy must be endorsed to waive the insurer's subrogate rights against the County in the manner which would result from the attachment of the NCCI Form "Waiver of our Right to Recover from Others Endorsement" (Advisor Form WC 00 03 13) with the County scheduled thereon. The employer's liability coverage afforded under the Worker's Compensation/ Employers Liability Insurance shall have minimum limits of:

\$500,000.00 per accident

\$500,000.00 disease limit

\$500,000.00 disease-policy limit

- 6.1.3. **Professional Liability Insurance.** Such insurance shall cover Service Provider for those sources of liability arising out of the rendering or failure to render professional services in the performance of the services required under this Agreement. If the policy provides coverage on a claims-made basis, such coverage must respond to all claims reported within at least three (3)

years following the period for which coverage is required. The professional liability insurance shall have a \$2,000,000.00 combined single limit (CSL).

- 6.1.4. **Cyber Liability, or Technology Errors and Omissions Insurance.** Coverage is required for any system connected to, and, or accessible from the internet. Coverage may be included as part of the required Professional Liability Insurance the limits of liability associated with the professional liability insurance shall not be less than Five Million and No/100 Dollars (\$5,000,000.00) per occurrence. If the policy provides coverages on a claims-made basis, such coverage must respond to all claims reported within at least three (3) years following the period for which coverage is required. Such policy shall cover, at a minimum, the following:

Data Loss and System Damage Liability;

Security Liability;

Privacy Liability; and

Privacy/Security Breach Response Coverage including Notification Expenses.

The limits of liability associated with the Service Provider's Cyber Liability, or Technology Errors and Omissions coverage shall not be less than the Five Million and No/100 Dollars (\$5,000,000.00) each occurrence. The County shall be included on the Cyber Liability, or Technology Errors and Omissions Insurance as an "additional insured."

- 6.1.5. **Business Automobile Liability Insurance.** The Service Provider shall maintain Business Automobile Liability Insurance covering all owned, non-owned, and hired vehicles used by the Service Provider in connection with this Agreement with a combined minimum limit of One Million and No/100 Dollars (\$1,000,000.00), single limit for bodily injury and property damage liability for each person/each occurrence.
- 6.1.6. **Crime and Fidelity Insurance.** The Service Provider shall maintain a policy of Crime and Fidelity Insurance in an amount not less than Five Million and No/100 Dollars (\$5,000,000.00) per occurrence.
- 6.1.7. **Umbrella (Excess) Liability Insurance.** The Service Provider shall maintain an Umbrella (Excess) Liability Insurance policy in an amount not less than Ten Million and No/100 Dollars (\$10,000,000.00) combined single limit bodily injury/ property damage, in excess of the commercial general liability insurance and business automobile insurance described above.
- 6.1.8. **Property Insurance.** Service Provider shall provide insurance on all property owned by Service Provider and used to perform Services under this Agreement. Such policy shall provide "all risk" perils, including flood, and shall be written on a basis of the lesser of the cost of complete repair or one hundred percent (100%) replacement value of the property. Coverage shall include all business personal property, tenant improvements, business interruption, property of others, in care, custody, and control of the insured and in transit. Service Provider shall be responsible for any deductible or self-insured retention associated with such insurance coverage.

## 6.2. **INSURANCE REQUIREMENTS**

- 6.2.1. **Rating of Insurance Companies.** All companies issuing the policies of insurance provided for herein shall be licensed or approved by the Department of Insurance, State of Florida, and shall have a financial rating no lower than II, and a policy holders surplus rating no lower than (A) as listed in the most current edition of A. M. Best TK Rating Guide. Companies with ratings lower than those specified herein shall only be acceptable upon the written consent of the County.
- 6.2.2. **Waiver of Subrogation.** Service Providers insurance policies shall be endorsed to provide that the insurers waive their rights of subrogation against the County and also to provide that the policies afford primary coverage over any other applicable insurance coverages.
- 6.2.3. **Extent of Coverages.** The required insurance coverages referred to above are set forth in full in their respective policy forms, and the foregoing descriptions of such policies are not intended to be complete nor to limit any of the provisions of the actual policies and should such descriptions be narrower than the coverages afforded under the actual policies of insurance, the provisions of the actual policies of insurance shall govern.
- 6.2.4. **Advance Notice of Cancellation.** Service Provider shall provide the County with thirty (30) calendar days advance notice of any cancellation of the policy except in case of cancellation for non-payment for which the County shall be given ten (10) calendar days advance notice.
- 6.2.5. **Request for Policy Forms.** The Service Provider shall provide, within thirty (30) calendar days after receipt of a request from the County, copies of the policies providing the insurance coverages required under this Agreement.
- 6.2.6. **Subcontractors.** If the Service Provider utilizes a subcontractor, the Service Provider shall require each subcontractor to endorse the County as an “additional insured” on the subcontractor’s commercial general liability policy.
- 6.2.7. **Maintenance of Coverage.** The coverages provided for under this Agreement are not to cease and are to remain in full force and effect until the County determines that all performance required of the Service Provider is completed. If any of the insurance coverages are terminated prior to the completion of the Services, the County shall be entitled to replace such insurance at the expense of the Service Provider and the Service Provider shall reimburse the County for all such forced replaced insurance.
- 6.2.8. **Financial Resources.** Service Provider shall be required to provide written documentation that is acceptable to the County establishing that the Service Provider has the financial resources readily available to cover damages, injuries and/or Losses which are not covered by the policies deductible amount or under any self-insurance program maintained by the Service Provider.
- 6.2.9. **Verification of Coverage.** Coverage shall be in place prior to the commencement of any work and throughout the duration of the Contract and for such additional periods as are provided for herein. A certificate of insurance will be provided to the County’s Risk Manager for review and approval. The certificate shall provide for the following:
- 6.2.9.1. The certificate holder shall read as follows:  
Lee County Board of County Commissioners, P.O. Box 398, Fort Myers, Florida 33902



- 6.2.9.2. “Lee County, a Political Subdivision and Charter County of the State of Florida, its agents, employees and public officials” will be named as an “Additional Insured” on all policies other than the professional liability policy on which the County shall be named as a certificate holder.

**Subcontractors.** It is the responsibility of the Service Provider to ensure that all subcontractors comply with all insurance requirements and maintain levels of coverage acceptable to the County.

- 6.3. **Indemnification.** Service Provider shall be fully liable for the actions of its current and former officers, employees, subcontractors and other agents under this Agreement. Service Provider shall at all times hereafter indemnify, hold harmless and defend County and all of County’s current and former officers, employees and other agents (collectively, “Indemnified Party”) from and against any and all lawsuits, causes of action, demands, claims, Losses, fines, penalties, damages, judgments, liabilities and expenditures of any kind, including attorneys’ fees, litigation expenses, and court costs (collectively, “Claim”), raised or asserted by any person or entity that is not a party to this Agreement, which Claim is caused or alleged to be caused, in whole or in part, by any intentional, reckless, or negligent act or omission of Service Provider or any current or former officer, employee, subcontractor, or other agent of Service Provider, arising from, relating to, or in connection with any obligation or performance under this Agreement. In the event any Claim is brought against an Indemnified Party, Service Provider shall, upon written notice from County, defend each Indemnified Party against each such Claim through counsel satisfactory to County or, at County’s option, pay for an attorney selected by the County to defend the Indemnified Party. The provisions and obligations of this section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by the County, in its sole and reasonable discretion, any sums due Service Provider under this Agreement may be retained by County until all Claims subject to this indemnification obligation have been resolved. Any sums so withheld shall not be subject to the payment of interest by County.

## Article 7

### REPRESENTATIONS

- 7.1. **Mutual Representations.** Each party represents and warrants that it has all necessary corporate power and authority to enter into this Master Agreement and all associated Service Agreements and to perform its obligations thereunder.
- 7.2. **Service Provider Representations.** The Service Provider represents and warrants to the County that:
- 7.2.1. It has and shall have the right and authority to use the Service Provider Software and Third Party Software to provide Services and to grant to County licenses to the Service Provider Software and Third Party Software described in each Service Agreement.
- 7.2.2. It is not a party to, and is not bound or affected by or subject to, any instrument, agreement, charter or by-law provision, rule, regulation, judgment or order which would be contravened or breached as a result of the execution of this Master Agreement, consummation of the transactions contemplated by this Master Agreement, or execution of any Service Agreement.

- 7.2.3. It is not the subject of any pending or threatened litigation (including claims subject to mediation or arbitration) arising from an outsourcing relationship similar to the relationship contemplated by this Master Agreement or any Service Agreement.
- 7.2.4. Service Provider (a) has, and each of the Service Provider's employees and subcontractors possesses the necessary knowledge, skills, experience, rights and resources to provide and perform the Services in accordance with the Agreement; (b) it has successfully provided and performed the Services that are substantially equivalent to the Services for other customers of Service Provider; and (c) the services will be performed in a prompt, diligent and professional manner using qualified, experienced individuals, and in accordance with preferred industry standards applicable to the performance of such Services.
- 7.2.5. It is a corporation duly incorporated, validly existing and in good standing under the laws of the state in which it is incorporated, and is in good standing in each other jurisdiction where the failure to be in good standing would have a material adverse effect on its business and ability to perform its obligations under this Master Agreement.
- 7.3. **Public Entity Crime Act.** Service Provider represents that it is familiar with the requirements and prohibitions under the Public Entity Crime Act, Section 287.133, Florida Statutes, and represents that its entry into this Agreement will not violate that Act. In addition to the foregoing, Service Provider further represents that there has been no determination that it has committed a "Public Entity Crime" as defined by Section 287.133, Florida Statutes, and that it has not been formally charged with committing an act defined as a "Public Entity Crime" regardless of the amount of money involved or whether Service Provider has been placed on the convicted vendor list. Notwithstanding any provision in this Agreement to the contrary, if any representation stated in this section is false, County shall have the right to immediately terminate this Agreement without liability, at its discretion, and recover all damages attributable to that false representation.
- 7.4. **Contingency Fee.** Service Provider warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Service Provider, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for Service Provider, any fee, commission, percentage, gift or other consideration contingent upon, or resulting from, the award or making of this Agreement. For a breach or violation of this provision, the County shall have the right to immediately terminate this Agreement without liability, at its discretion, and to recover all damages attributable to such a misrepresentation.

## Article 8

### EQUAL EMPLOYMENT OPPORTUNITY

- 8.1. No party to this Agreement may discriminate on the basis of race, color, sex, religion, national origin, disability, age, marital status, political affiliation, sexual orientation, pregnancy or gender identification and expression in the performance of this Agreement. Service Provider shall include the foregoing or similar, but equally restrictive, language in its contracts with any subcontractors. Failure by Service Provider to carry out any of the requirements of this section shall constitute a material breach of this Agreement which shall permit County to terminate this Agreement or to exercise any other remedy provided under this Agreement or under other applicable law, all such remedies being cumulative.

- 8.2. By execution of this Agreement, Service Provider represents that it has not been placed on the discriminatory vendor list as provided in Section 287.134, Florida Statutes. County hereby materially relies on such representation in entering into this Agreement. An untrue representation of the foregoing shall entitle the County to terminate this Agreement or to exercise any other remedy provided for under this Agreement and may result in the Service Provider being barred from the County's procurement activities.

## **Article 9**

### **TERM AND TERMINATION**

9.1. **Term of Agreement.**

- 9.1.1. **Initial Term.** The initial term of this Master Agreement shall begin on the Commencement Date. The Term shall continue for a period of **five (5) years** after the Commencement Date, unless earlier terminated or renewed in accordance with the provisions of this Master Agreement. Each Service Agreement contemplated hereunder shall set forth the applicable Service Agreement Term, but in no event shall the term of any Service Agreement exceed the Term of this Master Agreement.

- 9.1.2. **Option to Renew.** The County shall have the option to renew this Master Agreement for up to **three (3) additional one-year terms**, for desired Service Towers, upon the mutual written agreement of both Parties. The County can elect to avail itself of one, two or all of the renewal terms. The County shall exercise this option to renew for an additional Term by delivering written notice of such renewal to the Service Provider at least three (3) months prior to the expiration of the then-current Term. The Service Provider shall provide the County with notice of the need to make a renewal election four (4) months before the expiration of each Term. All of the terms of this Master Agreement, and any applicable Service Agreements, shall continue to apply without change, unless mutually agreed to by both parties during any renewal Term.

9.2. **Termination of Agreement**

- 9.2.1. **Termination for Cause.**

- 9.2.1.1. County shall have the option to terminate any Service Agreement, or one or more categories of Services under a Service Agreement, for cause in the event of any of the following: (i) a material breach of such Service Agreement by Service Provider that is not cured by Service Provider within fifteen (15) calendar days of the date on which County provides written notice of such breach; (ii) a material breach of such Service Agreement by Service Provider that is not reasonably subject to cure within fifteen (15) calendar days after its occurrence; (iii) if it is determined by County that there exists a plurality of non-material breaches by Service Provider that have a material adverse impact on the Services; (iv) immediately upon a material failure by Service Provider to provide any Services pertaining to disaster recovery services required under any Service Agreement; (v) upon Service Provider's failure to satisfactorily complete a migration under a Service Agreement by the scheduled Migration Completion Date; (vi) upon Service Provider's failure to provide adequate assurances of performance within seven (7) calendar days of Service Provider's receipt of County's demand for such assurances; or (viii) upon any change in control of Service Provider or any sale of all or substantially all the assets of Service Provider, except in the event of a merger or other form of combination between Service Provider and its parent or a wholly owned subsidiary of its parent provided that the County is satisfied, in the exercise of its reasonable discretion, that such a merger or combination will not adversely affect Service Provider's creditworthiness or ability to provide the Services.
- 9.2.1.2. County shall have the option to terminate this Master Agreement and all Service Agreements for cause (i) at any time if County has terminated one or more Service Agreement for cause; or (ii) upon any change in control of Service Provider or any sale of substantially all the assets of Service Provider, except in the event of a merger or other form of combination between Service Provider and its parent or a wholly owned subsidiary of its parent, consented to by County, which consent shall not be unreasonably withheld or delayed.
- 9.2.1.3. County shall exercise its termination option by delivering to Service Provider written notice of such termination identifying the termination date which shall be at least thirty (30) calendar days from the date such termination notice is delivered to Service Provider.
- 9.2.1.4. Service Provider shall have the option to terminate a Service Agreement if County fails to pay in accordance with the Prompt Payment Act and if the County owes undisputed amounts to Service Provider under such Service Agreement and County fails to cure such failure within thirty (30) calendar days after receipt of written notice specifically stating that Service Provider is exercising its rights under this section. Service Provider hereby waives any rights it may have under this Master Agreement or any Service Agreement, at law or in equity, to terminate this Master Agreement or any Service Agreement for any other reason. Service Provider shall exercise its termination option by delivering to County written notice of such termination identifying the termination date which shall be at least ninety (90) calendar days from the date such termination notice is delivered and served upon the County as required by law.

9.2.2. **Non-Appropriation.** All funds for payment by the County under this Agreement are subject to the availability of an annual appropriation for this purpose by the Lee County Board of County Commissioners. In the event of non-appropriation of funds by the County for the services provided under this Agreement, the County will terminate the Contract, without termination charge or other liability, on the last day of the then current fiscal year or when the appropriation made for the then-current year for the services covered by this Agreement is spent, whichever event occurs first. If at any time funds are not appropriated for the continuance of this Agreement, cancellation shall be accepted by Service Provider on thirty (30) calendar days' prior written notice, but failure to give such notice shall be of no effect and the County shall not be obligated under this Agreement beyond the date of termination.

9.2.2.1. **Termination for Convenience.** County shall have the option to terminate for convenience this Master Agreement or one or more Service Agreements or one or more categories of Services under a Service Agreement. County shall exercise its termination option by delivering to Service Provider written notice of such termination identifying the termination date which shall be at least thirty (30) calendar days after the date of such notice. In connection with any such termination, County shall have no liability to Service Provider for amounts in excess of the normal charges through the date of termination except for payment of any termination fees referenced in a Service Agreement. Any termination fee included within a Service Agreement shall not include any reimbursement for lost profit and shall be strictly limited to any sums that are owed the Service Provider as of the date of the termination and the actual demobilization costs the Service Provider incurs as a result of such termination. Service Provider shall be deemed to have waived and released any other claims against the County it possesses.

9.2.2.2. County shall have the option to terminate this Master Agreement without cause at any time if no Services are being provided under any Service Agreement.

9.2.2.3. If a purported termination for cause by County is determined not to be a proper termination for cause, such termination shall be deemed, at County's option, to be a termination for convenience subject to this Section.

9.2.3. **Termination for Insolvency.** County shall have the option to terminate this Master Agreement in its entirety without payment of any termination fees if Service Provider (i) becomes insolvent or is unable to meet its debts as they mature, (ii) files a voluntary petition in bankruptcy or seeks reorganization or to effect a plan or other arrangement with creditors, (iii) files an answer or other pleading admitting, or fails to deny or contest, the material allegations of an involuntary petition filed against it pursuant to any applicable statute relating to bankruptcy or reorganization, (iv) shall be adjudicated bankrupt or shall make an assignment for the benefit of its creditors generally, (v) shall apply for, consent to or acquiesce in the appointment of any receiver or trustee for all or a substantial part of its property, or (vi) any such receiver or trustee shall be appointed and shall not be discharged within thirty (30) calendar days after the date of such appointment.

9.2.4. **Termination Upon Force Majeure Event.** County shall have the option to terminate this Master Agreement or one or more affected Service Agreements or categories of Services, if Service Provider fails to perform any Services in any material respect because of the occurrence of a Force Majeure Event and: (a) Service Provider does not cure such failure within seven (7) calendar days after the occurrence of the Force Majeure Event; or (b) such failure is not reasonably subject to cure within seven (7) calendar days after such occurrence. County shall exercise its termination option by delivering to Service Provider written notice of such termination identifying the termination date.

- 9.2.5. **Effect of Termination.** Termination of this Master Agreement or any Service Agreement or categories of Services for any reason under this Article shall not affect (i) any liabilities or obligations of either party arising before the termination date; (ii) continuing obligations under this Agreement or any Service Agreement; or (iii) any damages or other remedies to which a party may be entitled under this Master Agreement or any Service Agreement, at law or in equity, arising from any breaches of obligations occurring before the termination date.
- 9.2.6. **Support in Managing Termination/Expiration.** Upon County's delivery to Service Provider of any written notice of breach or termination of this Master Agreement or any Service Agreement, Service Provider shall provide to County or County's designee the assistance reasonably requested by County to facilitate the orderly transfer of the Services to County or its designee, including, without limitation, preparation of a mutually agreeable, reasonable Migration Plan and the delivery of any assistance specifically described in any Service Agreement(s) ("Support in Managing Termination/Expiration"). Such Migration Plan would include an identification of key positions requiring transition management, and important procedures to be performed regarding County Data, documentation, projects and activities so that County's business is not adversely affected during transition. County may also request that Service Provider begin providing support in managing termination/expiration at any time within the six-month period prior to expiration of any Service Agreement Term. Unless otherwise provided in a Service Agreement, the Support in Managing Termination/Expiration referenced in a Service Agreement shall be provided to County at no additional cost.
- 9.2.7. **Software Licenses.** Upon expiration or earlier termination of any Service Agreement and unless provided otherwise in such Service Agreement, Service Provider shall grant to County a worldwide, royalty-free, nonexclusive license to County to use the Service Provider Software used to provide the applicable Services at the end of the Service Agreement at Service Provider's then-current fees. Service Provider may offer to maintain such Service Provider Software on terms at least as favorable as those offered to other similarly situated Service Provider Customers. The scope of any such license grant will be for the sole and exclusive purpose of supporting County's technology requirements covered by such Service Agreement that has been terminated and any such Service Provider Software or derivative works thereof may only be used by County or by a third party on County's behalf for such purpose.
- 9.2.8. **Contracts.** Upon expiration or earlier termination of any Service Agreement, Service Provider shall, at County's request and sole discretion, and to the extent permitted by the applicable Third Party Contract, assign to County or its designee any Third Party Software Licenses and any Third Party Service Contracts used to provide Services to County at the end of the Term. Concurrently with the assignment, County shall expressly assume all financial liabilities associated with such Third Party Service Contracts and Third Party Software Licenses.

## Article 10

### DISENTANGLEMENT SERVICES

- 10.1. **General Obligations.** Service Provider shall accomplish a complete transition of any terminated Services, whether in their entirety or on a Service Agreement-by-Service Agreement basis, as applicable, from Service Provider to County and/or to any replacement provider designated by County (the "Replacement Service Provider") as directed by County, without any material interruption of, or adverse impact on, the Services. As part of the Services, Service Provider shall perform the obligations set forth in this Article 10 (collectively,



the “Disentanglement Services”).

## **10.2. Disentanglement Process and Performance**

**10.2.1. Initiation of Disentanglement Services.** The Disentanglement Services shall begin on any of the following dates: (a) the date designated by County in connection with the expiration of the Term, which date shall not be earlier than one hundred eighty (180) calendar days prior to the Expiration Date; (b) the Termination Date specified in any Termination Notice delivered by County to Service Provider pursuant to and in compliance with County’s termination rights as set forth in this Agreement; or (c) the Termination Date specified in any Termination Notice delivered by Service Provider to County.

**10.2.2. End of Disentanglement Services.** Disentanglement Services shall continue until the Termination Date or Expiration Date, as applicable. County may extend the Disentanglement Services as set forth in paragraph 10.6 for the fees and on such terms negotiated and agreed upon by the Parties in writing.

**10.2.3. Firm Commitment.** Service Provider shall provide the Disentanglement Services to County and/or the Replacement Service Provider regardless of the reason for the expiration or termination of this Agreement. At County’s request, Service Provider shall provide the Disentanglement Services directly to the Replacement Service Provider; provided, however that, unless otherwise agreed by the Parties in writing, all such Disentanglement Services shall be performed subject to and in accordance with the terms and conditions of this Agreement.

**10.3. Disentanglement Services Plan.** Within thirty (30) calendar days’ written notice from County to Service Provider requesting a plan for Disentanglement Services, Service Provider shall provide for County’s review, comment and approval a plan for implementing the provision of the Disentanglement Services set forth in this Article 10 (Disentanglement Services) (the “Disentanglement Plan”). Service Provider understands and agrees that County’s operations are dependent on the Services and that County’s inability to receive the Services would result in irreparable damages to County. Therefore, upon the expiration of this Agreement or its termination by either party for any reason, including the breach of this Agreement by the other party, the rights of County shall in any and all events (except as provided in Section 10.4) be provided as set forth in this Article. If no Disentanglement Plan has yet been agreed to at the time of termination, the rights of County upon any termination shall be as set forth in this Article 10. If a Disentanglement Plan has been agreed to, then the rights of County upon any expiration or termination of this Agreement shall be as set forth in the most recent approved Disentanglement Plan, and also as set forth in this Article 10. In the event of any inconsistency between this Article 10 and the applicable Disentanglement Plan, this Section shall govern. If no Disentanglement Plan has been agreed to by the parties at the time of any termination of this Agreement, then Service Provider shall provide the professional services staff necessary to provide the Services, at performance standards and Service Levels in effect at the time of termination or expiration, as well as the transition support services, which services shall be provided as set forth in and in accordance with this Article 10.

**10.4. Performance of Services.** Service Provider shall provide County with all of the Services and all of the Disentanglement Services as provided in this Article and in the then most recent version of the Disentanglement Plan. All Disentanglement Services shall be provided subject to and in accordance with the terms and conditions of this Agreement. After the expiration or termination of the Term, Service Provider shall perform the Disentanglement Services with at least the same degree of accuracy, quality, completeness, timeliness, responsiveness and

resource efficiency as it provided and was required to provide with respect to the Services during the Term. The quality and level of performance of the Disentanglement Services provided by Service Provider following the expiration or termination of this Agreement shall continue to meet or exceed the Service Levels (and SLA Credits shall still apply) and shall not be degraded or deficient in any respect. Service Provider Personnel (including all Service Provider Key Personnel) reasonably considered by County to be critical to the performance of the Services and Disentanglement Services shall be retained on the County account through the completion of all relevant Disentanglement Services in accordance with and subject to the Designation of Service Provider Key Employees section and the Reassignment and Replacement section. The duty of Service Provider to provide such Disentanglement Services shall be conditioned on County paying Service Provider as to the Services received during the Disentanglement Period. Service Provider shall have no right to withhold or limit any of the Services or any of such Disentanglement Services on the basis of any alleged breach of this Agreement by County, other than a failure by County to timely pay the amounts due for Services rendered during the Disentanglement Period or the amounts due for such Disentanglement Services under this Section. County shall have the right to immediately seek specific performance of this Section in any court of competent jurisdiction, without engaging in pre-suit negotiations and mediation as provided in Article 13 hereof, and Service Provider hereby waives any defense that damages are an adequate remedy.

- 10.5. **Cooperation.** Service Provider shall (i) meet with County as soon as practicable after a notice of termination or notice of a decision to not extend this Agreement has been given to discuss any potential modifications to the then most current Disentanglement Plan; (ii) use all Commercially Reasonable Efforts to assist County in effecting a transition of the Services, in accordance with industry best practices, to County or another vendor chosen by County; (iii) provide the number and types of resources necessary to complete the transition in accordance with the Disentanglement Plan; and (iv) be compensated for all transition related services and costs by payment by County in accordance with the rates set forth in this Agreement for Services. Service Provider and County acknowledge and agree that their mutual cooperation is important to an effective transition of technology services provided by Service Provider to County or its designated provider(s). Each of the Parties agrees that acts, conduct, statements or other participation by a party in efforts relating to the transition of services, on or after the termination or expiration date, shall (i) not be deemed an admission of liability by either party with regard to any claims arising from the termination of this Agreement; (ii) not be deemed a compromise, release or waiver of any disputed claims between the Parties hereto or an estoppel of the right to advance any such claims; or (iii) prejudice either party's right to seek damages from the other.
- 10.6. **Period for Performance of Disentanglement Services.** Unless otherwise directed by County, commencing (i) six (6) months prior to the expiration or ceasing of the Agreement; (ii) upon any notice of termination or non-renewal of the Agreement; or (iii) continuing for a period defined in the Disentanglement Plan, but in no event less than twelve (12) months following the expiration or termination of this Agreement (unless a shorter time period is requested by County), Service Provider shall continue to provide the Services as well as any and all services. After such twelve (12) month period (or such shorter time period as requested by County), unless otherwise directed by County, Service Provider shall provide extensions of transition support services as requested by County in serial thirty (30) calendar day extension terms for up to an additional six (6) months provided that written notice of each serial thirty (30) calendar day extension is issued at least thirty (30) calendar days prior to the commencement of the requested thirty (30) calendar day extension.

The total period of transition support services, including all extensions provided for herein, shall not exceed eighteen (18) months. In addition to the Services as set forth in this Agreement, the Disentanglement Services shall include, at a minimum, converting data, providing parallel services until transition to a new system, providing On-site technical support, cooperating with County or its designated Service Provider in developing required interfaces and such other services as shall be necessary or appropriate to facilitate, without interruption to the Services, the orderly transition of Services to County or its new provider of services in accordance with industry best practices

10.7. **Specific Disentanglement Services Obligations.** The Disentanglement Services shall include at a minimum and as requested by County, the following Services, functions and responsibilities:

10.7.1. During the provision of the Disentanglement Services, the Parties shall cooperate fully with one another to facilitate a smooth transition of the terminated Services from Service Provider to County and/or the Replacement Service Provider. Without limiting the generality of the foregoing, Service Provider shall: (a) cooperate with County and/or the Replacement Service Provider and otherwise promptly take all steps required to assist County in effectuating the Disentanglement Services; (b) provide to County and/or the Replacement Service Provider full, complete, detailed and sufficient information (including all information then being utilized by Service Provider with respect to data conversions, interface specification, programs, tools, utilities and other resources used to provide the Services) and knowledge transfer with respect to all such information in order to enable County's and/or the Replacement Service Provider's personnel (or that of Third Parties) to fully assume and become self-reliant with respect to, and continue without interruption, the provision of the Services; and (c) provide for the prompt and orderly conclusion of all work, as County may direct, including completion or partial completion of Services, documentation of work in progress, and other measures to assure an orderly transition to County and/or the Replacement Service Provider.

10.7.2. Service Provider shall (i) perform programming and consulting services as requested to assist in implementing the transition plan; (ii) train personnel designated by County in the use of any Equipment, Software, materials or processes to be transferred; (iii) catalog all Software, County Data and Equipment used to provide the Services, provide machine readable and printed listings of Source Materials for Software and assist in its reconfiguration; (iv) analyze and report on the space required for the County Data and the Software needed to provide the Services; (v) assist in the execution of a parallel operation, data migration and testing process until the transition to County has been successfully completed; (vi) create and provide copies of the County Data in the format and on the media reasonably requested by County and, when directed by County to do so, delete (and certify in writing such deletion) all County Data and Documentation in Service Provider's possession or control from any tapes or other data storage media, including written records, in Service Provider's possession or control except archival records as necessary for documentation of Service Provider's engagement with County; (vii) provide such services as requested by County so that important knowledge, information and practices pass from Service Provider and Service Provider personnel to County, County's Third Party Service Providers and/or County authorized users; and (viii) provide other technical assistance as requested by County.

10.7.3. In addition to and/or as part of the Procedures Manual, Service Provider shall provide to County complete information, including complete documentation, in accordance with the standards and methodologies to be implemented by Service Provider, for all Software (including applications developed as part of the Services) and Equipment sufficient to enable County

and/or the Replacement Service Provider to fully assume the provision of the Services to County.

- 10.7.4. Service Provider shall return to County, if not previously returned, all County Equipment, in condition at least as good as the condition thereof on the reference date, ordinary wear and tear excepted. Such County Equipment shall be returned at the expiration or termination date or the completion of any Services or Transition Services associated with such County Equipment requested by County under this Agreement, whichever is later.
- 10.7.5. Service Provider shall inform County of any subcontractor or Third Party Service Provider contracts primarily dedicated by Service Provider, Service Provider subcontractors or Service Provider Affiliates to perform the Services. County shall retain the right to contract directly with any such subcontractor or Third Party Service Provider. In addition, Service Provider shall use Commercially Reasonable Efforts to provide County with the right to contract directly with any subcontractor or Third Party Service Provider previously, but no longer, utilized by Service Provider to perform any Services or to assume Service Provider's Contract with such subcontractor or Third Party Service Provider.
- 10.7.6. Service Provider agrees that, during the period in which the Disentanglement Services are being provided, it will meet with any vendors chosen by County to provide the Services to discuss the hiring by such vendors, on terms acceptable to Service Provider, of Service Provider's employees who are then providing the Services to County.

## **Article 11**

### **GENERAL**

- 11.1 **No Authority.** Neither party shall have any authority, and neither party shall represent that it has any authority, to assume or create any obligation, express or implied, on behalf of the other party, except as provided in this Agreement. Each party is an independent contractor, and this Agreement shall not be construed as creating a partnership, joint venture or employment relationship between the parties or as creating any other form of legal association that would impose liability on one party for the act or failure to act of the other party.
- 11.2 **No Implied or Exclusive Agreements.** Except as expressly required in a Service Agreement, nothing in this Master Agreement requires the County to purchase products or services from Service Provider. The County may request information, proposals or competitive bids from third parties on the same or different terms than as provided in this Master Agreement.
- 11.3 **Publicity.** All media releases, public announcements and other disclosures by Service Provider relating to this Master Agreement or any Service Agreement or the subject matter hereof, including promotional and marketing materials, but excluding announcements intended solely for internal distribution, or to meet legal or regulatory requirements, shall be coordinated with, and approved by, the County prior to release of the same. No license or right, either directly or by implication, is granted to Service Provider to use County's name or any of County's tradenames, trademarks, service marks, slogans, logos or designs for any advertising, promotional or other purpose without the prior, written permission of the County.
- 11.4 **Technical Sufficiency of Services Provided by Service Provider.**

- 11.4.1 Notwithstanding anything contained herein to the contrary, it is understood and agreed between the parties that neither the review, approval, nor acceptance by the County of data or any other documents furnished hereunder by Service Provider shall in any way release the Service Provider of its responsibility for the adequacy, completeness and accuracy of its work, and in no event shall the County's review, approval, acceptance of or payment for Service Provider's services be construed to operate as a waiver of any of the County's rights under this Agreement or any cause of action it may have, arising out of the performance of this Agreement.
- 11.4.2 The Service Provider hereby acknowledges that the County does not make any representations or warranties to the Service Provider by virtue of the information contained in the Solicitation or program descriptions. The Service Provider further acknowledges that it, alone, is responsible for the accuracy, completeness and technical sufficiency of all work performed by it under this Agreement, and the information contained in the County's Solicitation and program descriptions does not relieve, release or in any way whatsoever diminish the Service Provider's ultimate responsibility for the accuracy, completeness and technical sufficiency of the Services or any work to be performed hereunder.
- 11.5 Disclosure to Third Parties. Except as otherwise provided in this Agreement and under Florida law, Service Provider agrees not to divulge, furnish or make available to any third parties, firms or organizations, without County's prior written consent, or unless in connection with the proper performance of Service Provider's obligations hereunder, or in the course of any judicial or legislative proceedings where such information has been properly subpoenaed, any information concerning services to be rendered by Service Provider or any of its subcontractors under this Agreement.
- 11.6 Expertise. Service Provider affirmatively represents to the County that it is an expert in providing services of the nature to be provided under the terms of this Agreement.

## Article 12

### LEGAL MATTERS

- 12.1 **HIPAA Compliance.** It is understood by the Parties that County personnel or their agents have access to protected health information (hereinafter known as "PHI") that is subject to the requirements of 45 C.F.R. §160, 162 and 164, and related statutory and regulatory provisions. It is deemed to be a covered entity or business associate or otherwise required to comply with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") or the Health Information Technology for Economic and Clinical Health Act ("HITECH"). Service Provider shall fully protect individually identifiable health information as required by HIPAA and HITECH. Service Provider agrees to be bound by the terms of the Business Associate Agreement attached hereto as Schedule L, which is fully incorporated herein. Where required, Service Provider shall handle and secure such PHI in compliance with HIPAA, HITECH and its related regulations and, if required HIPAA, HITECH or other laws, shall include in its "Notice of Privacy Practices" notice of Service Provider and County's uses of a client's PHI. The requirement to comply with this provision, HIPAA and HITECH shall survive the expiration or termination of this Agreement.
- 12.2 **Drug Free Workplace.** It is a requirement of County that it enter into contracts only with firms that certify the establishment of a drug free workplace in accordance with Florida law. Execution of this Agreement by Service Provider shall also serve as Service Provider's required



certification that it either has, or that it will establish, a drug free workplace in accordance with Florida law.

- 12.3 **Sovereign Immunity.** The parties acknowledge that the County is entitled to sovereign immunity under the provisions of Section 768.28, Florida Statutes with respect to any claims for damages made against it. Nothing in this Agreement shall be construed as a waiver of the County's sovereign immunity.
- 12.4 **Legal Compliance.** Service Provider shall comply with all federal, state and local laws, regulations and ordinances relating to the delivery of the Services provided under the terms of this Agreement.
- 12.5 **Force Majeure.** (a) Neither party shall be liable for any failure or delay in the performance of its obligations under this Master Agreement or any Service Agreement, if any, to the extent such failure or delay: (i) is caused, without fault by such party, by fire, flood, earthquake, or acts of God; labor disruptions or strikes; acts of war, terrorism, riots, rebellions or revolutions; quarantines or embargoes; or any other similar cause beyond the reasonable control of such party; and (ii) could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, work-around plans or other means (including, in the case of Service Provider, compliance with Service Provider's obligations with respect to the provision of any disaster recovery services as set forth in any Service Agreement). Events meeting the criteria set forth above are referred to as "Force Majeure Events." (b) Upon the occurrence of a Force Majeure Event, the non-performing party shall be excused from any further performance for as long as such circumstances prevail and such party continues to attempt to recommence performance whenever and to whatever extent possible without delay. Any party so delayed in its performance will immediately notify the other and describe in detail the circumstances causing such delay. (c) If a Force Majeure Event causes a material failure or delay in the performance of any Services for more than seven (7) consecutive calendar days, County may, at its option, and in addition to any rights County may have pursuant to this section of this Agreement, suspend all service under this Agreement and procure such Services from an alternate source until Service Provider is again able to provide such Services, and Service Provider shall be liable for all payments made and costs incurred by County required to obtain the Services from such alternate source. County shall continue to pay Service Provider the charges established hereunder during such period, but Service Provider shall not be entitled to any additional payments as a result of the Force Majeure Event. (d) Notwithstanding any other provision of this Section, a Force Majeure Event shall not relieve Service Provider of its obligation to implement successfully all of the Services relating to disaster recovery services that are included in any Service Agreement within the time period described in such Service Agreement.
- 12.6 **Actions of Other Party.** Neither party shall be liable for any failure or delay in the performance of its obligations under this Master Agreement or any Service Agreement if such failure or delay is caused by the actions or omissions of the other party or breaches of this Master Agreement or a Service Agreement by the other party provided that the party which is unable to perform has provided the other party with reasonable notice of such non-performance and has used Commercially Reasonable Efforts to perform notwithstanding the actions, omissions or breaches of the other party.
- 12.7 **Consents and Approvals.** Whenever consent or approval of a party under this Agreement is required, unless otherwise provided, the consent and approval, if required to be obtained from



Service Provider, must be given by the President of the Service Provider, or other authorized representative, and, if required from County, must be given by the Board of County Commissioners, County Manager or County Designee.

## **Article 13**

### **DISPUTE RESOLUTION**

- 13.1 **General.** Any dispute between the Parties with respect to this Master Agreement shall be resolved as provided in this Article.
- 13.2 In the event of a dispute or claim arising out of this Agreement, the parties agree first to try in good faith to settle the dispute by direct discussion. If this is unsuccessful, the parties may enter into mediation in Lee County, Florida, with the parties sharing equally in the cost of such mediation. In the event mediation, if attempted, is unsuccessful in resolving a dispute, the parties may proceed to litigation as set forth below.
- 13.2.1 Any dispute, action or proceeding arising out of or related to this Agreement will be exclusively commenced in the state courts of Lee County, Florida, or where proper subject matter jurisdiction exists in the United States District Court for the Middle District of Florida. Each party irrevocably submits and waives any objections to the exclusive personal jurisdiction and venue of such courts, including any objection based on forum non conveniens.
- 13.2.2 Unless otherwise agreed in writing, Service Provider shall be required to continue all obligations under this Agreement during the pendency of claim or dispute including, but not limited to, actual period of mediation or judicial proceedings.

## **Article 14**

### **MISCELLANEOUS**

- 14.1 No modification, waiver, amendment, discharge, or change of this Agreement shall be valid unless the same is in writing, signed by the parties against whom the enforcement of such modification, waiver, amendment, discharge, or change is sought.
- 14.2 Except as provided in paragraph 3.2.13.6 of this Agreement, nothing contained in this Agreement shall create a contractual relationship or cause of action in favor of a third party against either County or Service Provider.
- 14.3 This Agreement and the schedules attached hereto constitute the entire Agreement between the parties relating to the transactions contemplated hereby and all prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged herein.
- 14.4 This Agreement shall be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute a single instrument.
- 14.5 All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular, or plural as the identity of the person(s) or entity may require.

- 14.6 If any provision or any portion of any provision of this Agreement or the application of any such provision or portion thereof to any person or circumstance shall be held invalid or unenforceable, the remaining portion of such provision and the remaining provisions of this Agreement, or the application of such provision held invalid, or unenforceable to persons or circumstances other than those to which it has been invalid or unenforceable, shall not be effected thereby.
- 14.7 In the event of any dispute as to the precise meaning of any term contained herein, the principles of construction and interpretations that written instruments be construed against the drafter shall not apply.
- 14.8 All articles, titles, or captions contained in this Agreement are for convenience only and shall not be deemed a part of this Agreement and shall not affect the meaning or interpretation of this Agreement.
- 14.9 All notices, demands, or other communications made pursuant to this Agreement shall be in writing and copies thereof shall be simultaneously directed to the parties listed below. Further, all notices, demands, or other communications shall be deemed to have been duly given by mailing, unless otherwise specified, by United States registered or Certified Mail, Return Receipt Requested, with proper postage prepaid, or sent by recognized overnight delivery service , at the following address:

If to County: Roger Desjarlais  
County Manager  
P.O. Box 398  
Fort Myers, FL 33902-0398

With copies to: Mary Tucker  
Director of Procurement Management  
P.O. Box 398  
Fort Myers, FL 33902-0398

If to Service Provider: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With copies to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Or to such other address or to such other persons as any party may designate to the other for

such purpose in the manner herein above set forth.

- 14.10 The parties hereto shall, at any time and from time to time following the execution hereof, execute and deliver all such further instruments and take all such further action as may be reasonably necessary or appropriate in order to carry out more effectively the purposes of this Agreement.
- 14.11 Every covenant, term, and provision of this Agreement shall be construed simply according to its fair meaning and shall not be strictly construed for or against any party.

[Remainder of this page intentionally left blank.]

**IN WITNESS WHEREOF**, the parties have executed this Agreement effective the day and year first written above.

ATTEST:  
CLERK OF CIRCUIT COURT  
Linda Doggett, Clerk

COUNTY: LEE COUNTY, FLORIDA  
BOARD OF COUNTY COMMISSIONERS

BY: \_\_\_\_\_

BY: \_\_\_\_\_  
**Chairman**

DATE: \_\_\_\_\_

APPROVED AS TO FORM FOR THE  
RELIANCE OF LEE COUNTY ONLY

BY: \_\_\_\_\_  
County Attorney's Office

ATTEST:

\_\_\_\_\_  
(SERVICE PROVIDER)

\_\_\_\_\_  
(Witness)

BY: \_\_\_\_\_  
(Authorized Signature)

\_\_\_\_\_  
(Title)

DATE: \_\_\_\_\_

CORPORATE SEAL:

## SCHEDULE A: FORM OF SERVICE TOWER AGREEMENT

There shall be a single Service Tower Agreement for each area of discrete services (Service Towers) as described in Article 2. The following terms will be addressed in the Service Agreement:

1. **Definitions.** Any significant terms used specifically in the Service Agreement and not otherwise defined in the Master Agreement will be defined.
2. **Acceptance Criteria, Tests.** The Acceptance Criteria and Acceptance Tests that will be used to evaluate the acceptability of any deliverables tendered pursuant to the Service Agreement.
3. **Appendices.** The Service Agreement may, if the parties deem it appropriate, include one or more attached appendices or schedules, such as Third Party Software; County Software; Service Provider Software; Measurement and Monitoring Tools; or Insurance.
4. **Charges.** The specific Service Provider charges applicable to the Services will be included with reference to the terms set forth in the Master Agreement. Any other financial obligations of County must be expressly included in the Service Agreement and Service Provider will retain responsibility for all other costs.
5. **Facilities, Equipment and Software Terms.** Specific terms with respect to facilities, Equipment, software and other assets will be included with reference to the Master Agreement.
6. **Incorporation by Reference.** Each Service Agreement shall reference the Master Agreement between County and Service Provider and shall expressly state that (i) the Service Agreement is entered into by the parties pursuant to the terms of the Master Agreement, and (ii) except to the extent expressly provided otherwise in the Service Agreement, all the terms and definitions of the Master Agreement are incorporated by reference into the Service Agreement.
7. **Notices; Signatures.** The Service Agreement will indicate whether any individuals or entities are to receive formal notices under the Service Agreement other than as set forth in the Master Agreement. The Service Agreement will be signed by authorized representatives of Service Provider and the County.
8. **Personnel Matters.** The Service Agreements will identify the Service Provider and County key personnel. Any specific terms applicable to Service Provider or County personnel matters related to the Services will be included, including matters related to transferred employees consistent with the Master Agreement.
9. **Services.** The Services to be provided under the Service Agreement will be described. This Section of the Service Agreement will state that the “Services,” as defined, include all Services and tasks related to or inherent in performance of the Services specifically described. County’s exclusive responsibilities will be clearly described in this Section of the Service Agreement.
10. **Term.** The term of the Service Agreement will be specified, including any County renewal or extension rights.
11. **Transition Services.** Any specific terms related to Service Provider termination assistance with respect to the Services will be included with reference to the Master Agreement.

12. **Service Levels.** Service levels for the Services will be included with reference to the Master Agreement.

(a) **Definitions.**

(1) **Service Level Measurement:** For any Service identified in this Service Agreement, Service Level Measurements are specified measurements for quantitatively calculating the Service Provider's actual performance. Service Level Measurements are compared with required Service Level Standards to appraise performance. Service Level Measurement and Service Level Standards information is attached to this Service Agreement in Schedules D through J.

(2) **Service Level Standards (also known as "Required Service Levels").**

i) **Service Level Measurement Method:** The Service Level Measurement Method is the specific, agreed-upon method for calculating the Service Level Measurement.

ii) **Required Service Level:** The Required Service Level is the minimally acceptable ordinary-course value for a Service Level Measurement. Any failure to meet or exceed a Required Service Level may constitute, depending upon the facts and circumstances, a material breach of Service Provider's obligations under the Service Agreement.

(3) **Service Level Credits:** The amounts that County shall recover, in addition to any other monetary remedies County may have, each time Service Provider fails to meet the Required Service Levels. The parties acknowledge that Service Level Credits are intended to roughly reflect the diminished value of the Services as a result of service level-related failures; they are not intended to compensate the County for breach and do not constitute liquidated damages, damages, penalties, or other compensation for any such breach or default. Service Level Credits are calculated in the manner described in this section.

(b) **Time.** The Required Service Levels provided shall be applicable beginning as specifically provided in a Service Agreement. Unless otherwise stated, each Service Level Measurement shall be calculated on a complete calendar month, quarter, or annual basis. Performance results shall be measured and reported based on actual results.

(c) **Modification.** From time to time during the Term, the parties agree to negotiate in good faith to modify Service Level Measurements, Service Level Measurement Methods, and Service Level Standards to reflect changes in County's business. All such changes shall be adopted in the form of a Change Order executed by both parties.

(d) **Remedies.** At all times during the Term, Service Provider shall provide the Services in a manner that meets or exceeds the then-existing Service Level Standards. The remedies for failure to do so shall include the remedies defined in this Service Agreement and the Master Agreement.



- (e) **Service Level Measurement Method.** For each service provided and each reporting period, the Service Provider shall report on the state of the Required Service Levels indicating whether the level was or was not satisfied for the reporting period. Required Service Levels that are not satisfied for the measurement and reporting period will result in “SLA Violations.” The quantity of Violations is aggregated for each Service Tower resulting in three “SLA States.” An “SLA State” is defined for each Service Tower separately for each measurement and reporting period and is used in the calculation of Service Level Credits. The SLA State is dependent upon the quantity of SLA Violations during the measurement period as follows: (a) “Achieved” has zero (0) SLA Violations, (b) “At Risk” has more one (1) or two (2) SLA Violation (c) “Missed” has three (3) or more SLA Violations.

If any Service Level Measurement for the measurement and reporting period is (a) less than the Required Service Level by three (3) percent for SLA (measure) other than “Availability” or (b) is less than the Required Service Level by one (1) percent for “Availability” SLA (measure) shall constitute a SLA State of Missed for the Service Tower.

- (f) **Service Level Credits.** (1) In each case of a failure to satisfy a Required Service Level, Service Provider will, within five (5) calendar days from the identification of the deviation from the applicable Service Level Standard, provide to County a plan of activities which will allow Service Provider to satisfy the applicable Service Level Standard at the earliest date practicable. (2) In addition, County shall be entitled to recover a Service Level Credit for such deviation calculated in the manner described below, provided, however, that the Total Service Level Credits for any given month will not exceed fifty percent (50%) of Service Provider’s monthly charges for the Master Service Agreement (including all Service Agreements) for the applicable month (excluding Pass-Through Expenses and Special Charges, if any); (3) If a single event directly causes the failure to achieve more than one Required Service Level, all applicable Service Level Credits (for each Service Tower) will apply. In such event, and at the sole discretion of the County, the County may select a reduced quantity of Service Level Measurements that will be used for the calculation of the Service Level Credit. (4) At the County’s sole discretion, Service Level Credits may be provided in the form of additional hours for non-recurring initiatives. (5) Should the County elect for a monetary service credit, such credits will be reflected in the invoice following month in which the SLA violation(s) occurred.

- (g) **Method of Calculation for Service Level Credits.** (1) If Service Provider fails to meet or exceed the Required Service Level, SLA Violations will occur and the SLA State will be assessed as described Article 13. For each Service Tower the following Service Level Credits will be calculated and represented as a percentage of the monthly charges for that Service Tower (excluding Pass-Through Expenses and Special Charges, if any):

Service Tower		SLA State		
		Achieved	At Risk	Missed
1	IT Governance and Management	0%	2%	3%

2	Infrastructure Services	0%	3%	6%
3	Cybersecurity Services	0%	3%	5%
4	Telecommunication Services	0%	3%	6%
5	Application Services	0%	2%	4%
6	End User Technology Services	0%	2%	4%
7	DR & Emergency Operations	0%	1%	3%

(2) If three or more Services have a reported SLA State of “At Risk” or “Missed,” **the Service Level Credits are doubled for all Service Towers for the measurement and reporting period.** (3) For Service Towers having an “At Risk” SLA State, Service Level Credits are applied after two consecutive measurement and reporting periods for which the Service Tower’s SLA state is reported as “At Risk,” thus providing a remediation period not to exceed thirty (30) calendar days. The Service Level Credits will be applied to the second month of service (as opposed to both) during which the SLA Violations occurred and SLA State reported as “At Risk.”

- (h) **Termination for Chronic Issues.** The County has the right to begin the Dispute Resolution Process if the Service Provider chronically fails to meet the established Service Levels. The determination for chronic failure is as follows: (a) has any Service Tower reported as At Risk for more than three (3) out of six (6) consecutive reporting measurement periods or (b) has any Service Tower reported as Missed for more than two (2) out of twelve (12) consecutive reporting measurement periods.
- (i) **Exceptions to Liability for Service Level Credits.** Service Provider shall not be liable to pay County Service Level Credits for any failure to meet a Service Level Standard to the extent that such a failure is directly attributable to (i) a Force Majeure Event; (ii) breaches of this Agreement by County, provided that Service Provider has provided County with reasonable notice of such breach immediately after becoming aware of it and Service Provider has used all Commercially Reasonable Efforts to perform notwithstanding such breach; or (iii) acts or omissions of County or its suppliers, provided that Service Provider has provided County with reasonable notice of such act or omission immediately after becoming aware of it and Service Provider has used all Commercially Reasonable Efforts to perform notwithstanding such acts or omissions, or (iv) the first manifestation of an extraordinary latent error or defect in Equipment used by Service Provider in providing the Services (and any related repeated instances pending the applicable Service Provider’s correction of the defect) if such defect was (1) unknown to Service Provider and (2) not disclosed in any information distributed by the third party licensor, manufacturer, or distributor and (3) not preventable or discoverable through normal testing or maintenance procedures.

## **SCHEDULE B: Migration Services**

1. **Migration Plan.** If any migration of Services is to occur under a Service Agreement, Service Provider shall be responsible for preparing a Migration Plan (as defined below) subject to approval of the County in order to assure an orderly transition of the Services (and, if necessary, the Equipment and Software). After any migration completion date (“Migration Completion Date”), Service Provider shall obtain the written consent of the County prior to any subsequent migration of the Services. Any such subsequent migration of Services shall be conducted by Service Provider at its sole expense pursuant to a Migration Plan (as defined below) prepared by Service Provider and approved by the County.
2. **Content of Migration Plan.** Within thirty (30) calendar days following a Service Agreement Effective Date (a Service Agreement “completion date”), Service Provider shall submit for approval by the County a final plan (the “Migration Plan”) for the migration of the Services. The Migration Plan shall state in detail:
  - (a) the requirement that Service Provider create dedicated Migration teams;
  - (b) a detailed description of all Migration activities to be performed by Service Provider and County (including any incumbent Service Provider currently providing services to County), the significant components and subcomponents of each such activity and a complete timetable for completion of such activities;
  - (c) a list of all Deliverables to be completed by Service Provider;
  - (d) the dates by which each such activity or deliverable are to be completed (the “Migration Milestones”);
  - (e) a process for County to delay all or any part of the transition if County determines that any part of the transition poses a risk or hazard to County or its operations (without any increase in Service Provider’s charges to County);
  - (f) Service Provider’s plan for assuming operational responsibility for the Services on each Service Agreement Commencement Date;
  - (g) a process and set of standards acceptable to County to which Service Provider will adhere in the performance of the Transition Services, and that will enable County to determine whether Service Provider has successfully completed the Migration Services and the activities and deliverables associated with each Migration Milestone, including measurable success criteria by each Service Agreement that Service Provider must meet before transitioning the work any further;
  - (h) an assessment of risks associated with the Migration Services and the contingency or risk mitigation strategies to be employed by Service Provider and County in the event of disruption or delay; provided, however, that such assessment and plans will not affect Service Provider’s obligation to meet the Migration Milestones; and
  - (i) a detailed work plan identifying the specific transition activities to be performed by individual Service Provider Personnel on a weekly basis during the Migration Period.

As part of the Services, Service Provider shall perform all functions and services, including the functions and services described in the Migration Plan necessary to accomplish the migration to the Service Provider as identified in the Migration Plan (the “Migration Services”). Service Provider shall perform the Migration Services without causing a disruption to County’s business or production environment.

3. **County Facilities.** As part of the Services and as directed by County, Service Provider shall administer and manage the closing or opening of any County Facilities, if required, in connection with a migration. In connection with such closures or openings and as part of the Services, Service Provider shall, upon County’s request, identify and solicit, upon terms and prices as favorable to County as Service Provider would obtain for its own account, purchasers of County’s data processing assets at the applicable County Facilities.
4. **Migration Services.** Each Migration Plan shall include migration acceptance testing for each Service that is migrated that will ensure a complete and satisfactory migration of Services. As part of the Migration Services, and if requested by County, Service Provider shall provide (i) parallel operation/testing environments and (ii) a training environment for the Service Provider Environment using test data prepared by Service Provider. Subject to approval by the County and where testing with data representative of the production environment is necessary, Service Provider may use a copy of such County production data; provided, however, that such test data shall not contain actual client names or addresses to the extent that the same is prohibited by statutory or regulatory requirements.
5. **Delay.** Service Provider acknowledges that in the event any milestone (“Migration Milestone”) is not achieved in the manner specified in a Migration Plan, County will suffer damages the amounts of which are difficult to specify at this time. Accordingly, in addition to any obligations under this Section, Service Provider shall pay to County, upon County’s election, the following amounts if Service Provider fails by more than the number of days specified in this Section to achieve a Migration Milestone: (i) In the event a Migration Milestone is not met within ten (10) calendar days of the Migration Milestone date set forth in the applicable Migration Plan, County may elect, and upon such election Service Provider shall pay to County the amounts specified in the applicable Migration Plan for each Migration Milestone that is not achieved. (ii) If the damages resulting from the failure to meet a Migration Milestone exceed the amount specified in the Migration Plan, County may terminate the applicable Service Agreement, upon notice to Service Provider within thirty (30) calendar days after such failure.
6. **Breach.** A breach of any Migration Plan shall constitute a breach of the applicable Service Agreement. Unless otherwise expressly provided in a Service Agreement or Migration Plan, all of Service Provider’s obligations contained in the Master Agreement and the applicable Service Agreement shall continue to apply during the applicable migration of Services.
7. **Migration Completion.** Upon the date of the successful completion of the migration acceptance testing, the Transition Services shall be complete and Service Provider shall assume operational responsibility for, and commence providing, the Services as set forth in the applicable Service Agreement and in accordance with the Commencement Date. For each Service Agreement, the Service Agreement Commencement Date shall occur in one of the following ways:
  - (a) Within one (1) Business Day following the date of successful completion of all Migration Services in accordance with the applicable standards set forth in this

Agreement, the approved Migration Plan, and the Service Agreement for the applicable service:

- i. Service Provider shall deliver a written notice to County certifying such successful completion, which written notice shall: (1) specify that Service Provider reasonably believes that the Transition has been successfully completed in accordance with the applicable standards set forth in this Agreement and the Service Agreement for the applicable service, and the approved Migration Plan; and (2) document the basis for Service Provider's conclusion that successful completion of the Migration has occurred (the "Service Provider Migration Notice").
    - ii. County shall have ten (10) Business Days following County's receipt of the Service Provider Migration Notice to confirm whether Migration has been successfully completed, which confirmation shall be based upon Service Provider's completion of the applicable criteria, standards and milestones set forth in this Agreement and the Services Agreement for the applicable services, and the Migration Plan attached thereto. Upon County's written acceptance of such certification that the Migration has been successfully completed, the date on which the Service Provider Migration Notice was delivered to County shall be the Service Agreement Commencement Date for the purposes of respective Service Agreement.
  - (b) If County determines that all material elements of all Migration Milestones have been successfully completed, and if Service Provider has not provided a Service Provider Migration Notice stating that the Migration has been successfully completed as set forth in subsection (i) above, then County shall have the right to declare the Service Agreement Commencement Date for the purposes of the applicable Services based upon Service Provider's material completion of the applicable criteria, standards and milestones set forth in this Agreement and the Statement of Work for the applicable Service Agreement, and the approved Migration Plan and County shall provide written notice to Service Provider of the same. Upon such determination, Service Provider shall begin the provision of the Services and complete any remaining identified Transition elements as quickly as possible as part of the Services.
8. **Termination for Cause.** Notwithstanding the foregoing, County may terminate this Agreement, in whole or in part, for cause if (i) Service Provider fails to comply with its obligations with respect to the provision of Migration Services and such failure causes or will cause a material disruption to or otherwise has or will have a material adverse impact on the operations of County, (ii) Service Provider materially breaches its obligations with respect to the provision of Migration Services and fails to cure such breach within fifteen (15) calendar days after its receipt of notice thereof or (iii) Service Provider fails to meet a Migration Milestone and Service Provider fails to cure such breach within fifteen (15) calendar days after its receipt of notice thereof. In addition, unless otherwise agreed, if Service Provider fails to meet the Migration Milestone for the completion of the transition of all Services to Service Provider by more than forty-five (45) calendar days, County may terminate this Agreement, in whole or in part, for cause. In all such events County may recover the damages suffered by County in connection with such a termination.

**SCHEDULE C**  
**FORM - CHANGE ORDER DOCUMENT**

**CHANGE ORDER AUTHORIZATION**

Change Order No.:

(A Change Order Authorization Requires Approval by the Department Director for Expenditures Under \$25,000 or Approval by the County Manager for Expenditures Between \$25,000 and \$50,000 or Approval by the Board of County Commissioners for Expenditures over \$50,000)

CONTRACT NAME: INFORMATION TECHNOLOGY OUTSOURCING SERVICES

FOR PROJECT \_\_\_\_\_ PROVIDER: \_\_\_\_\_

SOLICIT NO.: CN-02-28 CONTRACT NO.: \_\_\_\_\_ ACCOUNT NO. \_\_\_\_\_

REQUESTED BY: \_\_\_\_\_ DATE OF REQUEST: \_\_\_\_\_



Upon the completion and execution of this Change Order Authorization by both parties the Service Provider is authorized to and shall proceed with the following:

MASTER SERVICES AGREEMENT	DATED: _____
SERVICE AGREEMENT: IT GOVERNANCE AND MANAGEMENT	DATED: _____
SERVICE AGREEMENT 2: INFRASTRUCTURE SERVICES	DATED: _____
SERVICE AGREEMENT 3: CYBERSECURITY SERVICES	DATED: _____
SERVICE AGREEMENT 4: TELECOMMUNICATIONS SERVICES	DATED: _____
SERVICE AGREEMENT 5: APPLICATION SERVICES	DATED: _____
SERVICE AGREEMENT 6: END USER TECHNOLOGIES SERVICES	DATED: _____
SERVICE AGREEMENT 7: DISASTER RECOVERY & EMERGENCY OPERATIONS	DATED: _____

It is understood and agreed that the acceptance of this modification by the SERVICE PROVIDER constitutes an accord and satisfaction.

=====

RECOMMENDED:

ACCEPTED

COUNTY APPROVAL:

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

Department Director

Date

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

Service Provider

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

Department Director (Under  
\$25,000)

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

Contracts Management

Date

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

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

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

County Manager  
(Between \$25,000 and \$50,000)

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

APPROVED AS TO FORM FOR  
THE RELIANCE OF LEE COUNTY  
ONLY

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\*County Attorney's Office

---

\* County Attorney signature needed  
for **over** Board level expenditures  
only

By:

---

Chairman  
Board of County Commissioners

(Over \$50,000)

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

**SERVICE ENHANCEMENT**  
**SUPPLEMENTAL/CHANGE ORDER SERVICES**

1.1.1 NAME OF END USER DEPARTMENT:

DATE OF REQUEST: \_\_\_\_\_

CHANGE TO: ☐ MASTER AGREEMENT

☐ SERVICE AGREEMENT NO.

All terms defined in the agreement shall have the same meaning ascribed to them therein when used in this Service Enhancement. The County hereby requests that Service Provider perform the Supplement/Change Order Services described below. The parties acknowledge that any Supplemental/Change Order Services to be performed pursuant to this Service Enhancement shall be performed under the terms and conditions of the Agreement. In addition, unless otherwise set forth below, any payments to be made by County to Service Provider under this Service Enhancement shall be made pursuant to the terms and conditions of the Agreement. The amounts to be paid by County to Service Provider under this Service Enhancement shall be in addition to any other amounts which County is obligated to pay to Service Provider under the Agreement.

Description of Supplemental/Change Order:

Projected Start Date for Services:

Projected End Date for Services:

Total amount to be paid:

## SCHEDULE D

### SERVICE AGREEMENT FOR TOWER 1 - IT GOVERNANCE AND MANAGEMENT

This Service Tower Agreement No. 1: Governance ("Service Agreement") is entered into pursuant to, and is expressly incorporated by reference into, that Master Services Agreement for Information Technology Outsourced Services ("Master Agreement") executed between Lee County, Florida ("County") and \_\_\_\_\_ ("Service Provider"), is hereby entered into on the \_\_\_\_\_, 2018 (the "Service Agreement Effective Date").

Accordingly, the parties agree as follows:

1. **Incorporation by Reference.** The parties agree that this Service Agreement is entered into by the parties pursuant to the terms of the Master Agreement, and except to the extent expressly provided otherwise in this Service Agreement, all the terms, conditions, and definitions set forth in the Master Agreement are hereby incorporated by reference with the same force and effect as though fully set forth herein. To the extent the terms set forth in this Service Agreement are inconsistent with the terms of the Master Agreement; the terms set forth herein shall apply.
2. **Term.** The initial term of this Service Agreement shall begin on the Commencement Date of the Master Agreement. The Term shall continue for a period of five (5) years after the Commencement Date of the Master Agreement, unless earlier terminated or renewed in accordance with the provisions of the Master Agreement.  
  
**Option to Renew.** The County shall have the option to renew this Service Agreement for up to three (3) additional one-year terms. The County can elect to avail itself of one, two or all of the renewal terms. The County shall exercise this option to renew for an additional Term by delivering written notice of such renewal to the Service Provider at least three (3) months prior to the expiration of the then-current Term. The Service Provider shall provide the County with notice of the need to make a renewal election four (4) months before the expiration of each Term. All of the terms of this Service Agreement shall continue to apply without change, unless mutually agreed to by both parties during any renewal Term and reduced to writing. "Term" shall refer to both the initial term of the Service Agreement and any renewal of the Service Agreement. "Service Agreement Term" shall refer to both the original term of the applicable Service Agreement and any renewal of the Service Agreement.
3. **Exhibits.** All exhibits attached hereto are incorporated by reference.
4. **Key Positions:** Key County and Key Service Provider Positions are specified in Exhibit A attached hereto.
5. **Services.** The Services to be provided by the Service Provider under this Service Agreement are described in Exhibit B attached hereto.

6. **Inherent Services.** Subject to the Master Agreement Article 3 entitled “Working Relationship,” any services that are implicit within the Services, and are not specifically described, and which are determined to be reasonably required for the proper performance and provisioning of the Services, shall be deemed to be implied by and included within the scope of the Services to the same extent and in the same manner as if specifically described in this Service Agreement. If such inherent services result in a substantial increase in Service Provider resources, either of personnel or other resources, such increase will be addressed pursuant to the Change Order procedures of the Master Agreement.
7. **Responsibilities of Lee County.** The responsibility matrix included in Exhibit B to this Service Agreement identifies the responsibilities of Lee County during the Term of this Service Agreement. Exhibit B may be amended and supplemented from time to time pursuant to the terms of the Master Agreement. The responsibilities of Lee County shall be limited to those items listed in the matrix.
8. **Notices.** All notices, demands, or other communications made pursuant to this Service Agreement shall be in writing and copies thereof shall be simultaneously directed to the parties listed below. Further, all notices, demands, or other communications shall be deemed to have been duly given by mailing, unless otherwise specified, by United States registered or Certified Mail, Return Receipt Requested, with proper postage prepaid, or sent by recognized overnight delivery service , at the following address:

If to County: Roger Desjarlais  
County Manager  
P.O. Box 398  
Fort Myers, FL 33902-0398

With copies to: Mary Tucker  
Director of Procurement Management  
P.O. Box 398  
Fort Myers, FL 33902-0398

If to Service Provider: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With copies to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

9. **Service Levels.** Service levels for the Services will be included with reference to the Master Agreement.

(a) **Definitions.**

(1) **Service Level Measurement:** For any Service identified in this Service Agreement, Service Level Measurements are specified measurements for quantitatively calculating the Service Provider's actual performance. Service Level Measurements are compared with required Service Level Standards to appraise performance. Service Level Measurement and Service Level Standards information is attached to this Service Agreement in Exhibit C.

(2) **Service Level Standards (also known as "Required Service Levels").**

i) **Service Level Measurement Method:** The Service Level Measurement Method is the specific, agreed-upon method for calculating the Service Level Measurement.

ii) **Required Service Level:** The Required Service Level is the minimally acceptable ordinary-course value for a Service Level Measurement. Any failure to meet or exceed a Required Service Level may constitute, depending upon the facts and circumstances, a material breach of Service Provider's obligations under the Service Agreement.

(3) **Service Level Credits:** The amounts which County shall recover, in addition to any other monetary remedies County may have, each time Service Provider fails to meet the Required Service Levels. The Parties acknowledge that Service Level Credits are intended to roughly reflect the diminished value of the Services as a result of service level - related failures; they are not intended to compensate the County for breach and do not constitute liquidated damages, damages, penalties, or other compensation for any such breach or default. Service Level Credits are calculated in the manner described in this section.

(b) **Time.** The Required Service Levels provided shall be applicable beginning as specifically provided in a Service Agreement. Unless otherwise stated, each Service Level Measurement shall be calculated on a complete calendar month, quarter, or annual basis. Performance results shall be measured and reported based on actual results.

(c) **Modification.** From time to time during the Term, the parties agree to negotiate in good faith to modify Service Level Measurements, Service Level Measurement Methods, and Service Level Standards to reflect changes in County's business. All such changes shall be adopted in the form of a signed written amendment executed by both parties.

(d) **Remedies.** At all times during the Term, Service Provider shall provide the Services in a manner that meets or exceeds the then-existing Service Level Standards. The remedies for failure to do so shall include the remedies defined in this Service Agreement and the Master Agreement.



- (e) **Service Level Measurement Method.** For each service provided and each reporting period, the Service Provider shall report on the state of the Required Service Levels indicating whether the level was or was not satisfied for the reporting period. Required Service Levels that are not satisfied for the measurement and reporting period will result in “SLA Violations.” The quantity of Violations is aggregated for each Service Tower resulting in three “SLA States.” An “SLA State” is defined for each Service Tower separately for each measurement and reporting period and is used in the calculation of Service Level Credits. The SLA State is dependent upon the quantity of SLA Violations during the measurement period as follows: (a) “Achieved” has zero (0) SLA Violations, (b) “At Risk” has more one (1) or two (2) SLA Violation (c) “Missed” has three (3) or more SLA Violations. If any Service Level Measurement for any measurement period is less than the Required Service Level by three (3) percent or more, then it shall constitute a SLA State Missed.
- (f) **Service Level Credits.** (1) In each case of a failure to satisfy a Required Service Level, Service Provider will, within five (5) calendar days from the identification of the deviation from the applicable Service Level Standard, provide to County a plan of activities which will allow Service Provider to satisfy the applicable Service Level Standard at the earliest date practicable. (2) In addition, County shall be entitled to recover a Service Level Credit for such deviation calculated in the manner described below, provided, however, that the Total Service Level Credits for any given month will not exceed fifty percent (50%) of Service Provider’s monthly charges for the Master Service Agreement (including all Service Agreements) for the applicable month (excluding Pass-Through Expenses and Special Charges, if any); (3) If a single event directly causes the failure to achieve more than one Required Service Level, all applicable Service Level Credits (for each Service Tower) will apply. In such event, and at the sole discretion of the County, the County may select a reduced quantity of Service Level Measurements that will be used for the calculation of the Service Level Credit. (4) At the County’s sole discretion, Service Level Credits may be provided in the form of additional hours for non-recurring initiatives. (5) Should the County elect for a monetary service credit, such credits will be reflected in the invoice following month in which the SLA violation(s) occurred.
- (g) **Method of Calculation for Service Level Credits.**
- (1) If Service Provider fails to meet or exceed the Required Service Level, SLA Violations will occur and the SLA State will be assessed as described in Article 13. For each Service Tower the following service credits will be calculated and represented as a percentage of the monthly charges for that Tower (excluding Pass-Through Expenses and Special Charges, if any):

Service Tower		SLA State		
		Achieved	At Risk	Missed
1	IT Governance and Management	0%	2%	3%
2	Infrastructure Services	0%	3%	6%
3	Cybersecurity Services	0%	3%	5%

4	Telecommunication Services	0%	3%	6%
5	Application Services	0%	2%	4%
6	End User Technology Services	0%	2%	4%
7	DR & Emergency Operations	0%	1%	3%

- (2) If three or more Services have a reported SLA State of “At Risk” or “Missed” **the service level credits are doubled for all Service Tower(s) for the measurement and reporting period.** For Service Towers having an “At Risk” SLA State, Service Level credits are applied after two consecutive measurement and reporting periods for which the Service Tower’s SLA state is reported as “At Risk,” thus providing a remediation period not to exceed thirty (30) calendar days. The Service Level Credits will be applied to the second month of service (as opposed to both) during which the SLA Violations occurred and SLA State reported as “At Risk.”
- (h) **Exceptions to Liability for Service Level Credits.** Service Provider shall not be liable to pay County Service Level Credits for any failure to meet a Service Level Standard to the extent that such a failure is directly attributable to (i) a Force Majeure Event; (ii) breaches of this Agreement by County, provided that Service Provider has provided County with reasonable notice of such breach immediately after becoming aware of it and Service Provider has used all Commercially Reasonable Efforts to perform notwithstanding such breach; or (iii) acts or omissions of County or its suppliers, provided that Service Provider has provided County with reasonable notice of such act or omission immediately after becoming aware of it and Service Provider has used all Commercially Reasonable Efforts to perform notwithstanding such acts or omissions, or (iv) the first manifestation of an extraordinary latent error or defect in Equipment used by Service Provider in providing the Services (and any related repeated instances pending the applicable Service Provider’s correction of the defect) if such defect was (1) unknown to Service Provider and (2) not disclosed in any information distributed by the third party licensor, manufacturer, or distributor and (3) not preventable or discoverable through normal testing or maintenance procedures.
- (i) **Termination for Chronic Issues.** The County has the right to begin the Dispute Resolution process if the Service Provider chronically fails to meet the established Service Levels. The determination for chronic failure is as follows: (a) has any Service Tower reported as “At Risk” for more than three (3) out of six (6) consecutive reporting measurement periods or (b) has any Service Tower reported as “Missed” for more than two (2) out of twelve (12) consecutive reporting measurement periods.
- (j) **Service Provider Software and Third Party Software.** All Service Provider Software and Third Party Software are identified in Exhibit D.

**IN WITNESS WHEREOF**, the parties have executed this Service Agreement, effective the day and year first written above.

ATTEST:

CLERK OF CIRCUIT COURT  
Linda Doggett, Clerk

COUNTY: LEE COUNTY, FLORIDA

BOARD OF COUNTY COMMISSIONERS

BY: \_\_\_\_\_

BY: \_\_\_\_\_  
**Chairman**

DATE: \_\_\_\_\_

APPROVED AS TO FORM FOR THE  
RELIANCE OF LEE COUNTY ONLY

BY: \_\_\_\_\_  
County Attorney's Office

ATTEST:

\_\_\_\_\_  
(Witness)

\_\_\_\_\_  
(SERVICE PROVIDER)

BY: \_\_\_\_\_  
(Authorized Signature)

\_\_\_\_\_  
(Title)

DATE: \_\_\_\_\_

CORPORATE SEAL:

**Exhibit A: Key County and Key Service Provider Positions**

- To be included prior to finalization of Contract

**Exhibit B: Scope of Service (Roles & Responsibilities matrix)**

- To be included prior to finalization of Contract

**Exhibit C: Service Level Agreement**

- To be included prior to finalization of Contract

**Exhibit D: Service Provider Software and Third Party Software**

- To be included prior to finalization of Contract

## SCHEDULE E

### SERVICE AGREEMENT FOR TOWER 2 - INFRASTRUCTURE SERVICES

This Service Tower Agreement No. 2: Infrastructure Services ("Service Agreement") is entered into pursuant to, and is expressly incorporated by reference into, that Master Services Agreement for Information Technology Outsourced Services ("Master Agreement") executed between Lee County, Florida ("County") and \_\_\_\_\_ ("Service Provider"), is hereby entered into on the \_\_\_\_\_, 2018 (the "Service Agreement Effective Date").

Accordingly, the parties agree as follows:

1. **Incorporation by Reference.** The parties agree that this Service Agreement is entered into by the parties pursuant to the terms of the Master Agreement, and except to the extent expressly provided otherwise in this Service Agreement, all the terms, conditions, and definitions set forth in the Master Agreement are hereby incorporated by reference with the same force and effect as though fully set forth herein. To the extent the terms set forth in this Service Agreement are inconsistent with the terms of the Master Agreement; the terms set forth herein shall apply.
2. **Term.** The initial term of this Service Agreement shall begin on the Commencement Date of the Master Agreement. The Term shall continue for a period of five (5) years after the Commencement Date of the Master Agreement, unless earlier terminated or renewed in accordance with the provisions of the Master Agreement.  
  
**Option to Renew.** The County shall have the option to renew this Service Agreement for up to three (3) additional one-year terms. The County can elect to avail itself of one, two or all of the renewal terms. The County shall exercise this option to renew for an additional Term by delivering written notice of such renewal to the Service Provider at least three (3) months prior to the expiration of the then-current Term. The Service Provider shall provide the County with notice of the need to make a renewal election four (4) months before the expiration of each Term. All of the terms of this Service Agreement shall continue to apply without change, unless mutually agreed to by both parties during any renewal Term and reduced to writing. "Term" shall refer to both the initial term of the Service Agreement and any renewal of the Service Agreement. "Service Agreement Term" shall refer to both the original term of the applicable Service Agreement and any renewal of the Service Agreement.
3. **Exhibits.** All exhibits attached hereto are incorporated by reference.
4. **Key Positions:** Key County and Key Service Provider Positions are specified in Exhibit A attached hereto.
5. **Services.** The Services to be provided by the Service Provider under this Service Agreement are described in Exhibit B attached hereto.

6. **Inherent Services.** Subject to the Master Agreement Article 3 entitled “Working Relationship,” any services that are implicit within the Services, and are not specifically described, and which are determined to be reasonably required for the proper performance and provisioning of the Services, shall be deemed to be implied by and included within the scope of the Services to the same extent and in the same manner as if specifically described in this Service Agreement. If such inherent services result in a substantial increase in Service Provider resources, either of personnel or other resources, such increase will be addressed pursuant to the Change Order procedures of the Master Agreement.
7. **Responsibilities of Lee County.** The responsibility matrix included in Exhibit B to this Service Agreement identifies the responsibilities of Lee County during the Term of this Service Agreement. Exhibit B may be amended and supplemented from time to time pursuant to the terms of the Master Agreement. The responsibilities of Lee County shall be limited to those items listed in the matrix.
8. **Notices.** All notices, demands, or other communications made pursuant to this Service Agreement shall be in writing and copies thereof shall be simultaneously directed to the parties listed below. Further, all notices, demands, or other communications shall be deemed to have been duly given by mailing, unless otherwise specified, by United States registered or Certified Mail, Return Receipt Requested, with proper postage prepaid, or sent by recognized overnight delivery service , at the following address:

If to County: Roger Desjarlais  
County Manager  
P.O. Box 398  
Fort Myers, FL 33902-0398

With copies to: Mary Tucker  
Director of Procurement Management  
P.O. Box 398  
Fort Myers, FL 33902-0398

If to Service Provider: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With copies to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

9. **Service Levels.** Service levels for the Services will be included with reference to the Master Agreement.

(a) **Definitions.**

(1) **Service Level Measurement:** For any Service identified in this Service Agreement, Service Level Measurements are specified measurements for quantitatively calculating the Service Provider's actual performance. Service Level Measurements are compared with required Service Level Standards to appraise performance. Service Level Measurement and Service Level Standards information is attached to this Service Agreement in Exhibit C.

(2) **Service Level Standards (also known as "Required Service Levels").**

i) **Service Level Measurement Method:** The Service Level Measurement Method is the specific, agreed-upon method for calculating the Service Level Measurement.

ii) **Required Service Level:** The Required Service Level is the minimally acceptable ordinary-course value for a Service Level Measurement. Any failure to meet or exceed a Required Service Level may constitute, depending upon the facts and circumstances, a material breach of Service Provider's obligations under the Service Agreement.

(3) **Service Level Credits:** The amounts which County shall recover, in addition to any other monetary remedies County may have, each time Service Provider fails to meet the Required Service Levels. The Parties acknowledge that Service Level Credits are intended to roughly reflect the diminished value of the Services as a result of service level - related failures; they are not intended to compensate the County for breach and do not constitute liquidated damages, damages, penalties, or other compensation for any such breach or default. Service Level Credits are calculated in the manner described in this section.

(b) **Time.** The Required Service Levels provided shall be applicable beginning as specifically provided in a Service Agreement. Unless otherwise stated, each Service Level Measurement shall be calculated on a complete calendar month, quarter, or annual basis. Performance results shall be measured and reported based on actual results.

(c) **Modification.** From time to time during the Term, the Parties agree to negotiate in good faith to modify Service Level Measurements, Service Level Measurement Methods, and Service Level Standards to reflect changes in County's business. All such changes shall be adopted in the form of a signed written amendment executed by both Parties.

(d) **Remedies.** At all times during the Term, Service Provider shall provide the Services in a manner that meets or exceeds the then-existing Service Level Standards. The remedies for failure to do so shall include the remedies defined in this Service Agreement and the Master Agreement.



- (e) **Service Level Measurement Method.** For each service provided and each reporting period, the Service Provider shall report on the state of the Required Service Levels indicating whether the level was or was not satisfied for the reporting period. Required Service Levels that are not satisfied for the measurement and reporting period will result in “SLA Violations.” The quantity of Violations is aggregated for each Service Tower resulting in three “SLA States.” An “SLA State” is defined for each Service Tower separately for each measurement and reporting period and is used in the calculation of Service Level Credits. The SLA State is dependent upon the quantity of SLA Violations during the measurement period as follows: (a) “Achieved” has zero (0) SLA Violations, (b) “At Risk” has more one (1) or two (2) SLA Violation (c) “Missed” has three (3) or more SLA Violations. If any Service Level Measurement for any measurement period is less than the Required Service Level by three (3) percent or more, then it shall constitute a SLA State Missed.
- (f) **Service Level Credits.** (1) In each case of a failure to satisfy a Required Service Level, Service Provider will, within five (5) calendar days from the identification of the deviation from the applicable Service Level Standard, provide to County a plan of activities which will allow Service Provider to satisfy the applicable Service Level Standard at the earliest date practicable. (2) In addition, County shall be entitled to recover a Service Level Credit for such deviation calculated in the manner described below, provided, however, that the Total Service Level Credits for any given month will not exceed fifty percent (50%) of Service Provider’s monthly charges for the Master Service Agreement (including all Service Agreements) for the applicable month (excluding Pass-Through Expenses and Special Charges, if any); (3) If a single event directly causes the failure to achieve more than one Required Service Level, all applicable Service Level Credits (for each Service Tower) will apply. In such event, and at the sole discretion of the County, the County may select a reduced quantity of Service Level Measurements that will be used for the calculation of the Service Level Credit. (4) At the County’s sole discretion, Service Level Credits may be provided in the form of additional hours for non-recurring initiatives. (5) Should the County elect for a monetary service credit, such credits will be reflected in the invoice following month in which the SLA violation(s) occurred.
- (g) **Method of Calculation for Service Level Credits.**
- (1) If Service Provider fails to meet or exceed the Required Service Level, SLA Violations will occur and the SLA State will be assessed as described Article 13. For each Service Tower the following service credits will be calculated and represented as a percentage of the monthly charges for that Tower (excluding Pass-Through Expenses and Special Charges, if any):

Service Tower		SLA State		
		Achieved	At Risk	Missed
1	IT Governance and Management	0%	2%	3%
2	Infrastructure Services	0%	3%	6%
3	Cybersecurity Services	0%	3%	5%

4	Telecommunication Services	0%	3%	6%
5	Application Services	0%	2%	4%
6	End User Technology Services	0%	2%	4%
7	DR & Emergency Operations	0%	1%	3%

- (2) If three or more Services have a reported SLA State of “At Risk” or “Missed” **the service level credits are doubled for all Service Tower(s) for the measurement and reporting period.** For Service Towers having an “At Risk” SLA State, Service Level credits are applied after two consecutive measurement and reporting periods for which the Service Tower’s SLA state is reported as “At Risk,” thus providing a remediation period not to exceed thirty (30) calendar days. The Service Level Credits will be applied to the second month of service (as opposed to both) during which the SLA Violations occurred and SLA State reported as “At Risk.”
- (h) **Exceptions to Liability for Service Level Credits.** Service Provider shall not be liable to pay County Service Level Credits for any failure to meet a Service Level Standard to the extent that such a failure is directly attributable to (i) a Force Majeure Event; (ii) breaches of this Agreement by County, provided that Service Provider has provided County with reasonable notice of such breach immediately after becoming aware of it and Service Provider has used all Commercially Reasonable Efforts to perform notwithstanding such breach; or (iii) acts or omissions of County or its suppliers, provided that Service Provider has provided County with reasonable notice of such act or omission immediately after becoming aware of it and Service Provider has used all Commercially Reasonable Efforts to perform notwithstanding such acts or omissions, or (iv) the first manifestation of an extraordinary latent error or defect in Equipment used by Service Provider in providing the Services (and any related repeated instances pending the applicable Service Provider’s correction of the defect) if such defect was (1) unknown to Service Provider and (2) not disclosed in any information distributed by the third party licensor, manufacturer, or distributor and (3) not preventable or discoverable through normal testing or maintenance procedures.
- (i) **Termination for Chronic Issues.** The County has the right to begin the Dispute Resolution process if the Service Provider chronically fails to meet the established Service Levels. The determination for chronic failure is as follows: (a) has any Service Tower reported as “At Risk for more than three (3) out of six (6) consecutive reporting measurement periods or (b) has any Service Tower reported as “Missed” for more than two (2) out of twelve (12) consecutive reporting measurement periods.
- (j) **Service Provider Software and Third Party Software.** All Service Provider Software and Third Party Software are identified in Exhibit D.

**IN WITNESS WHEREOF**, the parties have executed this Service Agreement, effective the day and year first written above.

ATTEST:

COUNTY: LEE COUNTY, FLORIDA

CLERK OF CIRCUIT COURT

BOARD OF COUNTY COMMISSIONERS

Linda Doggett, Clerk

BY: \_\_\_\_\_

BY: \_\_\_\_\_

**Chairman**

DATE: \_\_\_\_\_

APPROVED AS TO FORM FOR THE  
RELIANCE OF LEE COUNTY ONLY

BY: \_\_\_\_\_

County Attorney's Office

ATTEST:

\_\_\_\_\_  
(SERVICE PROVIDER)

\_\_\_\_\_  
(Witness)

BY: \_\_\_\_\_

(Authorized Signature)

\_\_\_\_\_  
(Title)

DATE: \_\_\_\_\_

CORPORATE SEAL:

**Exhibit A: Key County and Key Service Provider Positions**

- To be included prior to finalization of Contract

**Exhibit B: Scope of Service (Roles & Responsibilities matrix)**

- To be included prior to finalization of Contract

**Exhibit C: Service Level Agreement**

- To be included prior to finalization of Contract

**Exhibit D: Service Provider Software and Third Party Software**

- To be included prior to finalization of Contract

## SCHEDULE F

### SERVICE AGREEMENT FOR TOWER 3 - CYBERSECURITY SERVICES

This Service Tower Agreement No. 3: Cyber Security ("Service Agreement") is entered into pursuant to, and is expressly incorporated by reference into, that Master Services Agreement for Information Technology Outsourced Services ("Master Agreement") executed between Lee County, Florida ("County") and \_\_\_\_\_ ("Service Provider"), is hereby entered into on the \_\_\_\_\_, 2018 (the "Service Agreement Effective Date").

Accordingly, the parties agree as follows:

1. **Incorporation by Reference.** The parties agree that this Service Agreement is entered into by the parties pursuant to the terms of the Master Agreement, and except to the extent expressly provided otherwise in this Service Agreement, all the terms, conditions, and definitions set forth in the Master Agreement are hereby incorporated by reference with the same force and effect as though fully set forth herein. To the extent the terms set forth in this Service Agreement are inconsistent with the terms of the Master Agreement; the terms set forth herein shall apply.
2. **Term.** The initial term of this Service Agreement shall begin on the Commencement Date of the Master Agreement. The Term shall continue for a period of five (5) years after the Commencement Date of the Master Agreement, unless earlier terminated or renewed in accordance with the provisions of the Master Agreement.  
  
**Option to Renew.** The County shall have the option to renew this Service Agreement for up to three (3) additional one-year terms. The County can elect to avail itself of one, two or all of the renewal terms. The County shall exercise this option to renew for an additional Term by delivering written notice of such renewal to the Service Provider at least three (3) months prior to the expiration of the then-current Term. The Service Provider shall provide the County with notice of the need to make a renewal election four (4) months before the expiration of each Term. All of the terms of this Service Agreement shall continue to apply without change, unless mutually agreed to by both parties during any renewal Term and reduced to writing. "Term" shall refer to both the initial term of the Service Agreement and any renewal of the Service Agreement. "Service Agreement Term" shall refer to both the original term of the applicable Service Agreement and any renewal of the Service Agreement.
3. **Exhibits.** All exhibits attached hereto are incorporated by reference.
4. **Key Positions:** Key County and Key Service Provider Positions are specified in Exhibit A attached hereto.
5. **Services.** The Services to be provided by the Service Provider under this Service Agreement are described in Exhibit B attached hereto.

6. **Inherent Services.** Subject to the Master Agreement Article 3 entitled “Working Relationship,” any services that are implicit within the Services, and are not specifically described, and which are determined to be reasonably required for the proper performance and provisioning of the Services, shall be deemed to be implied by and included within the scope of the Services to the same extent and in the same manner as if specifically described in this Service Agreement. If such inherent services result in a substantial increase in Service Provider resources, either of personnel or other resources, such increase will be addressed pursuant to the Change Order procedures of the Master Agreement.
7. **Responsibilities of Lee County.** The responsibility matrix included in Exhibit B to this Service Agreement identifies the responsibilities of Lee County during the Term of this Service Agreement. Exhibit B may be amended and supplemented from time to time pursuant to the terms of the Master Agreement. The responsibilities of Lee County shall be limited to those items listed in the matrix.
8. **Notices.** All notices, demands, or other communications made pursuant to this Service Agreement shall be in writing and copies thereof shall be simultaneously directed to the parties listed below. Further, all notices, demands, or other communications shall be deemed to have been duly given by mailing, unless otherwise specified, by United States registered or Certified Mail, Return Receipt Requested, with proper postage prepaid, or sent by recognized overnight delivery service , at the following address:

If to County: Roger Desjarlais  
County Manager  
P.O. Box 398  
Fort Myers, FL 33902-0398

With copies to: Mary Tucker  
Director of Procurement Management  
P.O. Box 398  
Fort Myers, FL 33902-0398

If to Service Provider: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With copies to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

9. **Service Levels.** Service levels for the Services will be included with reference to the Master Agreement.

(a) **Definitions.**

(1) **Service Level Measurement:** For any Service identified in this Service Agreement, Service Level Measurements are specified measurements for quantitatively calculating the Service Provider's actual performance. Service Level Measurements are compared with required Service Level Standards to appraise performance. Service Level Measurement and Service Level Standards information is attached to this Service Agreement in Exhibit C.

(2) **Service Level Standards (also known as "Required Service Levels").**

i) **Service Level Measurement Method:** The Service Level Measurement Method is the specific, agreed-upon method for calculating the Service Level Measurement.

ii) **Required Service Level:** The Required Service Level is the minimally acceptable ordinary-course value for a Service Level Measurement. Any failure to meet or exceed a Required Service Level may constitute, depending upon the facts and circumstances, a material breach of Service Provider's obligations under the Service Agreement.

(3) **Service Level Credits:** The amounts which County shall recover, in addition to any other monetary remedies County may have, each time Service Provider fails to meet the Required Service Levels. The Parties acknowledge that Service Level Credits are intended to roughly reflect the diminished value of the Services as a result of service level - related failures; they are not intended to compensate the County for breach and do not constitute liquidated damages, damages, penalties, or other compensation for any such breach or default. Service Level Credits are calculated in the manner described in this section.

(b) **Time.** The Required Service Levels provided shall be applicable beginning as specifically provided in a Service Agreement. Unless otherwise stated, each Service Level Measurement shall be calculated on a complete calendar month, quarter, or annual basis. Performance results shall be measured and reported based on actual results.

(c) **Modification.** From time to time during the Term, the Parties agree to negotiate in good faith to modify Service Level Measurements, Service Level Measurement Methods, and Service Level Standards to reflect changes in County's business. All such changes shall be adopted in the form of a signed written amendment executed by both Parties.

(d) **Remedies.** At all times during the Term, Service Provider shall provide the Services in a manner that meets or exceeds the then-existing Service Level Standards. The remedies for failure to do so shall include the remedies defined in this Service Agreement and the Master Agreement.



- (e) **Service Level Measurement Method.** For each service provided and each reporting period, the Service Provider shall report on the state of the Required Service Levels indicating whether the level was or was not satisfied for the reporting period. Required Service Levels that are not satisfied for the measurement and reporting period will result in “SLA Violations.” The quantity of Violations is aggregated for each Service Tower resulting in three “SLA States.” An “SLA State” is defined for each Service Tower separately for each measurement and reporting period and is used in the calculation of Service Level Credits. The SLA State is dependent upon the quantity of SLA Violations during the measurement period as follows: (a) “Achieved” has zero (0) SLA Violations, (b) “At Risk” has more one (1) or two (2) SLA Violation (c) “Missed” has three (3) or more SLA Violations. If any Service Level Measurement for any measurement period is less than the Required Service Level by three (3) percent or more, then it shall constitute a SLA State Missed.
- (f) **Service Level Credits.** (1) In each case of a failure to satisfy a Required Service Level, Service Provider will, within five (5) calendar days from the identification of the deviation from the applicable Service Level Standard, provide to County a plan of activities which will allow Service Provider to satisfy the applicable Service Level Standard at the earliest date practicable. (2) In addition, County shall be entitled to recover a Service Level Credit for such deviation calculated in the manner described below, provided, however, that the Total Service Level Credits for any given month will not exceed fifty percent (50%) of Service Provider’s monthly charges for the Master Service Agreement (including all Service Agreements) for the applicable month (excluding Pass-Through Expenses and Special Charges, if any); (3) If a single event directly causes the failure to achieve more than one Required Service Level, all applicable Service Level Credits (for each Service Tower) will apply. In such event, and at the sole discretion of the County, the County may select a reduced quantity of Service Level Measurements that will be used for the calculation of the Service Level Credit. (4) At the County’s sole discretion, Service Level Credits may be provided in the form of additional hours for non-recurring initiatives. (5) Should the County elect for a monetary service credit, such credits will be reflected in the invoice following month in which the SLA violation(s) occurred.
- (g) **Method of Calculation for Service Level Credits.**
- (1) If Service Provider fails to meet or exceed the Required Service Level, SLA Violations will occur and the SLA State will be assessed as described Article 13. For each Service Tower the following service credits will be calculated and represented as a percentage of the monthly charges for that Tower (excluding Pass-Through Expenses and Special Charges, if any):

Service Tower		SLA State		
		Achieved	At Risk	Missed
1	IT Governance and Management	0%	2%	3%
2	Infrastructure Services	0%	3%	6%
3	Cybersecurity Services	0%	3%	5%

4	Telecommunication Services	0%	3%	6%
5	Application Services	0%	2%	4%
6	End User Technology Services	0%	2%	4%
7	DR & Emergency Operations	0%	1%	3%

- (2) If three or more Services have a reported SLA State of “At Risk” or “Missed” **the service level credits are doubled for all Service Tower(s) for the measurement and reporting period.** For Service Towers having an “At Risk” SLA State, Service Level credits are applied after two consecutive measurement and reporting periods for which the Service Tower’s SLA state is reported as “At Risk,” thus providing a remediation period not to exceed thirty (30) calendar days. The Service Level Credits will be applied to the second month of service (as opposed to both) during which the SLA Violations occurred and SLA State reported as “At Risk.”
- (h) **Exceptions to Liability for Service Level Credits.** Service Provider shall not be liable to pay County Service Level Credits for any failure to meet a Service Level Standard to the extent that such a failure is directly attributable to (i) a Force Majeure Event; (ii) breaches of this Agreement by County, provided that Service Provider has provided County with reasonable notice of such breach immediately after becoming aware of it and Service Provider has used all Commercially Reasonable Efforts to perform notwithstanding such breach; or (iii) acts or omissions of County or its suppliers, provided that Service Provider has provided County with reasonable notice of such act or omission immediately after becoming aware of it and Service Provider has used all Commercially Reasonable Efforts to perform notwithstanding such acts or omissions, or (iv) the first manifestation of an extraordinary latent error or defect in Equipment used by Service Provider in providing the Services (and any related repeated instances pending the applicable Service Provider’s correction of the defect) if such defect was (1) unknown to Service Provider and (2) not disclosed in any information distributed by the third party licensor, manufacturer, or distributor and (3) not preventable or discoverable through normal testing or maintenance procedures.
- (i) **Termination for Chronic Issues.** The County has the right to begin the Dispute Resolution process if the Service Provider chronically fails to meet the established Service Levels. The determination for chronic failure is as follows: (a) has any Service Tower reported as “At Risk” for more than three (3) out of six (6) consecutive reporting measurement periods or (b) has any Service Tower reported as “Missed” for more than two (2) out of twelve (12) consecutive reporting measurement periods.
- (j) **Service Provider Software and Third Party Software.** All Service Provider Software and Third Party Software are identified in Exhibit D.

**IN WITNESS WHEREOF**, the parties have executed this Service Agreement, effective the day and year first written above.

ATTEST:

CLERK OF CIRCUIT COURT  
Linda Doggett, Clerk

COUNTY: LEE COUNTY, FLORIDA  
BOARD OF COUNTY COMMISSIONERS

BY: \_\_\_\_\_

BY: \_\_\_\_\_  
**Chairman**

DATE: \_\_\_\_\_

APPROVED AS TO FORM FOR THE  
RELIANCE OF LEE COUNTY ONLY

BY: \_\_\_\_\_  
County Attorney's Office

ATTEST:

\_\_\_\_\_  
(Witness)

\_\_\_\_\_  
(SERVICE PROVIDER)

BY: \_\_\_\_\_  
(Authorized Signature)

\_\_\_\_\_  
(Title)

DATE: \_\_\_\_\_

CORPORATE SEAL:

**Exhibit A: Key County and Key Service Provider Positions**

- To be included prior to finalization of Contract

**Exhibit B: Scope of Service (Roles & Responsibilities matrix)**

- To be included prior to finalization of Contract

**Exhibit C: Service Level Agreement**

- To be included prior to finalization of Contract

**Exhibit D: Service Provider Software and Third Party Software**

To be included prior to finalization of Contract

## SCHEDULE G

### SERVICE AGREEMENT FOR TOWER 4 - TELECOMMUNICATIONS SERVICES

This Service Tower Agreement No. 4: Telecommunications Services ("Service Agreement") is entered into pursuant to, and is expressly incorporated by reference into, that Master Services Agreement for Information Technology Outsourced Services ("Master Agreement") executed between Lee County, Florida ("County") and \_\_\_\_\_ ("Service Provider"), is hereby entered into on the \_\_\_\_\_, 2018 (the "Service Agreement Effective Date").

Accordingly, the parties agree as follows:

1. **Incorporation by Reference.** The parties agree that this Service Agreement is entered into by the parties pursuant to the terms of the Master Agreement, and except to the extent expressly provided otherwise in this Service Agreement, all the terms, conditions, and definitions set forth in the Master Agreement are hereby incorporated by reference with the same force and effect as though fully set forth herein. To the extent the terms set forth in this Service Agreement are inconsistent with the terms of the Master Agreement; the terms set forth herein shall apply.
2. **Term.** The initial term of this Service Agreement shall begin on the Commencement Date of the Master Agreement. The Term shall continue for a period of five (5) years after the Commencement Date of the Master Agreement, unless earlier terminated or renewed in accordance with the provisions of the Master Agreement.  
  
**Option to Renew.** The County shall have the option to renew this Service Agreement for up to three (3) additional one-year terms. The County can elect to avail itself of one, two or all of the renewal terms. The County shall exercise this option to renew for an additional Term by delivering written notice of such renewal to the Service Provider at least three (3) months prior to the expiration of the then-current Term. The Service Provider shall provide the County with notice of the need to make a renewal election four (4) months before the expiration of each Term. All of the terms of this Service Agreement shall continue to apply without change, unless mutually agreed to by both parties during any renewal Term and reduced to writing. "Term" shall refer to both the initial term of the Service Agreement and any renewal of the Service Agreement. "Service Agreement Term" shall refer to both the original term of the applicable Service Agreement and any renewal of the Service Agreement.
3. **Exhibits.** All exhibits attached hereto are incorporated by reference.
4. **Key Positions:** Key County and Key Service Provider Positions are specified in Exhibit A attached hereto.
5. **Services.** The Services to be provided by the Service Provider under this Service Agreement are described in Exhibit B attached hereto.

6. **Inherent Services.** Subject to the Master Agreement Article 3 entitled “Working Relationship,” any services that are implicit within the Services, and are not specifically described, and which are determined to be reasonably required for the proper performance and provisioning of the Services, shall be deemed to be implied by and included within the scope of the Services to the same extent and in the same manner as if specifically described in this Service Agreement. If such inherent services result in a substantial increase in Service Provider resources, either of personnel or other resources, such increase will be addressed pursuant to the Change Order procedures of the Master Agreement.
7. **Responsibilities of Lee County.** The responsibility matrix included in Exhibit B to this Service Agreement identifies the responsibilities of Lee County during the Term of this Service Agreement. Exhibit B may be amended and supplemented from time to time pursuant to the terms of the Master Agreement. The responsibilities of Lee County shall be limited to those items listed in the matrix.
8. **Notices.** All notices, demands, or other communications made pursuant to this Service Agreement shall be in writing and copies thereof shall be simultaneously directed to the parties listed below. Further, all notices, demands, or other communications shall be deemed to have been duly given by mailing, unless otherwise specified, by United States registered or Certified Mail, Return Receipt Requested, with proper postage prepaid, or sent by recognized overnight delivery service , at the following address:

If to County: Roger Desjarlais  
County Manager  
P.O. Box 398  
Fort Myers, FL 33902-0398

With copies to: Mary Tucker  
Director of Procurement Management  
P.O. Box 398  
Fort Myers, FL 33902-0398

If to Service Provider: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With copies to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

9. **Service Levels.** Service levels for the Services will be included with reference to the Master Agreement.

- (a) **Definitions.**
- (1) **Service Level Measurement:** For any Service identified in this Service Agreement, Service Level Measurements are specified measurements for quantitatively calculating the Service Provider's actual performance. Service Level Measurements are compared with required Service Level Standards to appraise performance. Service Level Measurement and Service Level Standards information is attached to this Service Agreement in Exhibit C.
- (2) **Service Level Standards (also known as "Required Service Levels").**
- i) **Service Level Measurement Method:** The Service Level Measurement Method is the specific, agreed-upon method for calculating the Service Level Measurement.
- ii) **Required Service Level:** The Required Service Level is the minimally acceptable ordinary-course value for a Service Level Measurement. Any failure to meet or exceed a Required Service Level may constitute, depending upon the facts and circumstances, a material breach of Service Provider's obligations under the Service Agreement.
- (3) **Service Level Credits:** The amounts which County shall recover, in addition to any other monetary remedies County may have, each time Service Provider fails to meet the Required Service Levels. The Parties acknowledge that Service Level Credits are intended to roughly reflect the diminished value of the Services as a result of service level - related failures; they are not intended to compensate the County for breach and do not constitute liquidated damages, damages, penalties, or other compensation for any such breach or default. Service Level Credits are calculated in the manner described in this section.
- (b) **Time.** The Required Service Levels provided shall be applicable beginning as specifically provided in a Service Agreement. Unless otherwise stated, each Service Level Measurement shall be calculated on a complete calendar month, quarter, or annual basis. Performance results shall be measured and reported based on actual results.
- (c) **Modification.** From time to time during the Term, the Parties agree to negotiate in good faith to modify Service Level Measurements, Service Level Measurement Methods, and Service Level Standards to reflect changes in County's business. All such changes shall be adopted in the form of a signed written amendment executed by both Parties.
- (d) **Remedies.** At all times during the Term, Service Provider shall provide the Services in a manner that meets or exceeds the then-existing Service Level Standards. The remedies for failure to do so shall include the remedies defined in this Service Agreement and the Master Agreement.

- (e) **Service Level Measurement Method.** For each service provided and each reporting period, the Service Provider shall report on the state of the Required Service Levels indicating whether the level was or was not satisfied for the reporting period. Required Service Levels that are not satisfied for the measurement and reporting period will result in “SLA Violations.” The quantity of Violations is aggregated for each Service Tower resulting in three “SLA States.” An “SLA State” is defined for each Service Tower separately for each measurement and reporting period and is used in the calculation of Service Level Credits. The SLA State is dependent upon the quantity of SLA Violations during the measurement period as follows: (a) “Achieved” has zero (0) SLA Violations, (b) “At Risk” has more one (1) or two (2) SLA Violation (c) “Missed” has three (3) or more SLA Violations. If any Service Level Measurement for any measurement period is less than the Required Service Level by three (3) percent or more, then it shall constitute a SLA State Missed.
- (f) **Service Level Credits.** (1) In each case of a failure to satisfy a Required Service Level, Service Provider will, within five (5) calendar days from the identification of the deviation from the applicable Service Level Standard, provide to County a plan of activities which will allow Service Provider to satisfy the applicable Service Level Standard at the earliest date practicable. (2) In addition, County shall be entitled to recover a Service Level Credit for such deviation calculated in the manner described below, provided, however, that the Total Service Level Credits for any given month will not exceed fifty percent (50%) of Service Provider’s monthly charges for the Master Service Agreement (including all Service Agreements) for the applicable month (excluding Pass-Through Expenses and Special Charges, if any); (3) If a single event directly causes the failure to achieve more than one Required Service Level, all applicable Service Level Credits (for each Service Tower) will apply. In such event, and at the sole discretion of the County, the County may select a reduced quantity of Service Level Measurements that will be used for the calculation of the Service Level Credit. (4) At the County’s sole discretion, Service Level Credits may be provided in the form of additional hours for non-recurring initiatives. (5) Should the County elect for a monetary service credit, such credits will be reflected in the invoice following month in which the SLA violation(s) occurred.
- (g) **Method of Calculation for Service Level Credits.**
- (1) If Service Provider fails to meet or exceed the Required Service Level, SLA Violations will occur and the SLA State will be assessed as described Article 13. For each Service Tower the following service credits will be calculated and represented as a percentage of the monthly charges for that Tower (excluding Pass-Through Expenses and Special Charges, if any):

Service Tower		SLA State		
		Achieved	At Risk	Missed
1	IT Governance and Management	0%	2%	3%
2	Infrastructure Services	0%	3%	6%
3	Cybersecurity Services	0%	3%	5%



4	Telecommunication Services	0%	3%	6%
5	Application Services	0%	2%	4%
6	End User Technology Services	0%	2%	4%
7	DR & Emergency Operations	0%	1%	3%

- (2) If three or more Services have a reported SLA State of “At Risk” or “Missed” **the service level credits are doubled for all Service Tower(s) for the measurement and reporting period.** For Service Towers having an “At Risk” SLA State, Service Level credits are applied after two consecutive measurement and reporting periods for which the Service Tower’s SLA state is reported as “At Risk,” thus providing a remediation period not to exceed thirty (30) calendar days. The Service Level Credits will be applied to the second month of service (as opposed to both) during which the SLA Violations occurred and SLA State reported as “At Risk.”
- (h) **Exceptions to Liability for Service Level Credits.** Service Provider shall not be liable to pay County Service Level Credits for any failure to meet a Service Level Standard to the extent that such a failure is directly attributable to (i) a Force Majeure Event; (ii) breaches of this Agreement by County, provided that Service Provider has provided County with reasonable notice of such breach immediately after becoming aware of it and Service Provider has used all Commercially Reasonable Efforts to perform notwithstanding such breach; or (iii) acts or omissions of County or its suppliers, provided that Service Provider has provided County with reasonable notice of such act or omission immediately after becoming aware of it and Service Provider has used all Commercially Reasonable Efforts to perform notwithstanding such acts or omissions, or (iv) the first manifestation of an extraordinary latent error or defect in Equipment used by Service Provider in providing the Services (and any related repeated instances pending the applicable Service Provider’s correction of the defect) if such defect was (1) unknown to Service Provider and (2) not disclosed in any information distributed by the third party licensor, manufacturer, or distributor and (3) not preventable or discoverable through normal testing or maintenance procedures.
- (i) **Termination for Chronic Issues.** The County has the right to begin the Dispute Resolution process if the Service Provider chronically fails to meet the established Service Levels. The determination for chronic failure is as follows: (a) has any Service Tower reported as “At Risk” for more than three (3) out of six (6) consecutive reporting measurement periods or (b) has any Service Tower reported as “Missed” for more than two (2) out of twelve (12) consecutive reporting measurement periods.
- (j) **Service Provider Software and Third Party Software.** All Service Provider Software and Third Party Software are identified in Exhibit D.

**IN WITNESS WHEREOF**, the parties have executed this Service Agreement, effective the day and year first written above.

ATTEST:

CLERK OF CIRCUIT COURT  
Linda Doggett, Clerk

COUNTY: LEE COUNTY, FLORIDA  
BOARD OF COUNTY COMMISSIONERS

BY: \_\_\_\_\_

BY: \_\_\_\_\_  
**Chairman**

DATE: \_\_\_\_\_

APPROVED AS TO FORM FOR THE  
RELIANCE OF LEE COUNTY ONLY

BY: \_\_\_\_\_  
County Attorney's Office

ATTEST:

\_\_\_\_\_  
(Witness)

\_\_\_\_\_  
(SERVICE PROVIDER)

BY: \_\_\_\_\_  
(Authorized Signature)

\_\_\_\_\_  
(Title)

DATE: \_\_\_\_\_

CORPORATE SEAL:

**Exhibit A: Key County and Key Service Provider Positions**

- To be included prior to finalization of Contract

**Exhibit B: Scope of Service (Roles & Responsibilities matrix)**

- To be included prior to finalization of Contract

**Exhibit C: Service Level Agreement**

- To be included prior to finalization of Contract

**Exhibit D: Service Provider Software and Third Party Software**

- To be included prior to finalization of Contract

## SCHEDULE H

### SERVICE AGREEMENT FOR TOWER 5 - APPLICATION SERVICES

This Service Tower Agreement No. 5: Application Services (“Service Agreement”) is entered into pursuant to, and is expressly incorporated by reference into, that Master Services Agreement for Information Technology Outsourced Services (“Master Agreement”) executed between Lee County, Florida (“County”) and \_\_\_\_\_ (“Service Provider”), is hereby entered into on the \_\_\_\_\_, 2018 (the “Service Agreement Effective Date”).

Accordingly, the parties agree as follows:

1. **Incorporation by Reference.** The parties agree that this Service Agreement is entered into by the parties pursuant to the terms of the Master Agreement, and except to the extent expressly provided otherwise in this Service Agreement, all the terms, conditions, and definitions set forth in the Master Agreement are hereby incorporated by reference with the same force and effect as though fully set forth herein. To the extent the terms set forth in this Service Agreement are inconsistent with the terms of the Master Agreement; the terms set forth herein shall apply.
2. **Term.** The initial term of this Service Agreement shall begin on the Commencement Date of the Master Agreement. The Term shall continue for a period of five (5) years after the Commencement Date of the Master Agreement, unless earlier terminated or renewed in accordance with the provisions of the Master Agreement.  
  
**Option to Renew.** The County shall have the option to renew this Service Agreement for up to three (3) additional one-year terms. The County can elect to avail itself of one, two or all of the renewal terms. The County shall exercise this option to renew for an additional Term by delivering written notice of such renewal to the Service Provider at least three (3) months prior to the expiration of the then-current Term. The Service Provider shall provide the County with notice of the need to make a renewal election four (4) months before the expiration of each Term. All of the terms of this Service Agreement shall continue to apply without change, unless mutually agreed to by both parties during any renewal Term and reduced to writing. “Term” shall refer to both the initial term of the Service Agreement and any renewal of the Service Agreement. “Service Agreement Term” shall refer to both the original term of the applicable Service Agreement and any renewal of the Service Agreement.
3. **Exhibits.** All exhibits attached hereto are incorporated by reference.
4. **Key Positions:** Key County and Key Service Provider Positions are specified in Exhibit A attached hereto.
5. **Services.** The Services to be provided by the Service Provider under this Service Agreement are described in Exhibit B attached hereto.

6. **Inherent Services.** Subject to the Master Agreement Article 3 entitled “Working Relationship,” any services that are implicit within the Services, and are not specifically described, and which are determined to be reasonably required for the proper performance and provisioning of the Services, shall be deemed to be implied by and included within the scope of the Services to the same extent and in the same manner as if specifically described in this Service Agreement. If such inherent services result in a substantial increase in Service Provider resources, either of personnel or other resources, such increase will be addressed pursuant to the Change Order procedures of the Master Agreement.
7. **Responsibilities of Lee County.** The responsibility matrix included in Exhibit B to this Service Agreement identifies the responsibilities of Lee County during the Term of this Service Agreement. Exhibit B may be amended and supplemented from time to time pursuant to the terms of the Master Agreement. The responsibilities of Lee County shall be limited to those items listed in the matrix.
8. **Notices.** All notices, demands, or other communications made pursuant to this Service Agreement shall be in writing and copies thereof shall be simultaneously directed to the parties listed below. Further, all notices, demands, or other communications shall be deemed to have been duly given by mailing, unless otherwise specified, by United States registered or Certified Mail, Return Receipt Requested, with proper postage prepaid, or sent by recognized overnight delivery service , at the following address:

If to County: Roger Desjarlais  
County Manager  
P.O. Box 398  
Fort Myers, FL 33902-0398

With copies to: Mary Tucker  
Director of Procurement Management  
P.O. Box 398  
Fort Myers, FL 33902-0398

If to Service Provider: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With copies to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

9. **Service Levels.** Service levels for the Services will be included with reference to the Master Agreement.

(a) **Definitions.**

(1) **Service Level Measurement:** For any Service identified in this Service Agreement, Service Level Measurements are specified measurements for quantitatively calculating the Service Provider's actual performance. Service Level Measurements are compared with required Service Level Standards to appraise performance. Service Level Measurement and Service Level Standards information is attached to this Service Agreement in Exhibit C.

(2) **Service Level Standards (also known as "Required Service Levels").**

i) **Service Level Measurement Method:** The Service Level Measurement Method is the specific, agreed-upon method for calculating the Service Level Measurement.

ii) **Required Service Level:** The Required Service Level is the minimally acceptable ordinary-course value for a Service Level Measurement. Any failure to meet or exceed a Required Service Level may constitute, depending upon the facts and circumstances, a material breach of Service Provider's obligations under the Service Agreement.

(3) **Service Level Credits:** The amounts which County shall recover, in addition to any other monetary remedies County may have, each time Service Provider fails to meet the Required Service Levels. The Parties acknowledge that Service Level Credits are intended to roughly reflect the diminished value of the Services as a result of service level - related failures; they are not intended to compensate the County for breach and do not constitute liquidated damages, damages, penalties, or other compensation for any such breach or default. Service Level Credits are calculated in the manner described in this section.

(b) **Time.** The Required Service Levels provided shall be applicable beginning as specifically provided in a Service Agreement. Unless otherwise stated, each Service Level Measurement shall be calculated on a complete calendar month, quarter, or annual basis. Performance results shall be measured and reported based on actual results.

(c) **Modification.** From time to time during the Term, the Parties agree to negotiate in good faith to modify Service Level Measurements, Service Level Measurement Methods, and Service Level Standards to reflect changes in County's business. All such changes shall be adopted in the form of a signed written amendment executed by both Parties.

(d) **Remedies.** At all times during the Term, Service Provider shall provide the Services in a manner that meets or exceeds the then-existing Service Level Standards. The remedies for failure to do so shall include the remedies defined in this Service Agreement and the Master Agreement.

- (e) **Service Level Measurement Method.** For each service provided and each reporting period, the Service Provider shall report on the state of the Required Service Levels indicating whether the level was or was not satisfied for the reporting period. Required Service Levels that are not satisfied for the measurement and reporting period will result in “SLA Violations.” The quantity of Violations is aggregated for each Service Tower resulting in three “SLA States.” An “SLA State” is defined for each Service Tower separately for each measurement and reporting period and is used in the calculation of Service Level Credits. The SLA State is dependent upon the quantity of SLA Violations during the measurement period as follows: (a) “Achieved” has zero (0) SLA Violations, (b) “At Risk” has more one (1) or two (2) SLA Violation (c) “Missed” has three (3) or more SLA Violations. If any Service Level Measurement for any measurement period is less than the Required Service Level by three (3) percent or more, then it shall constitute a SLA State Missed.
- (f) **Service Level Credits.** (1) In each case of a failure to satisfy a Required Service Level, Service Provider will, within five (5) calendar days from the identification of the deviation from the applicable Service Level Standard, provide to County a plan of activities which will allow Service Provider to satisfy the applicable Service Level Standard at the earliest date practicable. (2) In addition, County shall be entitled to recover a Service Level Credit for such deviation calculated in the manner described below, provided, however, that the Total Service Level Credits for any given month will not exceed fifty percent (50%) of Service Provider’s monthly charges for the Master Service Agreement (including all Service Agreements) for the applicable month (excluding Pass-Through Expenses and Special Charges, if any); (3) If a single event directly causes the failure to achieve more than one Required Service Level, all applicable Service Level Credits (for each Service Tower) will apply. In such event, and at the sole discretion of the County, the County may select a reduced quantity of Service Level Measurements that will be used for the calculation of the Service Level Credit. (4) At the County’s sole discretion, Service Level Credits may be provided in the form of additional hours for non-recurring initiatives. (5) Should the County elect for a monetary service credit, such credits will be reflected in the invoice following month in which the SLA violation(s) occurred.
- (g) **Method of Calculation for Service Level Credits.**
- (1) If Service Provider fails to meet or exceed the Required Service Level, SLA Violations will occur and the SLA State will be assessed as described Article 13. For each Service Tower the following service credits will be calculated and represented as a percentage of the monthly charges for that Tower (excluding Pass-Through Expenses and Special Charges, if any):

Service Tower		SLA State		
		Achieved	At Risk	Missed
1	IT Governance and Management	0%	2%	3%
2	Infrastructure Services	0%	3%	6%
3	Cybersecurity Services	0%	3%	5%

4	Telecommunication Services	0%	3%	6%
5	Application Services	0%	2%	4%
6	End User Technology Services	0%	2%	4%
7	DR & Emergency Operations	0%	1%	3%

- (2) If three or more Services have a reported SLA State of “At Risk” or “Missed” **the service level credits are doubled for all Service Tower(s) for the measurement and reporting period.** For Service Towers having an “At Risk” SLA State, Service Level credits are applied after two consecutive measurement and reporting periods for which the Service Tower’s SLA state is reported as “At Risk,” thus providing a remediation period not to exceed thirty (30) calendar days. The Service Level Credits will be applied to the second month of service (as opposed to both) during which the SLA Violations occurred and SLA State reported as “At Risk.”
- (h) **Exceptions to Liability for Service Level Credits.** Service Provider shall not be liable to pay County Service Level Credits for any failure to meet a Service Level Standard to the extent that such a failure is directly attributable to (i) a Force Majeure Event; (ii) breaches of this Agreement by County, provided that Service Provider has provided County with reasonable notice of such breach immediately after becoming aware of it and Service Provider has used all Commercially Reasonable Efforts to perform notwithstanding such breach; or (iii) acts or omissions of County or its suppliers, provided that Service Provider has provided County with reasonable notice of such act or omission immediately after becoming aware of it and Service Provider has used all Commercially Reasonable Efforts to perform notwithstanding such acts or omissions, or (iv) the first manifestation of an extraordinary latent error or defect in Equipment used by Service Provider in providing the Services (and any related repeated instances pending the applicable Service Provider’s correction of the defect) if such defect was (1) unknown to Service Provider and (2) not disclosed in any information distributed by the third party licensor, manufacturer, or distributor and (3) not preventable or discoverable through normal testing or maintenance procedures.
- (i) **Termination for Chronic Issues.** The County has the right to begin the Dispute Resolution process if the Service Provider chronically fails to meet the established Service Levels. The determination for chronic failure is as follows: (a) has any Service Tower reported as “At Risk” for more than three (3) out of six (6) consecutive reporting measurement periods or (b) has any Service Tower reported as “Missed” for more than two (2) out of twelve (12) consecutive reporting measurement periods.
- (j) **Service Provider Software and Third Party Software.** All Service Provider Software and Third Party Software are identified in Exhibit D.



**IN WITNESS WHEREOF**, the parties have executed this Service Agreement, effective the day and year first written above.

ATTEST:

CLERK OF CIRCUIT COURT  
Linda Doggett, Clerk

COUNTY: LEE COUNTY, FLORIDA  
BOARD OF COUNTY COMMISSIONERS

BY: \_\_\_\_\_

BY: \_\_\_\_\_  
**Chairman**

DATE: \_\_\_\_\_

APPROVED AS TO FORM FOR THE  
RELIANCE OF LEE COUNTY ONLY

BY: \_\_\_\_\_  
County Attorney's Office

ATTEST:

\_\_\_\_\_  
(Witness)

\_\_\_\_\_  
(SERVICE PROVIDER)

BY: \_\_\_\_\_  
(Authorized Signature)

\_\_\_\_\_  
(Title)

DATE: \_\_\_\_\_

CORPORATE SEAL:

**Exhibit A:** Key County and Key Service Provider Positions

- To be included prior to finalization of Contract

**Exhibit B:** Scope of Service (Roles & Responsibilities matrix)

- To be included prior to finalization of Contract

**Exhibit C:** Service Level Agreement

- To be included prior to finalization of Contract

**Exhibit D:** Service Provider Software and Third Party Software

- To be included prior to finalization of Contract

## SCHEDULE I

### SERVICE AGREEMENT FOR 6 - END USER TECHNOLOGIES SERVICES

This Service Tower Agreement No. 6: End User Technology Services ("Service Agreement") is entered into pursuant to, and is expressly incorporated by reference into, that Master Services Agreement for Information Technology Outsourced Services ("Master Agreement") executed between Lee County, Florida ("County") and \_\_\_\_\_ ("Service Provider"), is hereby entered into on the \_\_\_\_\_, 2018 (the "Service Agreement Effective Date").

Accordingly, the parties agree as follows:

1. **Incorporation by Reference.** The parties agree that this Service Agreement is entered into by the parties pursuant to the terms of the Master Agreement, and except to the extent expressly provided otherwise in this Service Agreement, all the terms, conditions, and definitions set forth in the Master Agreement are hereby incorporated by reference with the same force and effect as though fully set forth herein. To the extent the terms set forth in this Service Agreement are inconsistent with the terms of the Master Agreement; the terms set forth herein shall apply.
2. **Term.** The initial term of this Service Agreement shall begin on the Commencement Date of the Master Agreement. The Term shall continue for a period of five (5) years after the Commencement Date of the Master Agreement, unless earlier terminated or renewed in accordance with the provisions of the Master Agreement.  
  
**Option to Renew.** The County shall have the option to renew this Service Agreement for up to three (3) additional one-year terms. The County can elect to avail itself of one, two or all of the renewal terms. The County shall exercise this option to renew for an additional Term by delivering written notice of such renewal to the Service Provider at least three (3) months prior to the expiration of the then-current Term. The Service Provider shall provide the County with notice of the need to make a renewal election four (4) months before the expiration of each Term. All of the terms of this Service Agreement shall continue to apply without change, unless mutually agreed to by both parties during any renewal Term and reduced to writing. "Term" shall refer to both the initial term of the Service Agreement and any renewal of the Service Agreement. "Service Agreement Term" shall refer to both the original term of the applicable Service Agreement and any renewal of the Service Agreement.
3. **Exhibits.** All exhibits attached hereto are incorporated by reference.
4. **Key Positions:** Key County and Key Service Provider Positions are specified in Exhibit A attached hereto.
5. **Services.** The Services to be provided by the Service Provider under this Service Agreement are described in Exhibit B attached hereto.

6. **Inherent Services.** Subject to the Master Agreement Article 3 entitled “Working Relationship,” any services that are implicit within the Services, and are not specifically described, and which are determined to be reasonably required for the proper performance and provisioning of the Services, shall be deemed to be implied by and included within the scope of the Services to the same extent and in the same manner as if specifically described in this Service Agreement. If such inherent services result in a substantial increase in Service Provider resources, either of personnel or other resources, such increase will be addressed pursuant to the Change Order procedures of the Master Agreement.
7. **Responsibilities of Lee County.** The responsibility matrix included in Exhibit B to this Service Agreement identifies the responsibilities of Lee County during the Term of this Service Agreement. Exhibit B may be amended and supplemented from time to time pursuant to the terms of the Master Agreement. The responsibilities of Lee County shall be limited to those items listed in the matrix.
8. **Notices.** All notices, demands, or other communications made pursuant to this Service Agreement shall be in writing and copies thereof shall be simultaneously directed to the parties listed below. Further, all notices, demands, or other communications shall be deemed to have been duly given by mailing, unless otherwise specified, by United States registered or Certified Mail, Return Receipt Requested, with proper postage prepaid, or sent by recognized overnight delivery service , at the following address:

If to County: Roger Desjarlais  
County Manager  
P.O. Box 398  
Fort Myers, FL 33902-0398

With copies to: Mary Tucker  
Director of Procurement Management  
P.O. Box 398  
Fort Myers, FL 33902-0398

If to Service Provider: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With copies to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

9. **Service Levels.** Service levels for the Services will be included with reference to the Master Agreement.

(a) **Definitions.**

(1) **Service Level Measurement:** For any Service identified in this Service Agreement, Service Level Measurements are specified measurements for quantitatively calculating the Service Provider's actual performance. Service Level Measurements are compared with required Service Level Standards to appraise performance. Service Level Measurement and Service Level Standards information is attached to this Service Agreement in Exhibit C.

(2) **Service Level Standards (also known as "Required Service Levels").**

i) **Service Level Measurement Method:** The Service Level Measurement Method is the specific, agreed-upon method for calculating the Service Level Measurement.

ii) **Required Service Level:** The Required Service Level is the minimally acceptable ordinary-course value for a Service Level Measurement. Any failure to meet or exceed a Required Service Level may constitute, depending upon the facts and circumstances, a material breach of Service Provider's obligations under the Service Agreement.

(3) **Service Level Credits:** The amounts which County shall recover, in addition to any other monetary remedies County may have, each time Service Provider fails to meet the Required Service Levels. The Parties acknowledge that Service Level Credits are intended to roughly reflect the diminished value of the Services as a result of service level - related failures; they are not intended to compensate the County for breach and do not constitute liquidated damages, damages, penalties, or other compensation for any such breach or default. Service Level Credits are calculated in the manner described in this section.

(b) **Time.** The Required Service Levels provided shall be applicable beginning as specifically provided in a Service Agreement. Unless otherwise stated, each Service Level Measurement shall be calculated on a complete calendar month, quarter, or annual basis. Performance results shall be measured and reported based on actual results.

(c) **Modification.** From time to time during the Term, the Parties agree to negotiate in good faith to modify Service Level Measurements, Service Level Measurement Methods, and Service Level Standards to reflect changes in County's business. All such changes shall be adopted in the form of a signed written amendment executed by both Parties.

(d) **Remedies.** At all times during the Term, Service Provider shall provide the Services in a manner that meets or exceeds the then-existing Service Level Standards. The remedies for failure to do so shall include the remedies defined in this Service Agreement and the Master Agreement.

- (e) **Service Level Measurement Method.** For each service provided and each reporting period, the Service Provider shall report on the state of the Required Service Levels indicating whether the level was or was not satisfied for the reporting period. Required Service Levels that are not satisfied for the measurement and reporting period will result in “SLA Violations.” The quantity of Violations is aggregated for each Service Tower resulting in three “SLA States.” An “SLA State” is defined for each Service Tower separately for each measurement and reporting period and is used in the calculation of Service Level Credits. The SLA State is dependent upon the quantity of SLA Violations during the measurement period as follows: (a) “Achieved” has zero (0) SLA Violations, (b) “At Risk” has more one (1) or two (2) SLA Violation (c) “Missed” has three (3) or more SLA Violations. If any Service Level Measurement for any measurement period is less than the Required Service Level by three (3) percent or more, then it shall constitute a SLA State Missed.
- (f) **Service Level Credits.** (1) In each case of a failure to satisfy a Required Service Level, Service Provider will, within five (5) calendar days from the identification of the deviation from the applicable Service Level Standard, provide to County a plan of activities which will allow Service Provider to satisfy the applicable Service Level Standard at the earliest date practicable. (2) In addition, County shall be entitled to recover a Service Level Credit for such deviation calculated in the manner described below, provided, however, that the Total Service Level Credits for any given month will not exceed fifty percent (50%) of Service Provider’s monthly charges for the Master Service Agreement (including all Service Agreements) for the applicable month (excluding Pass-Through Expenses and Special Charges, if any); (3) If a single event directly causes the failure to achieve more than one Required Service Level, all applicable Service Level Credits (for each Service Tower) will apply. In such event, and at the sole discretion of the County, the County may select a reduced quantity of Service Level Measurements that will be used for the calculation of the Service Level Credit. (4) At the County’s sole discretion, Service Level Credits may be provided in the form of additional hours for non-recurring initiatives. (5) Should the County elect for a monetary service credit, such credits will be reflected in the invoice following month in which the SLA violation(s) occurred.
- (g) **Method of Calculation for Service Level Credits.**
- (1) If Service Provider fails to meet or exceed the Required Service Level, SLA Violations will occur and the SLA State will be assessed as described Article 13. For each Service Tower the following service credits will be calculated and represented as a percentage of the monthly charges for that Tower (excluding Pass-Through Expenses and Special Charges, if any):

Service Tower		SLA State		
		Achieved	At Risk	Missed
1	IT Governance and Management	0%	2%	3%
2	Infrastructure Services	0%	3%	6%
3	Cybersecurity Services	0%	3%	5%

4	Telecommunication Services	0%	3%	6%
5	Application Services	0%	2%	4%
6	End User Technology Services	0%	2%	4%
7	DR & Emergency Operations	0%	1%	3%

- (2) If three or more Services have a reported SLA State of “At Risk” or “Missed” **the service level credits are doubled for all Service Tower(s) for the measurement and reporting period.** For Service Towers having an “At Risk” SLA State, Service Level credits are applied after two consecutive measurement and reporting periods for which the Service Tower’s SLA state is reported as “At Risk,” thus providing a remediation period not to exceed thirty (30) calendar days. The Service Level Credits will be applied to the second month of service (as opposed to both) during which the SLA Violations occurred and SLA State reported as “At Risk.”
- (h) **Exceptions to Liability for Service Level Credits.** Service Provider shall not be liable to pay County Service Level Credits for any failure to meet a Service Level Standard to the extent that such a failure is directly attributable to (i) a Force Majeure Event; (ii) breaches of this Agreement by County, provided that Service Provider has provided County with reasonable notice of such breach immediately after becoming aware of it and Service Provider has used all Commercially Reasonable Efforts to perform notwithstanding such breach; or (iii) acts or omissions of County or its suppliers, provided that Service Provider has provided County with reasonable notice of such act or omission immediately after becoming aware of it and Service Provider has used all Commercially Reasonable Efforts to perform notwithstanding such acts or omissions, or (iv) the first manifestation of an extraordinary latent error or defect in Equipment used by Service Provider in providing the Services (and any related repeated instances pending the applicable Service Provider’s correction of the defect) if such defect was (1) unknown to Service Provider and (2) not disclosed in any information distributed by the third party licensor, manufacturer, or distributor and (3) not preventable or discoverable through normal testing or maintenance procedures.
- (i) **Termination for Chronic Issues.** The County has the right to begin the Dispute Resolution process if the Service Provider chronically fails to meet the established Service Levels. The determination for chronic failure is as follows: (a) has any Service Tower reported as “At Risk” for more than three (3) out of six (6) consecutive reporting measurement periods or (b) has any Service Tower reported as “Missed” for more than two (2) out of twelve (12) consecutive reporting measurement periods.
- (j) **Service Provider Software and Third Party Software.** All Service Provider Software and Third Party Software are identified in Exhibit D.

**IN WITNESS WHEREOF**, the parties have executed this Service Agreement, effective the day and year first written above.

ATTEST:

CLERK OF CIRCUIT COURT

Linda Doggett, Clerk

COUNTY: LEE COUNTY, FLORIDA

BOARD OF COUNTY COMMISSIONERS

BY: \_\_\_\_\_

BY: \_\_\_\_\_

**Chairman**

DATE: \_\_\_\_\_

APPROVED AS TO FORM FOR THE  
RELIANCE OF LEE COUNTY ONLY

BY: \_\_\_\_\_

County Attorney's Office

ATTEST:

\_\_\_\_\_  
(Witness)

\_\_\_\_\_  
BY: \_\_\_\_\_

(SERVICE PROVIDER)

(Authorized Signature)

\_\_\_\_\_  
(Title)

DATE: \_\_\_\_\_

CORPORATE SEAL:

**Exhibit A:** Key County and Key Service Provider Positions

- To be included prior to finalization of Contract

**Exhibit B:** Scope of Service (Roles & Responsibilities matrix)

- To be included prior to finalization of Contract

**Exhibit C:** Service Level Agreement

- To be included prior to finalization of Contract

**Exhibit D:** Service Provider Software and Third Party Software

- To be included prior to finalization of Contract



## SCHEDULE J

### SERVICE AGREEMENT FOR TOWER 7 - DISASTER RECOVERY & EMERGENCY OPERATIONS

This Service Tower Agreement No. 7: Disaster Recovery and Emergency Operations: Disaster Recovery Services (“Service Agreement”) is entered into pursuant to, and is expressly incorporated by reference into, that Master Services Agreement for Information Technology Outsourced Services (“Master Agreement”) executed between Lee County, Florida (“County”) and \_\_\_\_\_ (“Service Provider”), is hereby entered into on the \_\_\_\_\_, 2018 (the “Service Agreement Effective Date”).

Accordingly, the parties agree as follows:

1. **Incorporation by Reference.** The parties agree that this Service Agreement is entered into by the parties pursuant to the terms of the Master Agreement, and except to the extent expressly provided otherwise in this Service Agreement, all the terms, conditions, and definitions set forth in the Master Agreement are hereby incorporated by reference with the same force and effect as though fully set forth herein. To the extent the terms set forth in this Service Agreement are inconsistent with the terms of the Master Agreement; the terms set forth herein shall apply.

2. **Term.** The initial term of this Service Agreement shall begin on the Commencement Date of the Master Agreement. The Term shall continue for a period of five (5) years after the Commencement Date of the Master Agreement, unless earlier terminated or renewed in accordance with the provisions of the Master Agreement.

**Option to Renew.** The County shall have the option to renew this Service Agreement for up to three (3) additional one-year terms. The County can elect to avail itself of one, two or all of the renewal terms. The County shall exercise this option to renew for an additional Term by delivering written notice of such renewal to the Service Provider at least three (3) months prior to the expiration of the then-current Term. The Service Provider shall provide the County with notice of the need to make a renewal election four (4) months before the expiration of each Term. All of the terms of this Service Agreement shall continue to apply without change, unless mutually agreed to by both parties during any renewal Term and reduced to writing. “Term” shall refer to both the initial term of the Service Agreement and any renewal of the Service Agreement. “Service Agreement Term” shall refer to both the original term of the applicable Service Agreement and any renewal of the Service Agreement.

3. **Exhibits.** All exhibits attached hereto are incorporated by reference.
4. **Key Positions:** Key County and Key Service Provider Positions are specified in Exhibit A attached hereto.
5. **Services.** The Services to be provided by the Service Provider under this Service Agreement are described in Exhibit B attached hereto.

6. **Inherent Services.** Subject to the Master Agreement Article 3 entitled “Working Relationship,” any services that are implicit within the Services, and are not specifically described, and which are determined to be reasonably required for the proper performance and provisioning of the Services, shall be deemed to be implied by and included within the scope of the Services to the same extent and in the same manner as if specifically described in this Service Agreement. If such inherent services result in a substantial increase in Service Provider resources, either of personnel or other resources, such increase will be addressed pursuant to the Change Order procedures of the Master Agreement.
7. **Responsibilities of Lee County.** The responsibility matrix included in Exhibit B to this Service Agreement identifies the responsibilities of Lee County during the Term of this Service Agreement. Exhibit B may be amended and supplemented from time to time pursuant to the terms of the Master Agreement. The responsibilities of Lee County shall be limited to those items listed in the matrix.
8. **Notices.** All notices, demands, or other communications made pursuant to this Service Agreement shall be in writing and copies thereof shall be simultaneously directed to the parties listed below. Further, all notices, demands, or other communications shall be deemed to have been duly given by mailing, unless otherwise specified, by United States registered or Certified Mail, Return Receipt Requested, with proper postage prepaid, or sent by recognized overnight delivery service , at the following address:

If to County: Roger Desjarlais  
County Manager  
P.O. Box 398  
Fort Myers, FL 33902-0398

With copies to: Mary Tucker  
Director of Procurement Management  
P.O. Box 398  
Fort Myers, FL 33902-0398

If to Service Provider: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With copies to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

9. **Service Levels.** Service levels for the Services will be included with reference to the Master Agreement.

- (j) **Definitions.**
- (1) **Service Level Measurement:** For any Service identified in this Service Agreement, Service Level Measurements are specified measurements for quantitatively calculating the Service Provider's actual performance. Service Level Measurements are compared with required Service Level Standards to appraise performance. Service Level Measurement and Service Level Standards information is attached to this Service Agreement in Exhibit C.
  - (2) **Service Level Standards (also known as "Required Service Levels").**
    - i) **Service Level Measurement Method:** The Service Level Measurement Method is the specific, agreed-upon method for calculating the Service Level Measurement.
    - ii) **Required Service Level:** The Required Service Level is the minimally acceptable ordinary-course value for a Service Level Measurement. Any failure to meet or exceed a Required Service Level may constitute, depending upon the facts and circumstances, a material breach of Service Provider's obligations under the Service Agreement.
  - (3) **Service Level Credits:** The amounts which County shall recover, in addition to any other monetary remedies County may have, each time Service Provider fails to meet the Required Service Levels. The Parties acknowledge that Service Level Credits are intended to roughly reflect the diminished value of the Services as a result of service level - related failures; they are not intended to compensate the County for breach and do not constitute liquidated damages, damages, penalties, or other compensation for any such breach or default. Service Level Credits are calculated in the manner described in this section.
- (k) **Time.** The Required Service Levels provided shall be applicable beginning as specifically provided in a Service Agreement. Unless otherwise stated, each Service Level Measurement shall be calculated on a complete calendar month, quarter, or annual basis. Performance results shall be measured and reported based on actual results.
- (l) **Modification.** From time to time during the Term, the Parties agree to negotiate in good faith to modify Service Level Measurements, Service Level Measurement Methods, and Service Level Standards to reflect changes in County's business. All such changes shall be adopted in the form of a signed written amendment executed by both Parties.
- (m) **Remedies.** At all times during the Term, Service Provider shall provide the Services in a manner that meets or exceeds the then-existing Service Level Standards. The remedies for failure to do so shall include the remedies defined in this Service Agreement and the Master Agreement.

- (n) **Service Level Measurement Method.** For each service provided and each reporting period, the Service Provider shall report on the state of the Required Service Levels indicating whether the level was or was not satisfied for the reporting period. Required Service Levels that are not satisfied for the measurement and reporting period will result in “SLA Violations.” The quantity of Violations is aggregated for each Service Tower resulting in three “SLA States.” An “SLA State” is defined for each Service Tower separately for each measurement and reporting period and is used in the calculation of Service Level Credits. The SLA State is dependent upon the quantity of SLA Violations during the measurement period as follows: (a) “Achieved” has zero (0) SLA Violations, (b) “At Risk” has more one (1) or two (2) SLA Violation (c) “Missed” has three (3) or more SLA Violations. If any Service Level Measurement for any measurement period is less than the Required Service Level by three (3) percent or more, then it shall constitute a SLA State Missed.
- (o) **Service Level Credits.** (1) In each case of a failure to satisfy a Required Service Level, Service Provider will, within five (5) calendar days from the identification of the deviation from the applicable Service Level Standard, provide to County a plan of activities which will allow Service Provider to satisfy the applicable Service Level Standard at the earliest date practicable. (2) In addition, County shall be entitled to recover a Service Level Credit for such deviation calculated in the manner described below, provided, however, that the Total Service Level Credits for any given month will not exceed fifty percent (50%) of Service Provider’s monthly charges for the Master Service Agreement (including all Service Agreements) for the applicable month (excluding Pass-Through Expenses and Special Charges, if any); (3) If a single event directly causes the failure to achieve more than one Required Service Level, all applicable Service Level Credits (for each Service Tower) will apply. In such event, and at the sole discretion of the County, the County may select a reduced quantity of Service Level Measurements that will be used for the calculation of the Service Level Credit. (4) At the County’s sole discretion, Service Level Credits may be provided in the form of additional hours for non-recurring initiatives. (5) Should the County elect for a monetary service credit, such credits will be reflected in the invoice following month in which the SLA violation(s) occurred.
- (p) **Method of Calculation for Service Level Credits.**
- (1) If Service Provider fails to meet or exceed the Required Service Level, SLA Violations will occur and the SLA State will be assessed as described Article 13. For each Service Tower the following service credits will be calculated and represented as a percentage of the monthly charges for that Tower (excluding Pass-Through Expenses and Special Charges, if any):

Service Tower		SLA State		
		Achieved	At Risk	Missed
1	IT Governance and Management	0%	2%	3%
2	Infrastructure Services	0%	3%	6%
3	Cybersecurity Services	0%	3%	5%

4	Telecommunication Services	0%	3%	6%
5	Application Services	0%	2%	4%
6	End User Technology Services	0%	2%	4%
7	DR & Emergency Operations	0%	1%	3%

- (2) If three or more Services have a reported SLA State of “At Risk” or “Missed” **the service level credits are doubled for all Service Tower(s) for the measurement and reporting period.** For Service Towers having an “At Risk” SLA State, Service Level credits are applied after two consecutive measurement and reporting periods for which the Service Tower’s SLA state is reported as “At Risk,” thus providing a remediation period not to exceed thirty (30) calendar days. The Service Level Credits will be applied to the second month of service (as opposed to both) during which the SLA Violations occurred and SLA State reported as “At Risk.”
- (q) **Exceptions to Liability for Service Level Credits.** Service Provider shall not be liable to pay County Service Level Credits for any failure to meet a Service Level Standard to the extent that such a failure is directly attributable to (i) a Force Majeure Event; (ii) breaches of this Agreement by County, provided that Service Provider has provided County with reasonable notice of such breach immediately after becoming aware of it and Service Provider has used all Commercially Reasonable Efforts to perform notwithstanding such breach; or (iii) acts or omissions of County or its suppliers, provided that Service Provider has provided County with reasonable notice of such act or omission immediately after becoming aware of it and Service Provider has used all Commercially Reasonable Efforts to perform notwithstanding such acts or omissions, or (iv) the first manifestation of an extraordinary latent error or defect in Equipment used by Service Provider in providing the Services (and any related repeated instances pending the applicable Service Provider’s correction of the defect) if such defect was (1) unknown to Service Provider and (2) not disclosed in any information distributed by the third party licensor, manufacturer, or distributor and (3) not preventable or discoverable through normal testing or maintenance procedures.
- (r) **Termination for Chronic Issues.** The County has the right to begin the Dispute Resolution process if the Service Provider chronically fails to meet the established Service Levels. The determination for chronic failure is as follows: (a) has any Service Tower reported as “At Risk” for more than three (3) out of six (6) consecutive reporting measurement periods or (b) has any Service Tower reported as “Missed” for more than two (2) out of twelve (12) consecutive reporting measurement periods.
- (s) **Service Provider Software and Third Party Software.** All Service Provider Software and Third Party Software are identified in Exhibit D.

**IN WITNESS WHEREOF**, the parties have executed this Service Agreement, effective the day and year first written above.

ATTEST:

CLERK OF CIRCUIT COURT  
Linda Doggett, Clerk

COUNTY: LEE COUNTY, FLORIDA  
BOARD OF COUNTY COMMISSIONERS

BY: \_\_\_\_\_

BY: \_\_\_\_\_  
**Chairman**

DATE: \_\_\_\_\_

APPROVED AS TO FORM FOR THE  
RELIANCE OF LEE COUNTY ONLY

BY: \_\_\_\_\_  
County Attorney's Office

ATTEST:

\_\_\_\_\_  
(Witness)

\_\_\_\_\_  
(SERVICE PROVIDER)

BY: \_\_\_\_\_  
(Authorized Signature)

\_\_\_\_\_  
(Title)

DATE: \_\_\_\_\_

CORPORATE SEAL:

**Exhibit A: Key County and Key Service Provider Positions**

- To be included prior to finalization of Contract

**Exhibit B: Scope of Service (Roles & Responsibilities matrix)**

- To be included prior to finalization of Contract

**Exhibit C: Service Level Agreement**

- To be included prior to finalization of Contract

**Exhibit D: Service Provider Software and Third Party Software**

- To be included prior to finalization of Contract

## SCHEDULE K

### APPLICATION PROJECT LISTING

This is a current Open Projects Listing as of March 28, 2018.

An updated version will be included at the time of Contract finalization.



### Project Status



#### Completed Projects

Project Name	Description	Next Milestone Date	Next Milestone	Project Manager	Department	Status	Status Date	RYG
EMS 31 - Trail Dairy	Facilities is building a new EMS medic location on Trail Dairy cir. ITG will ensure voice and data services are provided to this location.	01/20/2018	Comcast - Provide building feeder cable	Edwards, Kevin	Public Safety	Comcast has completed their cable TV service feed installation. Public Safety is operating from the new building. The project is complete.	03/23/2018	G

#### In-Flight Projects

Project Name	Description	Next Milestone Date	Next Milestone	Project Manager	Department	Status	Status Date	RYG
Accela Implementation	Upgrade of Tidemark to Accela Automation	09/01/2017	Administrative and technical training	Negron, Armando	Community Development	RedMark continues to work on conversion and scripting issues. Go live date is now 5/30/18	03/27/2018	G
Conservation 20/20 Move to Fleet	Facilities Construction and Design will build a new office for the Parks - Conservation 20/20 department at the Fleet location. ITG will provision the new office site with voice and data services then relocate the users from Terry Park to the new office.	08/31/2018	Construction Phase	Edwards, Kevin	Parks and Recreation	The structural walls of the new office building are nearly complete. The next construction meeting will be held in PWB 4C on 4/26/18 at 9:30am.	03/27/2018	G
Crystal Enterprise Upgrade	Upgrade crystal 11 to 13	04/21/2017	Configure Winds Authentication	Lewin, Scott	Enterprise Wide	Timeline has been aligned with the Accela project since this is primarily used by that application. No impact to users.	03/27/2018	G
Electronic Signature	Identify an electronic signature solution to be used countywide.	12/28/2017	DocuSign Implementation	Negron, Armando	Technology Services	Meeting with Procurement has been moved to March 30th to discuss workflows.	03/27/2018	G



Library Website Performance	Performance improvements and feature enhancements for the Library website.	06/23/2017	SEO Meta Tags	Bristow, Jeff	Library	Contacted Anne Simpson and Mindi Simon to let them know we can work on integration with the Library market product if they choose to purchase, and we can close this project out if they go this route. Awaiting their decision.	03/27/2018	Y
Little Green Button	Setup and Deployment of for use at various county departments\buildings for panic alerts from user workstations.		Create client deployment plan.	Lewin, Scott	Enterprise Wide	Deployment to DCD Admin complete. Darryl is coordinating with Cheryl Simpson to schedule the deployment to the remaining DCD computers.	03/27/2018	G
Microsoft Office Upgrade	Upgrade MS Office to the latest version.	04/30/2018	DCD	Edwards, Kevin	Enterprise Wide	DCD, the final department to receive the upgrade, can begin once the Accela project completes.	03/27/2018	G
New Bonita Springs Library	The Library department and Facilities will build a new library to replace the old location.		Building Construction	Edwards, Kevin	Library	The project has entered the foundation preparation phase. Telecom will provide 50M network connectivity options from CenturyLink, Comcast and FPL.	03/27/2018	G
New North Fort Myers Library	The Library department and Facilities will build a new library to replace the old location.		Building Construction	Edwards, Kevin	Library	Telecom has placed the CenturyLink order for B1 phones lines that will service the fire alarm, fax and security systems. The Telecom team is working to provide the handset quotes.	03/27/2018	G

OnBase Upgrade	Assist with the OnBase Upgrade.	04/27/2018	Rollout of the new Onbase 16 Client	Edwards, Kevin	Enterprise Wide	Testing OnBase 16 with Window 7 and Windows 10 should be wrapped up by 3/30/18 with only a few processes remaining to test. The Change Order will be presented to IAS next week for approval while the team continues to install and configure the new Production Environment.	03/27/2018	G
PCI Compliance	Run PCI Compliance check and work to address any services that are found to not be in compliance.	10/16/2017	DCD Payment Site to move to third party hosted site when Accela goes live.	Lewin, Scott	Enterprise Wide	No scheduled changes with this currently.	03/27/2018	G
Phone System Upgrade	Look for options to replace or upgrade the countywide phone system.	11/17/2017	Board approval	Bristow, Jeff	Enterprise Wide	Draft preliminary report is being worked on. Tom will be on site April 2nd to present the report and we are currently waiting on the estimated budget information. Tom & Pat have had a few additional conversations with Fred to gather additional pieces for the report and RFP.	03/27/2018	G
Request for Action (RFA)	Moving from Intelligov to Accela CRM and implementing Accela CRM for County wide Request for Action.		Start process to add Animal Services to Accela RFA. Initial meeting 5/22. Sent them questionnaires. Working with them on set up of request types and workflow. Launch Date TBD.	Scott, Denise	Technology Services	Cartegraph-Accela connection is working but DOT is still looking into problem with duplicate addresses. Need to fix that before we can move forward with scheduling DOT admin training. Call scheduled between Andrew	03/27/2018	G

OnBase Upgrade	Assist with the OnBase Upgrade.	04/27/2018	Rollout of the new Onbase 16 Client		Enterprise Wide	Testing OnBase 16 with Window 7 and Windows 10 should be wrapped up by 3/30/18 with only a few processes remaining to test. The Change Order will be presented to IAS next week for approval while the team continues to install and configure the new Production Environment.	03/27/2018		G
PCI Compliance	Run PCI Compliance check and work to address any services that are found to not be in compliance.	10/16/2017	DCD Payment Site to move to third party hosted site when Accela goes live.		Enterprise Wide	No scheduled changes with this currently.	03/27/2018		G
Phone System Upgrade	Look for options to replace or upgrade the countywide phone system.	11/17/2017	Board approval		Enterprise Wide	Draft preliminary report is being worked on. Tom will be on site April 2nd to present the report and we are currently waiting on the estimated budget information. Tom & Pat have had a few additional conversations with Fred to gather additional pieces for the report and RFP.	03/27/2018		G
Request for Action (RFA)	Moving from Intelligov to Accela CRM and implementing Accela CRM for County wide Request for Action.		Start process to add Animal Services to Accela RFA. Initial meeting 5/22. Sent them questionnaires. Working with them on set up of request types and workflow. Launch Date TBD.		Technology Services	Cartegraph-Accela connection is working but DOT is still looking into problem with duplicate addresses. Need to fix that before we can move forward with scheduling DOT admin training. Call scheduled between Andrew and JK at Accela on Wednesday.	03/27/2018		G

<b>Sire Upgrade / Novus Implementation</b>	Upgrade Sire to the latest version.	08/31/2017	Data Conversion		Information Technology	Novus is still working on data and video transfers. They are working on writing an internal app that will extract the data from our .bak file, in order to sync up with our pdf's and videos that were provided on the hard drive.	03/27/2018	06/20/2017 07/31/2017 08/31/2017 09/20/2017 10/31/2017 11/20/2017 12/21/2017 02/28/2018 03/31/2018 04/30/2018	G
<b>Skype for Business Service Expansion</b>	This project will expand online meeting capabilities and extend the service to a larger group of the County users.	02/28/2018	Human Resources Training		Enterprise Wide	Department training scheduling continues. No department training is scheduled for this week.	03/27/2018	06/20/2017 09/01/2017 11/03/2017 12/29/2017 03/30/2018	G
<b>Technology Services Move to City-County Annex</b>	Technology Services Division will move its departments into the City-County Annex on Hendry St.		Contractor's Guaranteed Maximum Price submitted for BOCC approval		Information Technology	Target Builders has been selected as the project's construction manager. The kickoff construction meeting will be scheduled for next week.	03/27/2018	07/31/2017 12/31/2017 06/30/2018	G
<b>Utilities - New Detar Office Building</b>	The new Detar office will be built to replace and increase the office space lost by structural damage the old building sustained from the foundation settling.		Design Phase		Utilities	The next design meeting has been scheduled for 3/29/18.	03/27/2018	06/30/2019	G
<b>Utilities Green Meadows Water Treatment Plant</b>	ITG will provision and deliver services to this new Utilities site.		Develop the phone and paging systems design		Utilities	The CenturyLink orders for Metro-E and B1 phone line service have been placed. This week, ITG's action plan will be reviewed by the construction team.	03/27/2018	09/28/2018	G
<b>Windows 10 Upgrades</b>	Windows 10 to be applied to all PC's	03/28/2018	Library Admin		Enterprise Wide	Riverdale Library completed. Library Administration is being upgraded this week. Lakes Library is next.	03/27/2018	12/31/2018	G
<b>Windows XP to Windows 7 Upgrade - DCD</b>	Windows XP to Windows 7 Upgrade for PC's. To be performed in parallel to Accela Upgrade.	06/26/2017	Round 3 - Apply profiles to upgraded PC's	Leon-Pereira, Maurelis	Community Development	This project is on hold until right before the Accela go-live. There are 23 computers left to be migrated to Win 7.	03/27/2018	10/31/2017 12/31/2017 03/30/2018 04/30/2018 05/31/2018	G

#### Projects Under Evaluation

Project Name	Description		Next Milestone		Department	Status		RYG
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		Next Milestone Date		Project Manager			Status Date	Completion Date	
<b>Chatbots</b>	Research and evaluate chatbot creation platforms for potential countywide solution adding automated chatbot to answer FAQ on the Lee County website, with routing to live chat as needed.	07/28/2017	Create comparison spreadsheet of potential vendors' features.		Technology Services	Meeting scheduled on 3/29 to discuss how to proceed with chatbots and possible 311 solutions.	03/27/2018		G
<b>Intranet Strategy</b>	Analyzing Lee County Intranet to develop a plan for improving its usefulness and functionality for current and potential users.		Denise to work with departments on content updates and on less tech-heavy design improvements. Met with United Way Intranet site team 5/25 and working on redesign of their site. Also teaching them how to update/maintain it.		Technology Services	Ongoing but on hold until after DOT launch in Accela. Denise working with departments as necessary to tweak designs/update intranet content.	03/27/2018		G
<b>Joel Blvd. Park</b>	New Parks and Recreation Project to provide a new park out toward SR80 and Joel Blvd. This new park will be staffed by one employee. The park will have wilderness trails and an agricultural learning area.		Permitting		Parks and Recreation	The project is currently in a long term permitting phase. Telecom has provided the estimated connectivity options and costs.	03/27/2018	01/01/2019	G
<b>Learning Management System (LMS)</b>	Identify requirements and assist Talent Development develop an RFP (if necessary).	01/31/2018	Identify Key Features & products to compare		Technology Services	Meeting with the Library is scheduled for April 9th to discuss their use of Compliance Suite and determine if they will shift to a new product selected by Training Development.	03/27/2018		G

#### New Project Requests

Project Name	Description	Next Milestone Date	Next Milestone	Project Manager	Department	Status	Status Date	Completion Date	RYG
<b>Kwiktag Upgrade</b>	Kwiktag Upgrade				Information Technology	Waiting on Kwiktag for next steps	03/27/2018		G
<b>Security Cameras at EOC and EDC Facilities</b>	Update/replace the existing camera system at the EOC and EDC locations.				Public Safety	Requesting updated equipment quotes and reviewing current equipment standards.	03/27/2018		G

**SCHEDULE L**  
**BUSINESS ASSOCIATE AGREEMENT BETWEEN**  
**LEE COUNTY, FLORIDA AND \_\_\_\_\_**

This BUSINESS ASSOCIATE AGREEMENT (“BAA”) is entered into by and between Lee County, Florida (“County”), and \_\_\_\_\_, a \_\_\_\_\_ corporation authorized to do business in the State of Florida with its principal office located at \_\_\_\_\_ (“Business Associate”) in connection with the \_\_\_\_\_ (the “Agreement”).

**RECITALS**

1. Business Associate provides services related to the operation of certain activities/programs that involve the use or disclosure of Protected Health Information (“PHI”);
2. The operation of such activities/programs is subject to the federal Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and the Health Information Technology for Economic and Clinical Health Act (“HITECH”);
3. HIPAA and HITECH mandate that certain responsibilities of contractors with access to PHI be documented through a written agreement; and
4. The County and Business Associate desire to comply with the requirements of HIPAA and HITECH and acknowledge their respective responsibilities.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**Section 1: Definitions**

- 1.1 All terms used in this BAA not otherwise defined herein shall have the meanings stated in the Privacy and Security Rules, 45 CFR Parts 160, 162, 164, and 42 U.S.C. § 17921.
- 1.2 “HIPAA Laws” mean collectively HIPAA, HITECH, 42 CFR Part 2 (if applicable), and the related regulations and amendments.
- 1.3 When the term “PHI” is used in this BAA, it includes the term “Electronic Protected Health Information” or “EPHI.”
- 1.4 Penalties as used in Section 3.18 below are defined as civil penalties that may be applied to the Business Associate and its workforce members by the Secretary of Health and Human Services (HHS). The amount of the penalties range depending on the type of violation. In determining penalties, the Secretary may take into account:

- a. the nature and extent of the violation;
- b. the nature and extent of harm resulting from such violation;
- c. the degree of culpability of the covered entity or business associate;
- d. the history of prior compliance with the administrative simplification provision including violations by the covered entity or business associate;
- e. the financial condition of the covered entity or business associate, and
- f. such other matters as justice may require.

## **Section 2: Confidentiality**

- 2.1 County and Business Associate shall comply with all federal and state laws governing the privacy and security of PHI.
- ☐ If this box is checked, the County and Business Associate are required to comply with 42 CFR Part 2 with respect to patient identifying information concerning alcohol and substance abuse treatment.

## **Section 3: Obligations and Activities of the Business Associate**

### **Use and Disclosure of PHI**

- 3.1 The Business Associate shall not use or disclose PHI other than as permitted or required by this BAA or as required by law. Business Associate may:
- a. Use and disclose PHI only as necessary to perform its obligations under the Agreement, provided that such use or disclosure would not violate HIPAA Laws if done by the County;
  - b. Use the PHI received in its capacity as a Business Associate of the County for its proper management and administration and to fulfill any legal responsibilities of Business Associate;
  - c. Disclose PHI in its possession to a third party for the proper management and administration of Business Associate, or to fulfill any legal responsibilities of Business Associate, provided that the disclosure would not violate HIPAA Laws if made by the County, or is required by law, and Business Associate has received from the third party written assurances that (i) the information will be kept confidential and used or further disclosed only for the purposes for which it was disclosed to the third party or as required by law; (ii) the third party will notify Business Associate of any instances of which it becomes aware in which the confidentiality of the information may have been breached; and (iii) the third party has agreed to implement reasonable and appropriate steps to safeguard the information;
  - d. Use PHI to provide data aggregation activities relating to the operations of the County; and
  - e. De-identify any and all PHI created or received by Business Associate under the Agreement, provided that the de-identification conforms to the requirements of the HIPAA Laws.



- 3.2 Business Associate shall limit its use and disclosure of, and request for PHI when practical or as required by law, to the information making up a Limited Data Set, as defined by HIPAA, and in all other cases subject to the requirements of 45 CFR 164.502(b), to the minimum amount of PHI necessary to accomplish the intended purpose of the use, disclosure, or request.
- 3.3 Business Associate is prohibited from selling PHI, using PHI for marketing purposes, or attempting to re-identify any PHI information in violation of HIPAA Laws.

#### Administrative, Physical, and Technical Safeguards

- 3.4 Business Associate shall implement administrative, physical, and technical safeguards that protect the confidentiality, integrity and availability of PHI that it creates, receives, maintains, or transmits on behalf of the County. The safeguards shall include written policies, procedures, a security risk assessment, training of Business Associate employees, and sanctions that are in compliance with HIPAA Laws.
- 3.5 Business Associate shall require all of its subcontractors, agents, and other third parties that receive, use, transmit, maintain, store, or have access to PHI to agree, in writing, to the same restrictions and conditions that apply to Business Associate pursuant to this BAA, including implementation of administrative, physical, and technical safeguards.

#### Access of Information; Amendment of Information; Accounting of Disclosures

- 3.6 Business Associate shall make available to the County all PHI in designated record sets within ten (10) calendar days of the County's request for the County to meet the requirements under 45 CFR § 164.524.
- 3.7 Business Associate shall make any amendments to PHI in a designated record set as directed or agreed to by the County pursuant to 45 CFR § 164.526 in the time and manner reasonably designated by the County.
- 3.8 Business Associate shall timely document such disclosures of PHI and information related to such disclosures as would be required for the County to respond to an individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528. Further, Business Associate shall provide to the County an accounting of all disclosure of PHI during the term of this BAA within ten (10) calendar days of termination of this BAA, or sooner if reasonably requested by the County for purposes of any monitoring/auditing of the County for compliance with HIPAA Laws.
- 3.9 Business Associate shall provide the County, or an individual under procedures approved by the County, information and documentation collected in accordance with the preceding paragraph to respond to an individual requesting an accounting for disclosures as provided under 45 CFR § 164.528 and HIPAA Laws.

#### Mitigation

- 3.10 Business Associate shall mitigate, to the extent possible and at its own expense, any harmful effect that is known to Business Associate of a use or disclosure of PHI by the Business Associate in violation of the requirements of this BAA or applicable law.

- 3.11 Business Associate shall take appropriate disciplinary action against any members of its workforce who use or disclose PHI in any manner not authorized by this BAA or applicable law.

#### Reporting of Breaches and Mitigation of Breach

- 3.12 Business Associate shall notify the County's HIPAA Privacy Official at (954) 357-6500 of any impermissible access, acquisition, use or disclosure of any unsecured PHI within twenty-four (24) hours of Business Associate becoming aware of such access, acquisition, use or disclosure. Unsecured PHI shall refer to such PHI that is not secured through use of a technology or methodology specified by the Secretary of HHS that renders such PHI unusable, unreadable, or indecipherable to unauthorized individuals. A breach of unsecured PHI shall be treated as discovered by Business Associate as of the first day on which such breach is known to the Business Associate or, by exercising reasonable diligence, would have been known to Business Associate, including any employee, officer, contractor, subcontractor, or other agent of Business Associate.
- 3.13 Business Associate shall submit a written report of a breach to the County within ten (10) Business Days after initial notification, and shall document the following:
- a. The identification of each individual whose PHI has been, or is reasonably believed by Business Associate, to have been accessed, acquired, used, or disclosed during the breach;
  - b. A brief description of what occurred, including the date of the breach and the date of the discovery of the breach, if known;
  - c. A description of the types of PHI that are involved in the breach (such as full name, social security number, date of birth, home address, account number, diagnosis, etc.);
  - d. A description of what is being done to investigate the breach, to mitigate harm to individuals, and the reasonable and appropriate safeguards being taken to protect against future breaches;
  - e. Any steps the County or the individual impacted by the breach should take to protect himself or herself from potential harm resulting from the breach;
  - f. Contact procedures for the Business Associate to enable individuals to ask questions or learn additional information, which may include, in the discretion of the County, a toll-free telephone number, e-mail address, website, or postal address, depending upon the available contact information that the Business Associate has for the affected individuals; and
  - g. Any other reasonable information requested by the County.
- 3.14 In the event of a breach, Business Associate shall, in consultation with and at the direction of the County, assist the County in conducting a risk assessment of the breach and mitigate, to the extent practicable, any harmful effect of such breach known to Business Associate.
- 3.15 The County, in its sole discretion, will determine whether the County or Business Associate shall be responsible to provide notification to individuals whose unsecured PHI has been disclosed, as well as to the Secretary of HHS and the media.

- a. Notification will be by first-class mail, or by electronic mail, if the individual has specified notice in that manner as a preference.
  - b. Information may be posted on the County and Business Associate's website where the Business Associate experienced, or is reasonably believed to have experienced, an impermissible use or disclosure of unsecured PHI that compromised the security or privacy of more than ten (10) individuals when no other current information is available to inform such individuals.
  - c. Notice shall be provided to prominent media outlets with information on an incident where the Business Associate experienced an impermissible use and disclosure of unsecured PHI that compromised the security or privacy of more than five hundred (500) individuals within the same state or jurisdiction during the incident.
  - d. The County may report, at least annually, any impermissible use and disclosure of unsecured PHI by the Business Associate to the Secretary of HHS as required by HIPAA Laws.
- 3.16 Business Associate agrees to pay the costs for notification to the County, individuals, and their representatives of any security or privacy breach that should be reported by Business Associate to the County. Business Associate also agrees to pay the costs for mitigating damages, including, but not limited to, the expenses for credit monitoring, if the County determines that the breach warrants such measures.
- 3.17 Business Associate agrees to have established procedures to investigate a breach, mitigate Losses, and protect against any future breaches, and to provide such procedures and any specific findings of the investigation to the County in the time and manner reasonably requested by the County.
- 3.18 Business Associate is liable to the County for any civil penalties imposed on the County under the HIPAA laws in the event of a violation of the HIPAA Laws as a result of any practice, behavior, or conduct of Business Associate.

#### Available Books and Records

- 3.19 Business Associate shall make its internal practices and books, related to the Agreement and the BAA, including all policies and procedures required by HIPAA Laws, available to the Director of Human Resources within five (5) Business Days of the Agreement.
- 3.20 Business Associate shall make its internal practices, books, and records, including all policies and procedures required by HIPAA Laws and PHI, relating to the use and disclosure of PHI received from the County or created or received on behalf of the County available to the County or to the Secretary of HHS or its designee within five (5) Business Days of request for the purposes of determining the Business Associate's compliance with HIPAA Laws.

### **Section 4: Obligations of the County**

- 4.1 The County shall notify Business Associate of any limitations in its notice of privacy practices in accordance with 45 CFR § 164.520, to the extent that such limitation may

affect the Business Associate's use of PHI.

- 4.2 The County shall notify Business Associate of any changes in, or revocation of, permission by an individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use of PHI.
- 4.3 The County shall notify Business Associate of any restriction to the use or disclosure of PHI to which the County has agreed in accordance with 45 CFR § 164.522, to the extent that such changes may affect Business Associate's use of PHI.
- 4.4 The County shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA Laws if done by the County.

## **Section 5: Term and Termination**

- 5.1 The term of this BAA shall be effective upon execution by all Parties and shall terminate upon the latter of termination or expiration of the Agreement, or the return or destruction of all PHI within the possession or control of the Business Associate as a result of the Agreement.
- 5.2 Upon the County's knowledge of a material breach of this BAA by Business Associate, the County shall either:
  - a. Provide an opportunity for Business Associate to cure the breach or terminate this BAA and the Agreement if the Business Associate does not cure the breach within the time specified by the County;
  - b. Immediately terminate this BAA and the Agreement, if Business Associate has breached a material term of this BAA and a cure is not possible; or
  - c. If neither termination nor cure is feasible, the County's HIPAA Privacy Official shall report the violation to the Secretary of HHS.
- 5.3 Upon completion or termination of the Agreement, Business Associate agrees, at County's option, to return to the County or destroy all PHI gathered, created, received or processed pursuant to the Agreement. No PHI related to the Agreement will be retained by Business Associate, or a contractor, subcontractor, or other agent of Business Associate, unless retention is required by law and specifically permitted in writing by the County.
- 5.4 In the event that returning or destroying PHI is infeasible, Business Associate shall provide to the County a written statement that it is infeasible to return or destroy the PHI and describe the conditions that make return or destruction of the PHI infeasible. Under that circumstance, Business Associate shall extend the protections of this BAA to the PHI retained and limit further uses and disclosures of such PHI to those purposes that make return or destruction infeasible, for so long as Business Associate maintains the PHI, in which case Business Associate's obligations under this Section shall survive termination of this BAA.

**Section 6: Miscellaneous**

- 6.1 Amendment. The County and Business Associate shall take such action as is necessary to amend this BAA for the County to comply with the requirements of HIPAA Laws or other applicable law.
- 6.2 Interpretation. Any ambiguity in this BAA shall be resolved to permit the County to comply with HIPAA Laws.

IN WITNESS WHEREOF, all parties have executed this Agreement this \_\_\_\_ day of \_\_\_\_\_, 2018.

ATTEST:  
CLERK OF CIRCUIT COURT  
Linda Doggett, Clerk

COUNTY: LEE COUNTY, FLORIDA  
BOARD OF COUNTY COMMISSIONERS

BY: \_\_\_\_\_

BY: \_\_\_\_\_  
**Chairman**

DATE: \_\_\_\_\_

APPROVED AS TO FORM FOR THE  
RELIANCE OF LEE COUNTY ONLY

BY: \_\_\_\_\_  
County Attorney's Office