



Quest Software Inc.
Enterprise License Purchase Acknowledgement Form No. Q-1927104

Customer Name:	City of Port St. Lucie Florida
Customer Address:	121 SW Port St Lucie Boulevard; Port St Lucie, FL 34984
Customer Contact Email:	Charles McCaskill
Prices Valid Through:	December 31, 2024
Partner:	Dell
Quest Sales Representative:	Kevin Shawler

This Enterprise License Purchase Acknowledgement Form (the “**PAF**”) is entered into as of the date of last or only signature below (“**Effective Date**”) between the organization stated above (“**Customer**” or “**you**”) and Quest Software Inc. at 20 Enterprise, Suite 100, Aliso Viejo, CA 92656 (“**Provider**” or “**us**”) to state the terms that apply to the following Software and Maintenance Services Customer has purchased from the Partner stated above.

Line	Software	License Type	Quantity
Enterprise Licenses			
1	NETVAULT ENTERPRISE CAPACITY EDITION ENTERPRISE 24X7 TERM LICENSE/MAINT	Enterprise (Per TB)	1
2	QORESTOR ENTERPRISE 24X7 TERM LICENSE/MAINT	Enterprise (Per TiB Capacity)	1
3	APEXSQL AUDIT ENTERPRISE 24X7 TERM LICENSE/MAINT	Enterprise (Per Instance)	1
4	APEXSQL MANAGE ENTERPRISE TERM LICENSE/MAINT	Enterprise (Per Instance)	1
5	SPOTLIGHT ON SQL SERVER XPERT EDITION ENTERPRISE 24X7 TERM LICENSE/MAINT PACK, consisting of the following: <ul style="list-style-type: none">• SQL OPTIMIZER FOR SQL SERVER W/SXE ENTERPRISE LICENSE/24X7 MAINT• SPOTLIGHT ON SQL SERVER ENTERPRISE W/SXE ENTERPRISE LICENSE/24X7 MAINTENANCE	Enterprise (Per Monitored Instance)	1
6	TOAD FOR SQL SERVER XPERT EDITION ENTERPRISE TERM LICENSE/MAINT PACK, consisting of the following: <ul style="list-style-type: none">• SQL OPTIMIZER FOR SQL SERVER W/TOAD SS XPT ENTERPRISE LICENSE/MAINT• TOAD FOR SQL SERVER PROFESSIONAL W/TOAD SS XPT ENTERPRISE LICENSE/MAINT	Enterprise (Per Seat)	1
7	RECOVERY MANAGER FOR EXCHANGE ENTERPRISE 24X7 TERM LICENSE/MAINT	Enterprise (Per Enabled User)	1
8	RECOVERY MANAGER FOR AD ENTERPRISE 24X7 TERM LICENSE/MAINT	Enterprise (Per Enabled User)	1
Fixed Quantity Licenses			
9	KACE SYSTEMS MANAGEMENT ADDTL MANAGED COMPUTER 24X7 TERM LICENSE/MAINT	Per Managed Computer	2,200
10	KACE SYSTEMS MANAGEMENT APPLIANCE W/100 MANAGED COMPUTER 24X7 TERM LICENSE/MAINT	Per Managed Computer	1



1. License Scope.

1.1 The Enterprise Licenses. For a three (3)-year period commencing as of the Effective Date (the “**Enterprise License Period**”), you may use the Software listed in lines 1 – 8 of the table above (the “**Table**”) in unlimited quantities in North America (the “**Enterprise License**”). For the avoidance of doubt, the Software listed in lines 9 – 10 of the Table are standard fixed licenses/appliances and are not part of the Enterprise License. Maintenance Services are included during the Enterprise License Period.

1.1.1 A **TB** is one terabyte (1000 Managed GBs) of information to be managed by the Software.

1.1.2 A **TiB of Capacity** is one tebibyte of storage capacity, or portion thereof, utilized by the Software. A tebibyte is 2^{40} bytes.

1.1.3 An **Instance** is a database server executable existing independently of other database server executables.

1.1.4 A **Monitored Instance** is an Instance monitored by the Software and exists for the time during which a database Instance is being monitored by the Software.

1.1.5 A **Seat** is a User, and A User is a named individual or unique login identity. For Software licensed by this License Type, a license is required for (a) each User who has the ability to access, use, display, run, or otherwise interact with the Software on a shared device or in a virtualized or cloud environment and (b) for every single-user device on which the Software is installed. However, in no case shall a User require more than one license. Licenses allocated to employees who have left the employ of Customer or allocated to contractors that are no longer providing services to Customer may be re-allocated to new users. Additionally, Customer may re-allocate Licenses of this License Type to new Users if Customer can document that the original user’s right to use the Software has been permanently terminated.

1.1.6 A **Managed Mailbox** is a mailbox within Customer’s organization or information store, but excluding public folder mailboxes, system mailboxes and disabled mailboxes. The license quantity for Software licensed by this License Type must be at least the total number of accounts (regardless of account type) in the domain(s) or other logical group of accounts with which the Software is to be used.

1.1.7 **Enabled User Accounts** are all the user accounts in the domain(s) to be managed by the Software, including, but not limited to, users’ logon accounts, secondary accounts tied to users, administrative accounts, service accounts, test accounts, and iNetOrgPerson objects. The license quantity for Software licensed by this License Type must be at least the total number of accounts (regardless of account type) in the domain(s) or other logical group of accounts with which the Software is to be used.

1.2 The Term Licenses. For a three (3)-year period commencing as of the Effective Date (the “**Term License Period**”), you may use the Software in lines 10-11 in the indicated quantities in the Table in North America (the “**Term License**”). Maintenance Services are included during the Term License Period.

1.2.1 A **Managed Computer** is any computer, PC, Server, tablet, or smartphone tracked or managed by the Software. Software licensed by this License Type which is registered to a specific Device (e.g., node-locked) may only be transferred to a Device other than that on which it was initially installed if (a) the new Device replaces the original Device and is used for the same purpose as the replaced Device or (b) Provider provides its written consent. A Device is any physical or virtual machine or peripheral equipment connected to a network, including, but not limited to those which store, process, transmit, capture, or display data.

2. End of the Enterprise License Period and Term License Periods. The Enterprise License and Term License will expire at the end of the last day of the Enterprise License Period and Term License Period.

3. Existing Licenses. If you have existing licenses for any of the Software contained in the Enterprise License (“**Exiting Licenses**”), those licenses will be subsumed into and made a part of the Enterprise License.

4. Mergers & Acquisitions. If during the Enterprise License Period, Customer acquires, is acquired by, is merged with, or is otherwise combined with another company (the “**M&A Event**”), Customer may not allow such other company to use the Enterprise License until and unless Customer pays Provider Upgrade Fees. The “**Upgrade Fees**” will be an amount mutually agreed to by the parties.

If Customer has paid Upgrade Fees, then any fixed fees agreed in advance for the period following the expiration of the Enterprise License Period, including as applicable but not limited to any renewal or extension of the Enterprise License or for Maintenance Services, shall be adjusted accordingly.



For clarification, this Section shall apply during the period of any renewal or extension of the Enterprise License to the same extent as during the Enterprise License Period, and shall apply for each M&A Event during such period(s).

- 5. **Other Terms.** This Order is governed by the terms stated above and the Software Transaction Agreement attached hereto, which is the only version of the Software Transaction Agreement that is part of the parties' agreement, as of the effective date of this Order (the "**Software Agreement**"). Capitalized terms not defined in this Order shall have the meanings given to them in the Software Agreement. In the event of a conflict between the terms and conditions of this Order and the terms and conditions of the Software Agreement, the terms and conditions of this Order will control.

By their signatures below, the parties agree to the terms and conditions of this Order and represent that they are authorized by their respective organizations to do so.

City of Port St. Lucie, Florida

By: _____
Name: _____
Title: _____
Date: _____

Quest Software Inc.

By:  _____
Name: Tiffany Joseph
Title: Assistant General Counsel
Date: 25 November 2024

This Software Transaction Agreement (the “**Agreement**”) is made between **Quest Software Inc.** with its principal place of business located at 20 Enterprise, Suite 100, Aliso Viejo, CA92656 (“**Provider**”) and the City of Port St. Lucie, Florida, with its principal place of business located at 121 SW Port St. Lucie Boulevard, Port St Lucie, FL 34984 (“**Customer**”). This Agreement shall govern the Enterprise License Purchase Acknowledgement Form No. Q-1927104 (“**PAF**”) and any additional purchases of licenses of the fixed quantity KACE Software described in the PAF that are made during the Enterprise License Period that expire at the end of the Enterprise License Period (“Enterprise License Period” as defined within the PAF).

1. Definitions. Capitalized terms not defined in context shall have the meanings assigned to them below:

- (a) “**Affiliate**” means any legal entity controlling, controlled by, or under common control with a party to this Agreement, for so long as such control relationship exists.
- (b) “**Appliance**” means a computer hardware product upon which the Software is pre-installed and delivered.
- (c) “**Documentation**” means the then current user manuals and documentation that Provider makes available for the Software either through the electronic download of the Software or from the Support Site, and all copies of the foregoing.
- (d) “**Effective Date**” means the date that Customer accepts the Agreement.
- (e) “**eStore**” means Provider’s online Software ordering system located at <https://shop.quest.com/>.
- (f) “Customer Special Terms” means those special terms required by the Customer and attached hereto as Exhibit 1.
- (g) “**License Type**” means the model by which the Software is licensed (e.g., by server, by mailbox, by managed user) as indicated in the applicable Order and defined in the Product Guide.
- (h) “**Maintenance Services**” means Provider’s then current maintenance and support offering specified in the applicable Order and made available to Customer as stated in the *Maintenance Services* Section below.
- (i) An “**Order**” is defined in Section 2 (Ordering).
- (j) “**Partner**” means a reseller or distributor that is under contract with Provider or another authorized party and is authorized via such contract to resell the Products and/or Maintenance Services.
- (k) “**Product(s)**” means the Software and/or Appliance(s) provided to Customer by Provider.
- (l) “**Product Guide**” means the document available at https://quest.com/docs/Product_Guide.pdf that contains the Product Terms.
- (m) “**Product Terms**” means the terms associated with each License Type and any other terms associated with an individual Product. The Product Terms for Products in a Signed Order or a Governing Quotation shall be as stated in the Signed Order or Governing Quotation. If no Product Terms are stated in the Signed Order or Governing Quotation, if the Order is placed with a Purchase Order (“**PO**”) only, if the Order is placed through the eStore, or if the Products are purchased from a Partner, then the Product Terms for such Products shall be as stated in the Product Guide as of the date of the Order or purchase.
- (n) “**Provider**” means Quest Software Inc., with its principal place of business located at 20 Enterprise, Suite 100, Aliso Viejo, CA 92656. If an Order is placed through and approved by an Affiliate of Provider, then that Affiliate shall be the Provider under this Agreement.
- (o) “**Software**” means any and all software that is provided or made available to Customer under this Agreement as well as any new versions and releases of such software that are made available to Customer pursuant to this Agreement, and, where applicable, all copies of the foregoing. Software includes On-Premises Software and SaaS Software (as defined in Appendix A Software License Terms), along with software that is delivered on an Appliance.
- (p) “**Support Site**” means Provider’s website defining support, available at <https://support.quest.com/essentials/support-guide>, and <https://support.quest.com>.
- (q) “**Use**” means Customer’s installation, deployment, access of or provision of access to, or operation of a Product.

2. Ordering. Customer may place an order for Products through (i) an ordering document signed by Customer and Provider (“**Signed Order**”), (ii) a Provider quotation referenced on a PO that states that it is governed exclusively by such quotation (“**Governing Quotation**”), (iii) an order placed through the eStore, (iv) an order placed through a Partner, or (v) a Customer **PO** submitted to Provider (each of which is referred to herein as an “**Order**”). Each Order shall be Customer’s irrevocable commitment to purchase and pay for the Products and/or Maintenance Services stated in the Order and each Order placed with Provider shall be subject to approval by Provider in writing or by performance. Customer may place Orders for professional services and training under Provider’s then current professional services terms.

3. Software License. Subject to Customer’s compliance with the terms of this Agreement, Provider grants to Customer, and Customer accepts from Provider, a non-exclusive, non-transferable (except as otherwise set forth herein) and non-sublicensable license to Use the quantities of

each item of Software licensed from Provider or a Partner within the parameters of the Product Terms associated with the applicable Software and License Type referenced in the Order and as described in Appendix A (a "**License**"). Except for MSP Licenses (as defined in Appendix A), Customer shall only Use the Software to support the internal business operations of itself and its worldwide Affiliates.

4. Restrictions. Customer may not, nor allow any third party to (a) Use the Software except as licensed hereunder, (b) reverse engineer, decompile, or otherwise seek to access the source code of the Software, except to the extent these restrictions are prohibited by applicable law and then only upon advance written notice to Provider, (c) copy, modify, create derivative works of, or remove proprietary notices from the Products or Documentation, (d) resell, sublicense, distribute or rent the Products or Documentation, (e) use the Software to provide a hosted or managed service to third parties, except for MSP Licenses, (f) use the Products or Documentation to create or enhance a competitive offering or for any other purpose which is competitive to Provider, or (g) conduct security or vulnerability tests of the Software, interfere with its operation or circumvent any access, licensing or copying restrictions.

5. Proprietary Rights. Customer understands and agrees that (i) the Products are protected by copyright and other intellectual property laws and treaties, (ii) Provider, its Affiliates and/or its licensors own the copyright, and other intellectual property rights in the Products, (iii) the Software is licensed, and not sold, (iv) this Agreement does not grant Customer any rights to use Provider's trademarks or service marks, and (v) Provider reserves any and all rights, implied or otherwise, which are not expressly granted to Customer in this Agreement.

6. Title, Risk of Loss and Delivery. Provider, its Affiliates and/or its licensors own the title to all Software. Title and risk of loss to an Appliance shall pass from Provider to Customer upon shipment (unless the Appliance is rented, leased or loaned to Customer). Delivery of or access to Products shall be by electronic download, access credentials, or FOB Shipping Point.

7. Payment and Taxes. Customer agrees to pay to Provider (or, if applicable, Partner) the fees specified in each Order, Customer will be invoiced promptly following delivery of, or granting of access to, the Products or prior to the commencement of any renewal Maintenance Period or renewed Software term. Customer shall make all payments due to Provider in full within thirty (30) days from the date of each invoice or such other period (if any) stated in a Signed Order. Provider reserves the right to charge Customer a late penalty of 1.5% per month (or the maximum rate permitted by law, whichever is less) for any amounts payable to Provider by Customer that are not subject to a good faith dispute and that remain unpaid after the due date until such amount is paid. Amounts payable under this Agreement shall be paid in full without set-off or deduction by the Customer, and such amounts shall not be subject to any other limitations or exclusions, whether under this Agreement or otherwise arising in law.

The fees stated in an Order may not include taxes. If Provider is required to pay sales, use, property, GST, value-added, other taxes based on the purchase or use of Products or Maintenance Services provided under this Agreement, then such taxes shall be billed to and paid by Customer. This Section does not apply to taxes based on Provider's income.

8. Term and Termination.

(a) **Termination.** This Agreement or the Licenses granted hereunder may be terminated by (i) mutual written agreement of Provider and Customer, (ii) either party for a material breach of this Agreement by the other party that the breaching party fails to cure to the non-breaching party's reasonable satisfaction within thirty (30) days following its receipt of notice of the breach ("**Breach**"), and (iii) Provider for a Breach by a Third Party User or MSP Client.

(b) **Effect of License Termination.** Upon termination of this Agreement or expiration or termination of a License for any reason, all rights granted to Customer for the applicable Software shall immediately cease and Customer shall immediately: (i) cease using the applicable Software and Documentation, (ii) remove all copies, installations, and instances of the applicable Software from all Customer computers and any other devices on which the Software was installed, and ensure that all applicable Third Party Users and Clients do the same, (iii) return the applicable Software to Provider together with all Documentation and other materials associated with the Software and all copies of any of the foregoing, or destroy such items, (iv) cease using the Maintenance Services associated with the applicable Software, (v) pay Provider or the applicable Partner all amounts due and payable up to the date of termination and shall not be entitled to any refund, and (vi) give Provider a written certification, within ten (10) days, that Customer, Third Party Users and Clients, as applicable, have complied with all of the foregoing obligations.

(c) **Survival.** Any provision of this Agreement that requires or contemplates continued performance after (i) termination of this Agreement, (ii) a termination or expiration of a License, or (iii) the expiration of a SaaS Term, is enforceable against the other party and their respective successors and assignees notwithstanding such termination or expiration, including, without limitation, the *Restrictions, Export, Payment, Taxes, Effect of License Termination, Survival, Warranty Disclaimer, Indemnity, Limitation of Liability, Confidential Information, Compliance Verification, and General* sections of this Agreement. Termination of this Agreement or a License shall be without prejudice to any other remedies that the terminating party may have under law, subject to the limitations and exclusions set forth in this Agreement.

9. Export. The Products and Maintenance Services are subject to the export control laws, rules, regulations, restrictions, sanctions and national security controls of the United States, Europe, and other applicable countries and regions ("**Export Controls**") and each party agrees to abide by the Export Controls. Customer hereby agrees to use the Products and Maintenance Services in accordance with the Export Controls, and shall not Use, export, re-export, sell, lease or otherwise transfer the Products or any copy, portion or direct product of the foregoing in violation of the Export Controls. Customer is solely responsible for obtaining all necessary licenses or authorizations relating to the Use, export, re-export, sale, lease or transfer of the Products and for ensuring compliance with the requirements of such licenses or authorizations.

10. Maintenance Services. If ordered, Maintenance Services are provided in accordance with Provider's then-current Support Guide attached hereto as Appendix B to the Agreement as of the effective date of this Agreement, and available on Provider's Support Site, which describes the Maintenance Services, including support offering levels, severity levels, response times, and contact information. The time period during which Customer is entitled to receive Maintenance Services is a "**Maintenance Period.**"

The Support Guide is incorporated in this Agreement and subject to change at Provider's discretion; however, Provider will not materially reduce the level of technical support services provided during a paid support period. As part of the Maintenance Services Provider will (i) make available new releases and corrections of the Software when Provider makes them generally available to its supported customers at no additional license fee, and (ii) provide technical support for issues that are demonstrable in the currently supported release(s) of the Software. Maintenance Services fees are due and payable annually in advance of a support period. Except for non-perpetual Licenses (for which the Maintenance Period is equal to the duration of the License) and unless otherwise stated in the Order, each License includes an initial Maintenance Period beginning on the date of the initial delivery of the Software following an Order and lasting for twelve (12) months thereafter.

The Maintenance Period for perpetual Licenses will automatically renew for additional terms of twelve (12) months, at the prices stated on a Maintenance Services renewal Quotation provided by Provider, unless the renewal has been cancelled by either party with at least sixty (60) days prior written notice (email is sufficient). Maintenance Services must be ordered for all copies of each licensed Product and may not be purchased for a subset of licenses of a Product only. The procedure and fees for reinstating Maintenance Services for Software after it has lapsed is posted on the Support Site.

11. Warranties and Remedies.

(a) **Software Warranty and Remedies.** Provider warrants that, during the applicable Warranty Period, the operation of the Software, as provided by Provider, will substantially conform to its Documentation (the "**Software Warranty**"). For On-Premises Software, the warranty shall be for ninety (90) days following the initial delivery of the Software pursuant to an Order; and for SaaS Software shall be the duration of the SaaS Term (the "**Warranty Period**").

Provided Customer notifies Provider of any breach of the foregoing warranty within the Warranty Period, Provider shall at its option (i) correct or provide a workaround for reproducible errors in the Software that caused the breach within a reasonable time considering the severity of the error and its effect on Customer or (ii) refund the license fees paid for the applicable nonconforming On-Premises Software in exchange for a return of such nonconforming On-Premises Software or provide a credit of the fees allocable to the period during which the SaaS Software was not operating in substantial conformance with the applicable Documentation. These are Customer's sole and exclusive remedies and Provider's sole obligation for any such breach of the Software Warranty.

(b) **Appliance Warranties.** Appliances are warranted in accordance with the warranty document delivered with the Appliance and/or included on the hardware manufacturers' website.

(c) **Warranty Exclusions.** The warranties set forth in this section shall not apply to any non-conformance (i) that Provider cannot recreate after exercising commercially reasonable efforts to attempt to do so; (ii) caused by misuse of the applicable Product or by using the Product in a manner that is inconsistent with this Agreement or the Documentation; or (iii) arising from the modification of the Product by anyone other than Provider.

(d) **Warranty Disclaimer.** THE EXPRESS WARRANTIES AND REMEDIES SET FORTH IN THIS SECTION OR IN A SIGNED ORDER OR GOVERNING QUOTATION ARE THE ONLY WARRANTIES AND REMEDIES PROVIDED BY PROVIDER HEREUNDER. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ALL OTHER WARRANTIES OR REMEDIES ARE EXCLUDED, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, INTEROPERABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, NON-INFRINGEMENT, SATISFACTORY QUALITY, AND ANY WARRANTIES ARISING FROM USAGE OF TRADE OR COURSE OF DEALING OR PERFORMANCE. PROVIDER DOES NOT WARRANT UNINTERRUPTED OR ERROR-FREE OPERATION OF THE PRODUCTS.

(e) **High-Risk Disclaimer.** THE PRODUCTS ARE NOT FAULT-TOLERANT AND ARE NOT DESIGNED OR INTENDED FOR USE AND MAY NOT BE USED IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE, SUCH AS IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, WEAPONS SYSTEMS, LIFE SUPPORT MACHINES, OR ANY OTHER POTENTIALLY LIFE CRITICAL USES (COLLECTIVELY, "**HIGH RISK ACTIVITIES**"). PROVIDER SHALL NOT BE LIABLE FOR ANY CLAIMS BY CUSTOMER IN RESPECT OF OR WHICH RELATE DIRECTLY OR INDIRECTLY TO HIGH-RISK ACTIVITIES.

12. Indemnity.

(a) **Provider Software Indemnity.** Provider shall indemnify Customer from any claim, suit, action, proceeding brought by a third party (a "**Third Party Claim**") to the extent it is based on an allegation that the Software directly infringes any patent, copyright, trademark, or other proprietary right enforceable in the country in which Provider has authorized Customer to use the Software, including the country to which the Software is delivered to Customer, or misappropriates a trade secret in such country. Provider shall have no obligation hereunder to indemnify Customer as described under this section against any Third Party Claim resulting from (1) Use of the Software other than as authorized by this Agreement, a Signed Order, or a Governing Quotation; (2) a modification of the Software other than by Provider, (3) Customer's Use of any release of the Software after Provider has provided a non-infringing update at no charge, or (4) Use of the Software in conjunction with other products, services, or data not supplied by Provider if the infringement would not have occurred but for such use. If, as a result of a Third Party Claim or an injunction, Customer must stop using any Software (the "**Infringing Software**"), Provider shall at its expense and option either (1) obtain for Customer the right to continue using the Infringing Software, (2) replace the Infringing Software with a functionally equivalent non-infringing product, (3) modify the Infringing Software so that it is non-infringing, or (4) terminate the License for the Infringing Software and (A) for On-Premises Software, accept the return of the Infringing Software and refund the license fee paid for the Infringing Software, pro-rated over a sixty (60) month period from the date of initial delivery of such Software following an Order, or (B) for SaaS Software, discontinue Customer's right to access and use the Infringing Software and refund the unused prorated portion of any license fees pre-paid by Customer for such Software. This section states Provider's entire liability and its sole and exclusive indemnification obligations with respect to a Third Party Claim and Infringing Software.

(b) **Reserved.**

(c) **Reserved.**

(d) **Indemnification Obligations.** Indemnification for a Third Party Claim shall exclusively consist of the following: indemnifying party shall (1) defend or settle the Third Party Claim at its own expense, (2) pay any judgments finally awarded against indemnified party under a Third Party Claim or any amounts assessed against indemnified party in any fines or settlements of a Third Party Claim, and (3) reimburse indemnified party for the reasonable administrative costs or expenses, including without limitation reasonable attorneys' fees, it necessarily incurs in responding to the Third Party Claim. Indemnifying party's obligations are conditioned upon indemnified party (i) giving prompt written notice of the Third Party Claim to the indemnifying party, (ii) permitting indemnifying party to retain sole control of the investigation, defense or settlement of the Third Party Claim as long as such settlement shall not include a financial obligation on or admission of liability by indemnified party, and (iii) providing indemnifying party with cooperation and assistance as indemnifying party may reasonably request in connection with the Third Party Claim.

13. Limitation of Liability.

(A) EXCLUSION OF DAMAGES. EXCEPT AS OTHERWISE STATED IN SUBSECTION (C) BELOW, IN NO EVENT SHALL CUSTOMER OR ITS AFFILIATES OR PROVIDER, ITS AFFILIATES OR SUPPLIERS BE LIABLE FOR (X) ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL LOSS OR DAMAGE OF ANY KIND OR (Y) LOSS OF REVENUE, LOSS OF ACTUAL OR ANTICIPATED PROFITS, LOSS OF BUSINESS, LOSS OF CONTRACTS, LOSS OF GOODWILL OR REPUTATION, LOSS OF ANTICIPATED SAVINGS, LOSS OF, DAMAGE TO OR CORRUPTION OF DATA, HOWSOEVER ARISING, WHETHER SUCH LOSS OR DAMAGE WAS FORESEEABLE OR IN THE CONTEMPLATION OF THE PARTIES.

(B) LIABILITY CAP. EXCEPT OTHERWISE STATED IN SUBSECTION (C) BELOW, THE MAXIMUM AGGREGATE AND CUMULATIVE LIABILITY OF CUSTOMER AND ITS AFFILIATES AND PROVIDER, ITS AFFILIATES AND SUPPLIERS, FOR DAMAGES UNDER THIS AGREEMENT, WHETHER ARISING IN OR FOR BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF STATUTORY DUTY, OR OTHERWISE, SHALL BE THE FEES PAID AND/OR OWED (AS APPLICABLE) BY CUSTOMER OR ITS AFFILIATES FOR THE ON-PREMISES PRODUCTS THAT ARE THE SUBJECT OF THE BREACH.

FOR MAINTENANCE SERVICES OR A PRODUCT SUBJECT TO RECURRING FEES SUCH AS SAAS SOFTWARE, THE MAXIMUM AGGREGATE AND CUMULATIVE LIABILITY SHALL BE THE ANNUALIZED AMOUNT PAID AND/OR OWED (AS APPLICABLE) FOR SUCH MAINTENANCE SERVICE OR PRODUCT DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE FIRST INCIDENT GIVING RISE TO THE BREACH.

(C) EXCLUSIONS FROM LIABILITY CAP. NOTHING IN THIS AGREEMENT SHALL EXCLUDE OR LIMIT A PARTY'S LIABILITY FOR: (I) ANY AMOUNTS DUE AND PAYABLE TO PROVIDER UNDER THIS AGREEMENT; (II) ANY BREACH OF THE *RESTRICTIONS* SECTION; (III) INDEMNITY OBLIGATIONS UNDER THE *INDEMNITY* SECTION; OR (IV) ANY LIABILITY TO THE EXTENT LIABILITY MAY NOT BE EXCLUDED OR LIMITED AS A MATTER OF APPLICABLE LAW.

The waivers and limitations in this Limitation of Liability section apply regardless of the form of action, whether in contract, tort (including negligence), strict liability, breach of statutory duty or otherwise and will survive and apply even if any limited remedy in this Agreement fails of its essential purpose and even if a party has been advised of the possibility of such liabilities or failures.

14. Confidential Information

(a) **Definition.** "**Confidential Information**" means information or materials disclosed by one party ("**Disclosing Party**") to the other party ("**Receiving Party**") that are not generally available to the public and which, due to their character and nature, a reasonable person under like circumstances would treat as confidential, including, without limitation, financial, marketing, and pricing information, trade secrets, know-how, proprietary tools, knowledge and methodologies, the Software (in source code and/or object code form), information or benchmark test results regarding the functionality and performance of the Software, any Software license keys provided to Customer, and the terms and conditions of this Agreement.

Confidential Information shall not include information or materials that (i) are generally known to the public, other than as a result of an unpermitted disclosure by the Receiving Party after the Effective Date; (ii) were known to the Receiving Party without an obligation of confidentiality prior to receipt from the Disclosing Party; (iii) the Receiving Party lawfully received from a third party without that third party's breach of agreement or obligation of trust; or (iv) qualify as a public record under Florida's public record laws, or (v) are or were independently developed by the Receiving Party without access to or use of the Disclosing Party's Confidential Information

(b) **Obligations.** The Receiving Party shall (i) not disclose the Disclosing Party's Confidential Information to any third party, except as permitted in subsection (c) below, and (ii) protect the Disclosing Party's Confidential Information from unauthorized use or disclosure by exercising at least the same degree of care it uses to protect its own similar information, but in no event less than a reasonable degree of care. The Receiving Party shall promptly notify the Disclosing Party of any known unauthorized use or disclosure of the Disclosing Party's Confidential Information and will cooperate with the Disclosing Party in any litigation brought by the Disclosing Party against third parties to protect its proprietary rights. For the avoidance of doubt, this section shall apply to all disclosures of the parties' Confidential Information as of the Effective Date, whether or not specifically arising from a party's performance under this Agreement.

(c) **Permitted Disclosures.** Notwithstanding the foregoing, the Receiving Party may disclose the Disclosing Party's Confidential Information without the Disclosing Party's prior written consent to any of its Affiliates, directors, officers, employees, consultants, contractors or representatives (collectively, the "**Representatives**"), but only to those Representatives that (i) have a "need to know" in order to carry out the purposes of this

Agreement or to provide professional advice in connection with this Agreement, (ii) are legally bound to the Receiving Party to protect information such as the Confidential Information under terms at least as restrictive as those provided herein, and (iii) have been informed by the Receiving Party of the confidential nature of the Confidential Information and the requirements regarding restrictions on disclosure and use as set forth in this section. The Receiving Party shall be liable to the Disclosing Party for the acts or omissions of any Representatives to which it discloses Confidential Information which, if done by the Receiving Party, would be a breach of this Agreement. Additionally, it shall not be a breach of this section for the Receiving Party to disclose the Disclosing Party's Confidential Information as may be required by operation of law or legal process, provided that the Receiving Party provides prior notice of such disclosure to the Disclosing Party unless expressly prohibited from doing so by a court, arbitration panel or other legal authority of competent jurisdiction.

15. Data Protection.

(a) **Data Privacy.** Each party shall comply with all laws and regulations applicable to the processing of personal data in connection with any transactions related to this Agreement, such as but not limited to, the California Consumer Privacy Act as amended by the California Privacy Rights Act, the General Data Protection Regulation, or the UK Data Protection Act, including any implementation act(s) related thereto, or any other applicable laws regulations and other legal requirements related to (a) privacy and data security, and (b) the use, collection, retention, storage, security, disclosure, transfer, disposal and other processing of personal data ("**Privacy Laws**"). Each party is responsible for obtaining any necessary authorizations and consents prior to disclosing personal data to the other party or to any third party. The terms "controller", "personal data" and "processing" used in this section shall have the meaning set out in the applicable Privacy Laws. Either party may use personal data consisting of ordinary business contact data (e.g., name, phone number, email address, etc.) in its capacity as a controller strictly in accordance with applicable Privacy Laws in the normal course of business but only for the purpose of administration of the party's business relationship and performance of their obligations under this Agreement.

(b) **General Security.** Details on Provider's information security practices, data incident response policies, technical and organizational measures, and software development security practices are available at <https://www.quest.com/legal/security.aspx> (collectively "**Security Site**"). Customer agrees that Provider may modify its Security Site so long as it does not materially decrease the overall level of protection

16. License Verification. Reserved.

17. General.

(a) **Governing Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, without giving effect to any conflict of laws principles that would require the application of laws of a different state. Any action seeking enforcement of this Agreement or any provision hereof shall be brought exclusively in the state or federal courts located in the City of Port St. Lucie in the State of Florida. Each party hereby agrees to submit to the jurisdiction of such courts. The parties agree that neither the United Nations Convention on Contracts for the International Sale of Goods, nor the Uniform Computer Information Transaction Act (UCITA) shall apply to this Agreement, regardless of the states in which the parties do business or are incorporated.

(b) **Assignment.** Except as otherwise set forth herein, neither party shall, in whole or part, assign or transfer any part of this Agreement, the Licenses granted under this Agreement or any other rights, interest or obligations hereunder, whether voluntarily, by contract, by operation of law or by merger (whether that party is the surviving or disappearing entity), stock or asset sale, consolidation, dissolution, through government action or order, or otherwise without the prior written consent of the other party. Notwithstanding the foregoing, with notice to Customer, Provider may assign to an Affiliate or in connection with a corporate reorganization without Customer's prior written consent, provided that the assignee agree to the terms and conditions of this Agreement and the PAF as they exist at the time of such assignment. Any attempted transfer or assignment by either party that is not permitted by this Agreement shall be null and void.

(c) **Severability.** If any provision of this Agreement shall be held by a court of competent jurisdiction to be contrary to law, such provision will be enforced to the maximum extent permissible by law to affect the intent of the parties and the remaining provisions of this Agreement will remain in full force and effect. Notwithstanding the foregoing, the terms of this Agreement that limit, disclaim, or exclude warranties, remedies or damages are intended by the parties to be independent and remain in effect despite any failure or unenforceability thereof. The parties have relied on the limitations and exclusions set forth in this Agreement in determining whether to enter into it.

(d) **Use by U.S. Government.** The Software is a "commercial item" under FAR 12.201. Consistent with FAR section 12.212 and DFARS section 227.7202, any use, modification, reproduction, release, performance, display, disclosure or distribution of the Software or Documentation by the U.S. government is prohibited except as expressly permitted by the terms of this Agreement. In addition, when Customer is a U.S. government entity, the language in Subsection (a)(ii) of the *Infringement Indemnity* Section of this Agreement and the *Injunctive Relief* Section of this Agreement shall not be applicable.

(e) **Notices.** All notices provided hereunder shall be in writing and addressed to the legal department of the respective party or to such other address as may be specified in an Order or in writing by either of the parties to the other in accordance with this section. Except as may be expressly permitted herein, notices may be delivered personally, sent to an email address specified by the receiving party, sent via a nationally recognized courier or overnight delivery service, or mailed by first class mail, postage prepaid. All notices, requests, demands or communications shall be deemed effective upon personal delivery or, if sent by mail, four (4) days following deposit in the mail in accordance with this paragraph. Provider may also send operational notices via the SaaS Software, Documentation, or make available on the Support Site.

(f) **Disclosure of Customer Status.** Provider may include Customer in its listing of customers and, upon written consent by Customer, announce Customer's selection of Provider in its marketing communications.

(g) **Waiver.** Performance of any obligation required by a party hereunder may be waived only by a written waiver signed by an authorized representative of the other party, which waiver shall be effective only with respect to the specific obligation described therein. Any waiver or failure

to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

(h) **Injunctive Relief.** Each party acknowledges and agrees that in the event of a material breach of this Agreement, including but not limited to a breach of the *Software License*, *Restrictions* or *Confidential Information* Sections of this Agreement, the non-breaching party shall be entitled to seek immediate injunctive relief, without limiting its other rights and remedies.

(i) **Force Majeure.** Each party will be excused from performance for any period during which, and to the extent that, it is prevented from performing any obligation or service as a result of causes beyond its reasonable control, and without its fault or negligence, including without limitation, acts of God, strikes, lockouts, riots, acts of war, epidemics, pandemics, and third party utility or Internet failures. For added certainty, this section shall not operate to change, delete, or modify any of the parties' obligations under this Agreement (e.g., payment), but rather only to excuse a delay in the performance of such obligations.

(j) **Equal Opportunity.** Provider is a federal contractor and Affirmative Action employer (M/F/D/V) as required by the Equal Opportunity clause C.F.R. § 60-741.5(a).

(k) **Headings.** Headings in this Agreement are for convenience only and do not affect the meaning or interpretation of this Agreement. This Agreement will not be construed either in favor of or against one party or the other, but rather in accordance with its fair meaning. When the term "including" is used in this Agreement it will be construed in each case to mean "including, but not limited to."

(l) **Legal Fees.** If any legal action is brought to enforce obligations related to payment, compliance verification, or a violation of intellectual property rights, the prevailing party shall be entitled to recover its reasonable attorneys' fees, full costs and other collection expenses, in addition to any other relief it may be awarded.

(m) **Entire Agreement.** This Agreement contains the total agreement between the two parties regarding the subject matter covered herein and supersedes any other agreements, written, oral, expressed, or implied, including any confidentiality agreement between the parties, including the terms in Exhibit 1 attached hereto. In case of a conflict between the terms in this Agreement or Exhibit 1, the terms and conditions of Exhibit 1 shall control. Neither this Agreement, nor an Order, may be modified or amended except by a written agreement executed by a duly authorized representative of each party. No other act, document, usage or custom shall be deemed to amend or modify this Agreement or an Order and Customer agrees that all additional or inconsistent terms that may be contained in any purchase order or other documentation submitted by Customer in connection with an Order are not applicable. Customer agrees that all of Customer's licenses for such Product, regardless of license date, will be governed by the version of the Software Transaction Agreement and applicable Product Terms in effect on the date of the most recent license purchase.

IN WITNESS WHEREOF, Provider and Customer have caused this Agreement to be executed and delivered by their respective duly authorized representatives.

Quest Software Inc.

City of Port St. Lucie, Florida

By:  _____

By: _____

Name: Tiffany Joseph

Name: _____

Title: Assistant General Counsel

Title: _____

Date: 25 November 2024

Date: _____

APPENDIX A: SOFTWARE LICENSE TERMS

(1) **On-Premises Software.** If Software is delivered to Customer for (i) Customer's installation and use on its own equipment or (ii) pre-installed by Provider on an Appliance ("**On-Premises Software**"), the License term shall be perpetual (unless otherwise stated on the Order) and shall also include the right to (i) make a reasonable number of additional copies of the On-Premises Software to be used solely for non-productive archival or passive disaster recovery purposes, provided such copies are kept in a secure location and are not used for production purposes unless the associated primary copy of the On-Premises Software is no longer being used for production purposes, and (ii) make and use copies of the Documentation as reasonably necessary to support Customer's authorized users in their Use of the On-Premises Software. Each License for On-Premises Software shall only be installed by Customer in the country in which the On-Premises Software is initially delivered to Customer.

(2) **Reserved.**

(3) **Reserved.** acts and omissions of its Clients in connection with their use of the Software and Documentation shall be deemed the acts and omissions of Customer.

(4) **Evaluation License.** If an Order indicates that Software is to be used by Customer for evaluation purposes, or if Software is otherwise obtained from Provider for evaluation purposes, Customer shall be granted a License to Use such Software and the associated Documentation solely for Customer's own non-production, internal evaluation purposes (an "**Evaluation License**"). Each Evaluation License shall be granted for an evaluation period of up to thirty (30) days from the date of delivery of the On-Premises Software or from the date that access is granted to the SaaS Software, plus any extensions granted by Provider in writing (the "**Evaluation Period**"). There is no fee for an Evaluation License during the Evaluation Period, however, Customer is responsible for any applicable shipping charges or taxes which may be incurred, and any fees which may be associated with Use beyond the scope permitted herein. Customer will only be granted one Evaluation License per release of any item of Software. Notwithstanding anything otherwise set forth in this Agreement, Customer understands and agrees that Evaluation Licenses are provided "AS IS" and that Provider does not provide warranties or Maintenance Services for Evaluation Licenses.

(5) **Reserved.**

(6) **Use by Third Parties.** Customer may allow its services vendors, outsourcing providers, and contractors (each, a "**Third Party User**") to Use the Software and Documentation, provided that Customer ensures that (i) the Third Party User's access to or use of the Software and Documentation is subject to the restrictions and limitations contained in this Agreement, including, but not limited to those in the Export Section, and the applicable Order(s), (ii) the Third Party User cooperates with Provider during any compliance review that may be conducted by Provider or its designated agent, and (iii) the Third Party User promptly removes any Software installed on its computer equipment upon the completion of the Third Party's need to access or use the Software as permitted by this Section. Customer agrees that the acts and omissions of its Third Party Users related to this Agreement, the Software, and Orders shall be deemed the acts and omissions of Customer.

(7) **Open Source.** Software distributed to Customer (if any) may include third party open source software ("**Open Source**") as listed in the Documentation or by Provider upon request. If Customer elects to use the Open Source on a stand-alone basis, that use is subject to the applicable Open Source license and not this Agreement.

End of Appendix A / End of Software Transaction Agreement

EXHIBIT 1

**CITY OF PORT ST. LUCIE SPECIAL TERMS FOR CONTRACT FOR
Quest Software Inc. Enterprise License Purchase**

This EXHIBIT 1 is attached to and made a part of the Software Transaction Agreement between the CITY OF PORT ST. LUCIE, FLORIDA, a Florida municipal corporation, and QUEST SOFTWARE INC., Provider.

**SECTION I
SCOPE OF SERVICES AND COMPENSATION**

The scope of services, including the term of this Contract, and governing compensation is set forth in the Quest Software Inc. Enterprise License Purchase Acknowledgement Form No. Q-1927104 ("**Provider's Quote**").

**SECTION II
SOVEREIGN IMMUNITY**

Nothing contained in this Contract, including any attachments, shall be deemed or otherwise interpreted as waiving the Customer's sovereign immunity protections existing under the laws of the State of Florida, or as increasing the limits of liability as set forth in section 768.28, Florida Statutes.

**SECTION III
INSURANCE**

The Provider shall on a primary basis, except for Cyber Liability and Professional Liability, and at its sole expense agree to maintain in full force and effect at all times during the life of this Contract, insurance coverage and limits, including endorsements, as described herein. The requirements contained herein, as well as Customer's review or acceptance of insurance maintained by Provider are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Provider under the Contract.

The parties agree and recognize that it is not the intent of the Customer that any insurance policy/coverage that it may obtain pursuant to any provision of this Contract will provide insurance coverage to any entity, corporation, business, person, or organization, other than the Customer and the City shall not be obligated to provide any insurance coverage other than for the Customer or extend its immunity pursuant to section 768.28, Florida Statutes, under its self-insured program. Any provision contained herein to the contrary shall be considered void and unenforceable by any party. This provision does not apply to any obligation imposed on any other party to obtain insurance coverage for this project and/or any obligation to include the Customer as an additional insured under any other insurance policy or otherwise protect the interests of the Customer as specified in this Contract.

Workers' Compensation Insurance & Employer's Liability: The Provider shall agree to maintain Workers' Compensation Insurance & Employers' Liability in accordance with section 440, Florida Statutes. Employers' Liability must include limits of at least \$100,000.00 each accident, \$100,000.00 each disease/employee, and \$500,000.00 each disease/maximum. A Waiver of Subrogation endorsement must be provided. Coverage shall apply on a primary basis.

Commercial General Liability Insurance: The Provider shall agree to maintain Commercial General Liability insurance, issued under an Occurrence form basis, including Contractual liability, to cover the hold harmless agreement set forth herein, with limits of not less than:

Each occurrence	\$1,000,000
Personal/advertising injury	\$1,000,000

Products/completed operations aggregate	\$2,000,000
General aggregate	\$2,000,000
Fire damage	\$100,000 any 1 fire
Medical expense	\$10,000 any 1 person

Additional Insured: An Additional Insured endorsement **must** be attached to the certificate of insurance (should be CG2026) under the General Liability policy. Coverage is to be written on an occurrence form basis and shall apply as primary and non-contributory. Defense costs are to be in addition to the limit of liability. A waiver of subrogation is to be provided in favor of the Customer. Coverage shall extend to independent Providers and fellow employees. Contractual Liability is to be included. Coverage is to include a cross liability or severability of interests provision as provided under the standard ISO form separation of insurers clause.

Except as to Workers' Compensation and Employers' Liability, and Professional Liability Insurance, Certificates of Insurance and policies shall clearly state that coverage required by the Contract has been endorsed to include the Customer, a municipality of the State of Florida, its officers, agents, and employees as Additional Insured for Commercial General Liability and Business Auto policies. The name for the Additional Insured endorsement issued by the insurer shall read: **"City of Port St. Lucie, a municipality of the State of Florida, its officers, employees and agents shall be listed as additional insured and shall include Contract related to Quest Software Inc. Enterprise License Purchase Acknowledgement Form No. Q-1927104."** Copies of the Additional Insured endorsements shall be attached to the Certificate of Insurance. The policies shall be specifically endorsed to provide thirty (30) days written notice to the Customer prior to any adverse changes, cancellation, or non-renewal of coverage thereunder. In the event that the statutory liability of the Customer is amended during the term of this Contract to exceed the above limits, the Provider shall be required, upon thirty (30) days written notice by the Customer, to provide coverage at least equal to the amended statutory limit of liability of the Customer.

Business Automobile Liability Insurance: The Provider shall agree to maintain Business Automobile Liability at a limit of liability not less than \$1,000,000.00 each accident covering any auto, owned, non-owned and hired automobiles. In the event the Provider does not own any automobiles, the Business Auto Liability requirement shall be amended allowing Provider to agree to maintain only Hired & Non-Owned Auto Liability. This amended requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto Coverage form. Certificate holder must be listed as additional insured. A waiver of subrogation must be provided. Coverage shall apply on a primary and non-contributory basis.

Cyber Liability Insurance: Provider shall agree to maintain Cyber Liability in limits not less \$1,000,000 Per claim for direct loss, legal liability, and consequential loss resulting from cyber security breaches. Coverage to include coverage for Privacy & Security Liability, Security Breach Response / Customer Breach Notice Expense, Cyber Extortion and Electronic Media Liability. The Customer must be included as an additional insured. A waiver of subrogation shall be provided in favor of the Customer.

Professional Liability Insurance: Provider shall agree to maintain Professional Liability, or equivalent Errors & Omissions Liability at a limit of liability not less than \$1,000,000 Per claim. For policies written on a "Claims-Made" basis, the Provider warrants the retroactive date equals or precedes the effective date of this Contract. In the event the policy is canceled, non-renewed, switched to an Occurrence Form, retroactive date advanced, or any other event triggering the right to purchase a Supplemental Extended Reporting Period (SERP) during the life of this Contract, Provider shall agree to purchase a SERP with a minimum reporting period not less than three (3) years.

Waiver of Subrogation: By entering into this Contract, Provider agrees to a Waiver of Subrogation for each required policy. When required by the insurer or should a policy condition not permit an Insured to enter into a pre-loss contract to waive subrogation without an endorsement, then Provider shall agree to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent.

Deductibles: All deductible amounts shall be paid for and be the responsibility of the Provider for any and all claims under this Contract. Where an SIR or deductible exceeds \$500,000, the Customer reserves the right, but is not obligated, to review and request a copy of the Provider's most recent annual report or audited financial statement.

It shall be the responsibility of the Provider to ensure that all independent Providers and subProviders comply with the same insurance requirements referenced herein. It will be the responsibility of the Provider to obtain Certificates of Insurance from all independent Providers and subProviders listing the Customer as an Additional Insured without the language, "when required by written contract." If Provider, any independent Provider, or any subProvider maintain higher limits than the minimums shown above, the Customer requires and shall be entitled to coverage for the higher limits maintained by Provider/independent Provider/subProvider.

The Provider may satisfy the minimum limits required above for either Commercial General Liability, Business Auto Liability, and Employers' Liability coverage under Umbrella or Excess Liability. The Umbrella or Excess Liability shall have an Aggregate limit not less than the highest "Each Occurrence" limit for either Commercial General Liability, Business Auto Liability, or Employers' Liability. When required by the insurer, or when Umbrella or Excess Liability is written on Non-Follow Form, the Customer shall be endorsed as an "Additional Insured."

The Customer, by and through its Risk Management Department, reserves the right, but is not obligated, to review, modify, reject, or accept any required policies of insurance, including limits, coverages, or endorsements, herein from time to time throughout the term of this Contract. All insurance carriers must have an AM Best rating of at least A:VII or better. When a self-insured retention or deductible exceeds \$500,000, the Customer reserves the right, but is not obligated, to review and request a copy of Provider's most recent annual report or audited financial statement.

A failure on the part of the Provider to execute the Contract and/or punctually deliver the required insurance certificates and other documentation may be cause for annulment of the agreement.

SECTION IV **COMPLIANCE WITH LAWS**

Provider shall comply with all laws, rules and regulations applicable to the performance of its obligations under this Agreement.

SECTION V **PUBLIC RECORDS**

Provider and any subcontractors shall comply with section 119.0701, Florida Statutes. The Provider and any subcontractors are to allow public access to all documents, papers, letters, or other material made or received by the Provider in conjunction with this Contract, unless the records are exempt from Article I, section 24(a), Florida Constitution, and section 119.07(1)(a), Florida Statutes. Pursuant to section 119.10(2)(a), Florida Statutes, any person who willfully and knowingly violates any of the provisions of chapter 119, Florida Statutes, commits a misdemeanor of the first degree, punishable as provided in sections 775.082 and 775.083, Florida Statutes.

RECORDS

The Customer is a public agency subject to chapter 119, Florida Statutes. The Provider shall comply with Florida's Public Records Law. CONTRACTOR'S RESPONSIBILITY FOR COMPLIANCE WITH CHAPTER 119, FLORIDA STATUTES. Pursuant to section 119.0701, Florida Statutes, Provider agrees to comply with all public records laws, specifically to:

Keep and maintain public records required by the Customer in order to perform the service.

1. The timeframes and classifications for records retention requirements must be in accordance with the [General Records Schedule GS1-SL for State and Local Government Agencies](#).
2. During the term of the Contract, the Provider shall maintain all books, reports, and records in accordance with generally accepted accounting practices and standards for records directly related to this Contract.
3. Records include all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business with the Customer. Provider's records under this Contract include but are not limited to, supplier/subcontractor invoices and contracts, project documents, meeting notes, emails, and all other documentation generated during this Contract.
4. Upon prior written notice to Provider, the Provider agrees to make available to the Customer, during normal business hours all books of account, reports, and records relating to this Contract.
5. A Provider who fails to provide the public records to the Customer within a reasonable time may also be subject to penalties under section 119.10, Florida Statutes.

Upon request from the Customer's custodian of public records, provide the public agency 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 this chapter or as otherwise provided by law.

Ensure that the public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Contract term and following completion of the Contract if the Provider does not transfer the records to the Customer.

Upon completion of the Contract, transfer, at no cost to the Customer, all public records in possession of the Provider, or keep and maintain public records required by the Customer to perform the service. If the Provider transfers all public records to the Customer upon completion of the Contract, the Provider shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Provider keeps and maintains public records upon completion of the Contract, the Provider shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Customer, upon request from the Customer's custodian of public records in a format that is compatible with the information technology systems of the Customer.

IF THE PROVIDER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE PROVIDER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

CITY CLERK
121 SW Port St. Lucie Blvd.
Port St. Lucie, FL 34984
(772) 871-5157
pr@cityofpsl.com

SECTION VI
POLICY OF NON-DISCRIMINATION

Neither party shall discriminate against any person in its operations, activities, or delivery of services under this Contract. Each party shall affirmatively comply with all applicable provisions of federal, state, and local equal employment laws and shall not engage in or commit any discriminatory practice against any person based on race, age, religion, color, gender, sexual orientation, national origin, marital status, physical or mental disability, political affiliation, or any other factor which cannot be lawfully used as a basis for service delivery.

SECTION VII **CODE OF ETHICS**

Provider confirms that it has reviewed, understands, and will conform to the principles of applicable provisions of the State of Florida Code of Ethics in [Chapter 112.311 et seq.](#), Florida Statutes, and Code of Ethics Ordinances in the Customer's Code of Ordinances, [section 9.14](#) (the "Policies"). However any specific operational requirements must be set forth directly in a document signed by and between the parties, and in the event of any material change to the Policies that requires Provider to make or confirm any operational procedure or change, the parties will discuss such material change in good faith. In addition, Provider reserves the right to object and/or otherwise decline to compliance with any particular requirement in the Policies where Provider's compliance would result in a breach of Provider's confidentiality and other contractual obligations to third parties or in a violation of Provider's information security policies.

SECTION VIII **SCRUTINIZED COMPANIES**

By entering into this Contract with the Customer, Provider certifies that it and those related entities of Provider, as defined by Florida law, are not on the Scrutinized Companies that Boycott Israel List, created pursuant to section 215.4725, Florida Statutes, and are not engaged in a boycott of Israel. The Customer may terminate this Contract if Provider or any of those related entities of Provider, as defined by Florida law, are found to have submitted a false certification or any of the following occur with respect to the company or a related entity: (i) it has been placed on the Scrutinized Companies that Boycott Israel List, or is engaged in a boycott of Israel, or (ii) for any contract for goods or services of one million dollars or more, it has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or it is found to have been engaged in business operations in Cuba or Syria. Notwithstanding the preceding, the Customer reserves the right and may, in its sole discretion, on a case by case basis, permit a company on such lists or engaged in business operations in Cuba or Syria to be eligible for, bid on, submit a proposal for, or enter into or renew a contract for goods or services of one million dollars or more, or may permit a company on the Scrutinized Companies that Boycott Israel List to be eligible for, bid on, submit a proposal for, or enter into or renew a contract for goods or services of any amount, should the Customer determine that the conditions set forth in section 287.135(4), Florida Statutes, are met.

SECTION XII **E-VERIFY**

To the extent required by law, Provider shall comply with section 448.095, Florida Statutes.

SECTION XIII **AUDITS**

Upon prior written notice, the Provider shall permit the City's authorized auditor or any authorized representative of the State, and where federal funds are involved (if applicable), the Comptroller General of the United States, or any other authorized representative of the United States government, to access and examine solely any records related to the Contract, review all books, documents, papers, electronic or optically stored and created records, or other records relating or pertaining to this Contract kept by or under the control of the Provider, including, but not limited to, those kept by the Provider, its employees, agents, assigns, successors, and subcontractors. Such records shall be made available to the City during normal business hours at the Provider's office or place of business. The Provider shall not impose a charge for audit or examination of the Provider's books and records. If an audit discloses incorrect billings greater than 5% of the Agreement price for any one year, the City shall

be permitted to charge the Provider for the cost of the audit and appropriate reimbursement. Any adjustments and/or payments that must be made as a result of any such audit or inspection of the Provider's invoices and/or records shall be made within a reasonable amount of time (not to exceed ninety (90) days) from presentation of the City's findings to the Provider. Evidence of criminal conduct will be turned over to the proper authorities.

The Provider shall also ensure the City has these rights with Provider's employees, agents, assigns, successors, and subcontractors, and the obligations of these rights shall be explicitly included in any subcontracts or agreements formed between the Provider and any subcontractors to the extent that those subcontracts or agreements relate to fulfillment of the Provider's obligations to the City.

SECTION XI **CONSTRUCTION**

The title of the section and paragraph headings in this Contract are for reference only and shall not govern, suggest, or affect the interpretation of any of the terms or provisions within each section or this Contract as a whole. The use of the term "including" in this Contract shall be construed as "including, without limitation." Where specific examples are given to clarify a general statement, the specific language shall not be construed as limiting, modifying, restricting, or otherwise affecting the general statement. All singular words and terms shall also include the plural, and vice versa. Any gendered words or terms used shall include all genders. Where a rule, law, statute, or ordinance is referenced, it indicates the rule, law, statute, or ordinance in place at the time the Contract is executed, as well as may be amended from time to time, where application of the amended version is permitted by law.

The parties have participated jointly in the negotiation and drafting of this Contract, and agree that both have been represented by counsel and/or had sufficient time to consult counsel, before entering into this Contract. In the event an ambiguity, conflict, omission, or question of intent or interpretation arises, this Contract shall be construed as if drafted jointly by the parties, and no presumption or burden of proof or persuasion based on which party drafted a provision of the Contract.

SECTION X **SEVERABILITY**

The provisions of this Contract shall be deemed severable and if any portion of the Contract is found invalid or unenforceable, it shall not affect the validity or enforceability of the other provisions herein.

SECTION XI **NON-EXCLUSIVITY**

Provider acknowledges and agrees that this Contract is non-exclusive.

XVII **CONFLICT**

Reserved

SECTION XVII **DISCRIMINATORY, CONVICTED, AND ANTITRUST VIOLATOR VENDOR LISTS**

Provider certifies that neither it nor any of its affiliates, as defined in the statutes below, have been placed on the discriminatory vendor list under section 287.134, Florida Statutes; the convicted vendor list under section 287.133, Florida Statutes; or the

antitrust violator vendor list under section 287.137, Florida Statutes. Absent certain conditions under these statutes, neither Providers nor their affiliates, as defined in the statutes, who have been placed on such lists may submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a Provider, supplier, subProvider, or consultant under a contract with any public entity; and may not transact business with any public entity.

SECTION XVIII
COOPERATION WITH INSPECTOR GENERAL

Pursuant to section 20.055, Florida Statutes, it is the duty of every state officer, employee, agency, special district, board, commission, Provider, and subcontractor to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing pursuant to this section. Provider understands and will comply with this statute.