



**State of West Virginia**  
**Contract**

**Order Date:** 12-02-2022

CORRECT ORDER NUMBER MUST APPEAR ON ALL PACKAGES, INVOICES, AND SHIPPING PAPERS. QUESTIONS CONCERNING THIS ORDER SHOULD BE DIRECTED TO THE DEPARTMENT CONTACT.

<b>Order Number:</b>	CCT 1500 1500 AGO2300000001 1	
<b>Document Name:</b>	Justware Annual Maintenance and Support -Direct Award	<b>Procurement Folder:</b> 1025085
<b>Document Description:</b>	Justware Annual Maintenance and Support -Direct Award	<b>Reason for Modification:</b>
<b>Procurement Type:</b>	Central Sole Source	
<b>Buyer Name:</b>	Toby L Welch	
<b>Telephone:</b>	(304) 558-8802	
<b>Email:</b>	toby.l.welch@wv.gov	
<b>Shipping Method:</b>	Best Way	
<b>Free on Board:</b>	FOB Dest, Freight Prepaid	
	<b>Effective Start Date:</b>	2022-05-01
	<b>Effective End Date:</b>	2023-04-30
<b>VENDOR</b>		

<b>VENDOR</b>		<b>DEPARTMENT CONTACT</b>																					
<b>Vendor Customer Code:</b> 000000229623 JOURNAL TECHNOLOGIES INC 843 S 100 W		<b>Requestor Name:</b> Angela M Price <b>Requestor Phone:</b> (304) 558-2021 <b>Requestor Email:</b> angela.price@wvoasis.gov																					
LOGAN US <b>Vendor Contact Phone:</b> 435-713-2100 <b>Discount Details:</b>		<div>23</div> <div>FILE LOCATION</div>																					
UT 84321 <b>Extension:</b>																							
<table><thead><tr><th></th><th>Discount Allowed</th><th>Discount Percentage</th><th>Discount Days</th></tr></thead><tbody><tr><td>#1</td><td>No</td><td>0.0000</td><td>0</td></tr><tr><td>#2</td><td>Not Entered</td><td></td><td></td></tr><tr><td>#3</td><td>Not Entered</td><td></td><td></td></tr><tr><td>#4</td><td>Not Entered</td><td></td><td></td></tr></tbody></table>					Discount Allowed	Discount Percentage	Discount Days	#1	No	0.0000	0	#2	Not Entered			#3	Not Entered			#4	Not Entered		
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#2	Not Entered																						
#3	Not Entered																						
#4	Not Entered																						
<b>INVOICE TO</b>																							

INVOICE TO	SHIP TO
ATTORNEY GENERAL'S OFFICE 1900 KANAWHA BLVD E BUILDING 1 RM E-26 CHARLESTON WV 25305 US	ATTORNEY GENERALS OFFICE 1900 KANAWHA BLVD E BUILDING 1 RM E-26 CHARLESTON WV 25305 US

12-5-22 BAT

**Total Order Amount:**

\$307,091.40

### Purchasing Division's File Copy

**ENTERED**

PURCHASING DIVISION AUTHORIZATION DATE: <i>M. B. 12/05/2022</i> ELECTRONIC SIGNATURE ON FILE	ATTORNEY GENERAL APPROVAL AS TO FORM <i>John S. Gray</i> DATE: <i>12/15/22</i> ELECTRONIC SIGNATURE ON FILE	ENCUMBRANCE CERTIFICATION <i>12/16/2022</i> DATE: <i>12/16/2022</i> ELECTRONIC SIGNATURE ON FILE
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id: Dec 2, 2022

Order Number: CCT 1500 1500 AGO2300000001 1

Page: 1

FORM ID: WV-PRC-CCT-002 2020/05

**Extended Description:**

The Vendor, Journal Technologies, Inc. agrees to enter a contract to provide professional services for a Justware case management system built specifically to meet MFCU needs. Pursuant to WV Code 5A-3-10c, this was determined as a Direct Award per the attached documentation incorporated herein by reference and made a part of hereof.

Line	Commodity Code	Quantity	Unit	Unit Price	Total Price
1	81112200	0.00000		0.000000	\$42,491.40
<b>Service From</b>	<b>Service To</b>	<b>Manufacturer</b>		<b>Model No</b>	
2022-05-01	2023-04-30				

**Commodity Line Description:** Software maintenance and support- Justware

**Extended Description:**

Line	Commodity Code	Quantity	Unit	Unit Price	Total Price
2	81112200	0.00000		0.000000	\$135,000.00
<b>Service From</b>	<b>Service To</b>	<b>Manufacturer</b>		<b>Model No</b>	
2022-05-01	2023-04-30				

**Commodity Line Description:** one time implementation for transition

**Extended Description:**

Line	Commodity Code	Quantity	Unit	Unit Price	Total Price
3	81112200	0.00000		0.000000	\$90,000.00
<b>Service From</b>	<b>Service To</b>	<b>Manufacturer</b>		<b>Model No</b>	
2022-05-01	2023-04-30				

**Commodity Line Description:** eProsecutor maintenance and support

**Extended Description:**

Line	Commodity Code	Quantity	Unit	Unit Price	Total Price
4	81112200	0.00000		0.000000	\$39,600.00
<b>Service From</b>	<b>Service To</b>	<b>Manufacturer</b>		<b>Model No</b>	
2022-05-01	2023-04-30				

**Commodity Line Description:** eProsecutor data conversion testing hosting

**Extended Description:**

First two months free, and only if needed

### Journal Technologies Inc., Order of Precedence Agreement

Pursuant to this Order of Precedence Agreement, JOURNAL TECHNOLOGIES, INC. ("JTI") and the West Virginia Medicaid Fraud Control Unit ("MFCU"), a division of the West Virginia Office of the Attorney General ("WVAGO") agree that the contract for software maintenance and support services (the "Contract") shall be interpreted in the order of precedence listed below.

1. **Order of Precedence:** The Contract is comprised of the documents listed in this section. The terms and conditions contained in the various documents shall be interpreted according to the priority given to the contract documents in this section. Any terms and conditions contained in the first priority document shall prevail over conflicting terms in the second priority document, and so on.

**A. Contract Documents Order of Priority:**

- i. Order of Precedence Agreement (this document) – First Priority
- ii. WV-96 (attached hereto as Exhibit A) – Second Priority
- iii. West Virginia General Terms and Conditions as modified herein (Attached hereto as Exhibit B) – Third Priority
- iv. WV State Government HIPAA Business Associate Addendum (Attached as Exhibit E to the Journal Software Maintenance and Support Agreement) – Third Priority
- v. Provisions Required for Federally Funded Procurements (Attached hereto as Exhibit D) – Fifth Priority
- vi. Journal Software Professional Services Agreement (Attached hereto as Exhibit E) – Sixth Priority
- vii. Journal Software Maintenance and Support Agreement (Attached hereto as Exhibit F) – Seventh Priority

2. Document Modifications: The documents listed below are modified as indicated.

a. West Virginia General Terms and Conditions – The document entitled "General Terms and Conditions" is modified as follows:

- i. Funding – The term entitled "Funding" revised to include the following additional **bolded** clause:

18. FUNDING: This Contract shall continue for the term stated herein, contingent upon funds being appropriated by the Legislature or otherwise being made available. In the event funds are not appropriated or otherwise made available, this Contract becomes void and of no effect beginning July 1 of the fiscal year for which funding has not been appropriated or otherwise made available; **subject, however, to the terms of Section 7.5 ("Effects of Termination") of the Professional Services Agreement, which specifies that upon termination of the Contract for any reason, including non-appropriation, the State shall pay Vendor for all services rendered under the Contract up to the effective date of termination, including work in process.** If that occurs, the State may

notify the Vendor that an alternative source of funding has been obtained and thereby avoid the automatic termination. Non-appropriation or non-funding shall not be considered an event of default.

ii. Warranty – The term entitled “Warranty” is removed in its entirety and replaced with the following:

28. WARRANTY: Vendor warrants that the Services rendered to State pursuant to this Agreement shall be performed in a competent and professional manner, and that each of Vendor’s employees, contractors and agents assigned to perform Services pursuant to this Agreement shall have the training, background and skills commensurate with the level of performance reasonably expected for the tasks to which he or she is assigned..

iii. Privacy, Security, and Confidentiality - The term entitled “Privacy, Security, and Confidentiality” is revised to include the following additional **bolded** clauses:

30. PRIVACY, SECURITY, AND CONFIDENTIALITY: The Vendor agrees that it will not disclose to anyone, directly or indirectly, and such personally identifiable information or other confidential information gained from the Agency, unless the individual who is the subject of the information consents to the disclosure in writing or the disclosure is made pursuant to the Agency’s policies, procedures, and rules. Vendor further agrees to comply with the Confidentiality Policies and Information Security Accountability Requirements, set forth in

<http://www.state.wv.us/admin/purchase/privacy/default.html>; **provided, however, that as set forth in Exhibit E of the License Agreement (the Business Associate Addendum), the parties understand and agree that Amazon AWS’ use, access and disclosure of personally identifiable information will be subject to the terms of AWS’ standard business associate addendum; and, in addition, regarding:**

**Section 4.3.4 of the linked terms and conditions (relating to audits): Vendor regularly undergoes independent security audits (SOC 2 audits), the results of which may be shared with the State upon reasonable request therefor. Vendor updates its securities policies and practices based on such independent auditing and cannot agree that individual customers may require changes to Vendor’s security policies and practices.**

**Section 4.4.2 of the linked terms and conditions (related to breach and breach notification): Notwithstanding the terms herein, Vendor and State agree that the negotiated terms in Exhibit E of the License Agreement (the Business Associate Addendum), specifically Section I thereof (“Notification of Breach”) shall govern in the event of a verified breach of confidential information.**

iv. Indemnification – The term entitled “Indemnification” is removed in its entirety and replaced with the following:

36. INDEMNIFICATION: The Vendor agrees to indemnify, defend, and hold harmless the State and the Agency, their officers, and employees from and against third-party claims or losses resulting from: (i) the negligent actions or willful misconduct of Vendor in performance of the services herein; and (ii) any failure of the Vendor, its officers or employees to observe State and Federal laws including, but not limited to, labor and wage and hour laws.

V. Background Check – The term entitled “Background Check” is revised to include the following **bolded** sentence:

40. BACKGROUND CHECK: In accordance with W. Va. Code § 15-2D-3, the State reserves the right to prohibit a service provider’s employees from accessing sensitive or critical information or to be present at the Capitol complex based upon results addressed from a criminal background check. **Should background checks be required the Agency is responsible for any costs associate with the fingerprint-based state and federal background inquiry.** Service providers should contact the West Virginia Division of Protective Services by phone at (304) 558-9911 for more information.

WV Office of the Attorney General, MFCU

By: 

Its: Chief Deputy AG

Date: 9/29/22

Journal Technologies, Inc.

By: 

Its: President

Date: 9/30/22



**STATE OF WEST VIRGINIA  
ADDENDUM TO VENDOR'S STANDARD CONTRACTUAL FORMS**

State Agency, Board, or Commission (the "State"): WV Medicaid Fraud Control Unit, a division of the WV Attorney General's Office

Vendor: Journal Technologies, INC

Contract/Lease Number ("Contract"): CCT AGO2300000001

Commodity/Service: Software Maintenance and Support for JustWare and eProsecutor

The State and the Vendor are entering into the Contract identified above. The Vendor desires to incorporate one or more forms it created into the Contract. Vendor's form(s), however, include(s) one or more contractual terms and conditions that the State cannot or will not accept. In consideration for the State's incorporating Vendor's form(s) into the Contract, the Vendor enters into this Addendum which specifically eliminates or alters the legal enforceability of certain terms and conditions contained in Vendor's form(s). Therefore, on the date shown below each signature line, the parties agree to the following contractual terms and conditions in this Addendum are dominate over any competing terms made a part of the Contract:

1. **ORDER OF PRECEDENCE:** This Addendum modifies and supersedes anything contained on Vendor's form(s) whether or not they are submitted before or after the signing of this Addendum. **IN THE EVENT OF ANY CONFLICT BETWEEN VENDOR'S FORM(S) AND THIS ADDENDUM, THIS ADDENDUM SHALL CONTROL.**
2. **PAYMENT** – Payments for goods/services will be made in arrears only upon receipt of a proper invoice, detailing the goods/services provided or receipt of the goods/services, whichever is later. Notwithstanding the foregoing, payments for software licenses, subscriptions, or maintenance may be paid annually in advance.  
Any language imposing any interest or charges due to late payment is deleted.
3. **FISCAL YEAR FUNDING** – Performance of this Contract is contingent upon funds being appropriated by the WV Legislature or otherwise being available for this Contract. In the event funds are not appropriated or otherwise available, the Contract becomes of no effect and is null and void after June 30 of the current fiscal year. If that occurs, the State may notify the Vendor that an alternative source of funding has been obtained and thereby avoid the automatic termination. Non-appropriation or non-funding shall not be considered an event of default.
4. **RIGHT TO TERMINATE** – The State reserves the right to terminate this Contract upon thirty (30) days written notice to the Vendor. If this right is exercised, the State agrees to pay the Vendor only for all undisputed services rendered or goods received before the termination's effective date. All provisions are deleted that seek to require the State to (1) compensate Vendor, in whole or in part, for lost profit, (2) pay a termination fee, or (3) pay liquidated damages if the Contract is terminated early.  
Any language seeking to accelerate payments in the event of Contract termination, default, or non-funding is hereby deleted.
5. **DISPUTES** – Any language binding the State to any arbitration or to the decision of any arbitration board, commission, panel or other entity is deleted; as is any requirement to waive a jury trial.  
Any language requiring or permitting disputes under this Contract to be resolved in the courts of any state other than the State of West Virginia is deleted. All legal actions for damages brought by Vendor against the State shall be brought in the West Virginia Claims Commission. Other causes of action must be brought in the West Virginia court authorized by statute to exercise jurisdiction over it.  
Any language requiring the State to agree to, or be subject to, any form of equitable relief not authorized by the Constitution or laws of State of West Virginia is deleted.
6. **FEES OR COSTS:** Any language obligating the State to pay costs of collection, court costs, or attorney's fees, unless ordered by a court of competent jurisdiction is deleted.
7. **GOVERNING LAW** – Any language requiring the application of the law of any state other than the State of West Virginia in interpreting or enforcing the Contract is deleted. The Contract shall be governed by the laws of the State of West Virginia.
8. **RISK SHIFTING** – Any provision requiring the State to bear the costs of all or a majority of business/legal risks associated with this Contract, to indemnify the Vendor, or hold the Vendor or a third party harmless for any act or omission is hereby deleted.
9. **LIMITING LIABILITY** – Any language limiting the Vendor's liability for direct damages to person or property is deleted.
10. **TAXES** – Any provisions requiring the State to pay Federal, State or local taxes or file tax returns or reports on behalf of Vendor are deleted. The State will, upon request, provide a tax exempt certificate to confirm its tax exempt status.
11. **NO WAIVER** – Any provision requiring the State to waive any rights, claims or defenses is hereby deleted.

12. **STATUTE OF LIMITATIONS** – Any clauses limiting the time in which the State may bring suit against the Vendor or any other third party are deleted.
13. **ASSIGNMENT** – The Vendor agrees not to assign the Contract to any person or entity without the State's prior written consent, which will not be unreasonably delayed or denied. The State reserves the right to assign this Contract to another State agency, board or commission upon thirty (30) days written notice to the Vendor. These restrictions do not apply to the payments made by the State. Any assignment will not become effective and binding upon the State until the State is notified of the assignment, and the State and Vendor execute a change order to the Contract.
14. **RENEWAL** – Any language that seeks to automatically renew, modify, or extend the Contract beyond the initial term or automatically continue the Contract period from term to term is deleted. The Contract may be renewed or continued only upon mutual written agreement of the Parties.
15. **INSURANCE** – Any provision requiring the State to maintain any type of insurance for either its or the Vendor's benefit is deleted.
16. **RIGHT TO REPOSSESSION NOTICE** – Any provision for repossession of equipment without notice is hereby deleted. However, the State does recognize a right of repossession with notice.
17. **DELIVERY** – All deliveries under the Contract will be FOB destination unless the State expressly and knowingly agrees otherwise. Any contrary delivery terms are hereby deleted.
18. **CONFIDENTIALITY** – Any provisions regarding confidential treatment or non-disclosure of the terms and conditions of the Contract are hereby deleted. State contracts are public records under the West Virginia Freedom of Information Act ("FOIA") (W. Va. Code §29B-a-1, et seq.) and public procurement laws. This Contract and other public records may be disclosed without notice to the vendor at the State's sole discretion.

Any provisions regarding confidentiality or non-disclosure related to contract performance are only effective to the extent they are consistent with FOIA and incorporated into the Contract through a separately approved and signed non-disclosure agreement.

19. **THIRD-PARTY SOFTWARE** – If this Contract contemplates or requires the use of third-party software, the vendor represents that none of the mandatory click-through, unsigned, or web-linked terms and conditions presented or required before using such third-party software conflict with any term of this Addendum or that is has the authority to modify such third-party software's terms and conditions to be subordinate to this Addendum. The Vendor shall indemnify and defend the State against all claims resulting from an assertion that such third-party terms and conditions are not in accord with, or subordinate to, this Addendum.
20. **AMENDMENTS** – The parties agree that all amendments, modifications, alterations or changes to the Contract shall be by mutual agreement, in writing, and signed by both parties. Any language to the contrary is deleted.

Notwithstanding the foregoing, this Addendum can only be amended by (1) identifying the alterations to this form by using *Italics* to identify language being added and ~~striketrough~~ for language being deleted (do not use track-changes) and (2) having the Office of the West Virginia Attorney General's authorized representative expressly agree to and knowingly approve those alterations.

State: West Virginia  
By: [Signature]  
Printed Name: Douglas E. Battaglin II  
Title: Chief Deputy  
Date: 12/5/22

Vendor: Journal Technologies, Inc.  
By: [Signature]  
Printed Name: Maryjoe Rodriguez  
Title: President  
Date: Aug 22, 2022

## **GENERAL TERMS AND CONDITIONS:**

**1. CONTRACTUAL AGREEMENT:** Issuance of an Award Document signed by the Purchasing Division Director, or his designee, and approved as to form by the Attorney General's office constitutes acceptance by the State of this Contract made by and between the State of West Virginia and the Vendor. Vendor's signature on its bid, or on the Contract if the Contract is not the result of a bid solicitation, signifies Vendor's agreement to be bound by and accept the terms and conditions contained in this Contract.

**2. DEFINITIONS:** As used in this Solicitation/Contract, the following terms shall have the meanings attributed to them below. Additional definitions may be found in the specifications included with this Solicitation/Contract.

**2.1. "Agency" or "Agencies"** means the agency, board, commission, or other entity of the State of West Virginia that is identified on the first page of the Solicitation or any other public entity seeking to procure goods or services under this Contract.

**2.2. "Bid" or "Proposal"** means the vendors submitted response to this solicitation.

**2.3. "Contract"** means the binding agreement that is entered into between the State and the Vendor to provide the goods or services requested in the Solicitation.

**2.4. "Director"** means the Director of the West Virginia Department of Administration, Purchasing Division.

**2.5. "Purchasing Division"** means the West Virginia Department of Administration, Purchasing Division.

**2.6. "Award Document"** means the document signed by the Agency and the Purchasing Division, and approved as to form by the Attorney General, that identifies the Vendor as the contract holder.

**2.7. "Solicitation"** means the official notice of an opportunity to supply the State with goods or services that is published by the Purchasing Division.

**2.8. "State"** means the State of West Virginia and/or any of its agencies, commissions, boards, etc. as context requires.

**2.9. "Vendor" or "Vendors"** means any entity submitting a bid in response to the Solicitation, the entity that has been selected as the lowest responsible bidder, or the entity that has been awarded the Contract as context requires.



**3. CONTRACT TERM; RENEWAL; EXTENSION:** The term of this Contract shall be determined in accordance with the category that has been identified as applicable to this Contract below:

☒ **Term Contract**

**Initial Contract Term:** The Initial Contract Term will be for a period of one year. The Initial Contract Term becomes effective on the effective start date listed on the first page of this Contract and the Initial Contract Term ends on the effective end date also shown on the first page of this Contract.

**Renewal Term:** This Contract may be renewed upon the mutual written consent of the Agency, and the Vendor, with approval of the Purchasing Division and the Attorney General's office (Attorney General approval is as to form only). Any request for renewal should be delivered to the Agency and then submitted to the Purchasing Division thirty (30) days prior to the expiration date of the initial contract term or appropriate renewal term. A Contract renewal shall be in accordance with the terms and conditions of the original contract. Unless otherwise specified below, renewal of this Contract is limited to three successive one (1) year periods or multiple renewal periods of less than one year, provided that the multiple renewal periods do not exceed the total number of months available in all renewal years combined. Automatic renewal of this Contract is prohibited. Renewals must be approved by the Vendor, Agency, Purchasing Division and Attorney General's office (Attorney General approval is as to form only)

☐ **Alternate Renewal Term** – This contract may be renewed for \_\_\_\_\_ successive \_\_\_\_\_ year periods or shorter periods provided that they do not exceed the total number of months contained in all available renewals. Automatic renewal of this Contract is prohibited. Renewals must be approved by the Vendor, Agency, Purchasing Division and Attorney General's office (Attorney General approval is as to form only)

**Delivery Order Limitations:** In the event that this contract permits delivery orders, a delivery order may only be issued during the time this Contract is in effect. Any delivery order issued within one year of the expiration of this Contract shall be effective for one year from the date the delivery order is issued. No delivery order may be extended beyond one year after this Contract has expired.

☐ **Fixed Period Contract:** This Contract becomes effective upon Vendor's receipt of the notice to proceed and must be completed within \_\_\_\_\_ days.

☐ **Fixed Period Contract with Renewals:** This Contract becomes effective upon Vendor's receipt of the notice to proceed and part of the Contract more fully described in the attached specifications must be completed within \_\_\_\_\_ days. Upon completion of the work covered by the preceding sentence, the vendor agrees that:

☐ the contract will continue for \_\_\_\_\_ years;

☐ the contract may be renewed for \_\_\_\_\_ successive \_\_\_\_\_ year periods or shorter periods provided that they do not exceed the total number of months contained in all available renewals. Automatic renewal of this Contract is prohibited.

Renewals must be approved by the Vendor, Agency, Purchasing Division and Attorney

General's Office (Attorney General approval is as to form only).

☐ **One-Time Purchase:** The term of this Contract shall run from the issuance of the Award Document until all of the goods contracted for have been delivered, but in no event will this Contract extend for more than one fiscal year.

☐ **Other:** Contract Term specified in \_\_\_\_\_

**4. AUTHORITY TO PROCEED:** Vendor is authorized to begin performance of this contract on the date of encumbrance listed on the front page of the Award Document unless either the box for "Fixed Period Contract" or "Fixed Period Contract with Renewals" has been checked in Section 3 above. If either "Fixed Period Contract" or "Fixed Period Contract with Renewals" has been checked, Vendor must not begin work until it receives a separate notice to proceed from the State. The notice to proceed will then be incorporated into the Contract via change order to memorialize the official date that work commenced.

**5. QUANTITIES:** The quantities required under this Contract shall be determined in accordance with the category that has been identified as applicable to this Contract below.

☐ **Open End Contract:** Quantities listed in this Solicitation/Award Document are approximations only, based on estimates supplied by the Agency. It is understood and agreed that the Contract shall cover the quantities actually ordered for delivery during the term of the Contract, whether more or less than the quantities shown.

☒ **Service:** The scope of the service to be provided will be more clearly defined in the specifications included herewith.

☐ **Combined Service and Goods:** The scope of the service and deliverable goods to be provided will be more clearly defined in the specifications included herewith.

☐ **One-Time Purchase:** This Contract is for the purchase of a set quantity of goods that are identified in the specifications included herewith. Once those items have been delivered, no additional goods may be procured under this Contract without an appropriate change order approved by the Vendor, Agency, Purchasing Division, and Attorney General's office.

**6. EMERGENCY PURCHASES:** The Purchasing Division Director may authorize the Agency to purchase goods or services in the open market that Vendor would otherwise provide under this Contract if those goods or services are for immediate or expedited delivery in an emergency. Emergencies shall include, but are not limited to, delays in transportation or an unanticipated increase in the volume of work. An emergency purchase in the open market, approved by the Purchasing Division Director, shall not constitute of breach of this Contract and shall not entitle the Vendor to any form of compensation or damages. This provision does not excuse the State from fulfilling its obligations under a One-Time Purchase contract.

**7. REQUIRED DOCUMENTS:** All of the items checked in this section must be provided to the Purchasing Division by the Vendor as specified:

☐ **BID BOND (Construction Only):** Pursuant to the requirements contained in W. Va. Code § 5-22-1(c), All Vendors submitting a bid on a construction project shall furnish a valid bid bond in the amount of five percent (5%) of the total amount of the bid protecting the State of West Virginia. The bid bond must be submitted with the bid.

☐ **PERFORMANCE BOND:** The apparent successful Vendor shall provide a performance bond in the amount of 100% of the contract. The performance bond must be received by the Purchasing Division prior to Contract award.

☐ **LABOR/MATERIAL PAYMENT BOND:** The apparent successful Vendor shall provide a labor/material payment bond in the amount of 100% of the Contract value. The labor/material payment bond must be delivered to the Purchasing Division prior to Contract award.

In lieu of the Bid Bond, Performance Bond, and Labor/Material Payment Bond, the Vendor may provide certified checks, cashier's checks, or irrevocable letters of credit. Any certified check, cashier's check, or irrevocable letter of credit provided in lieu of a bond must be of the same amount and delivered on the same schedule as the bond it replaces. A letter of credit submitted in lieu of a performance and labor/material payment bond will only be allowed for projects under \$100,000. Personal or business checks are not acceptable. Notwithstanding the foregoing, West Virginia Code § 5-22-1 (d) mandates that a vendor provide a performance and labor/material payment bond for construction projects. Accordingly, substitutions for the performance and labor/material payment bonds for construction projects is not permitted.

☐ **MAINTENANCE BOND:** The apparent successful Vendor shall provide a two (2) year maintenance bond covering the roofing system. The maintenance bond must be issued and delivered to the Purchasing Division prior to Contract award.

☐ **LICENSE(S) / CERTIFICATIONS / PERMITS:** In addition to anything required under the Section of the General Terms and Conditions entitled Licensing, the apparent successful Vendor shall furnish proof of the following licenses, certifications, and/or permits upon request and in a form acceptable to the State. The request may be prior to or after contract award at the State's sole discretion.

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The apparent successful Vendor shall also furnish proof of any additional licenses or certifications contained in the specifications regardless of whether or not that requirement is listed above.

**8. INSURANCE:** The apparent successful Vendor shall furnish proof of the insurance identified by a checkmark below and must include the State as an additional insured on each policy prior to Contract award. The insurance coverages identified below must be maintained throughout the life of this contract. Thirty (30) days prior to the expiration of the insurance policies, Vendor shall provide the Agency with proof that the insurance mandated herein has been continued. Vendor must also provide Agency with immediate notice of any changes in its insurance policies, including but not limited to, policy cancelation, policy reduction, or change in insurers. The apparent successful Vendor shall also furnish proof of any additional insurance requirements contained in the specifications prior to Contract award regardless of whether that insurance requirement is listed in this section.

Vendor must maintain:

☐ **Commercial General Liability Insurance** in at least an amount of: \_\_\_\_\_ per occurrence.

☐ **Automobile Liability Insurance** in at least an amount of: \_\_\_\_\_ per occurrence.

☐ **Professional/Malpractice/Errors and Omission Insurance** in at least an amount of: \_\_\_\_\_ per occurrence. Notwithstanding the forgoing, Vendor's are not required to list the State as an additional insured for this type of policy.

☐ **Commercial Crime and Third Party Fidelity Insurance** in an amount of: \_\_\_\_\_ per occurrence.

☐ **Cyber Liability Insurance** in an amount of: \_\_\_\_\_ per occurrence.

☐ **Builders Risk Insurance** in an amount equal to 100% of the amount of the Contract.

☐ **Pollution Insurance** in an amount of: \_\_\_\_\_ per occurrence.

☐ **Aircraft Liability** in an amount of: \_\_\_\_\_ per occurrence.

☒ **Cyber Liability Insurance -**  
1st Party Cyber of \$2,000,000 for each Wrongful Act  
3rd Party Cyber of \$10,000,000 for each Wrongful Act

☐

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Notwithstanding anything contained in this section to the contrary, the Director of the Purchasing Division reserves the right to waive the requirement that the State be named as an additional insured on one or more of the Vendor's insurance policies if the Director finds that doing so is in the State's best interest.

**9. WORKERS' COMPENSATION INSURANCE:** Vendor shall comply with laws relating to workers compensation, shall maintain workers' compensation insurance when required, and shall furnish proof of workers' compensation insurance upon request.

**10. [Reserved]**

**11. LIQUIDATED DAMAGES:** This clause shall in no way be considered exclusive and shall not limit the State or Agency's right to pursue any other available remedy. Vendor shall pay liquidated damages in the amount specified below or as described in the specifications:

☐ \_\_\_\_\_ for \_\_\_\_\_.

☐ Liquidated Damages Contained in the Specifications.

☐ Liquidated Damages Are Not Included in this Contract.

**12. ACCEPTANCE:** Vendor's signature on its bid, or on the certification and signature page, constitutes an offer to the State that cannot be unilaterally withdrawn, signifies that the product or service proposed by vendor meets the mandatory requirements contained in the Solicitation for that product or service, unless otherwise indicated, and signifies acceptance of the terms and conditions contained in the Solicitation unless otherwise indicated.

**13. PRICING:** The pricing set forth herein is firm for the life of the Contract, unless specified elsewhere within this Solicitation/Contract by the State. A Vendor's inclusion of price adjustment provisions in its bid, without an express authorization from the State in the Solicitation to do so, may result in bid disqualification. Notwithstanding the foregoing, Vendor must extend any publicly advertised sale price to the State and invoice at the lower of the contract price or the publicly advertised sale price.

**14. PAYMENT IN ARREARS:** Payments for goods/services will be made in arrears only upon receipt of a proper invoice, detailing the goods/services provided or receipt of the goods/services, whichever is later. Notwithstanding the foregoing, payments for software maintenance, licenses, or subscriptions may be paid annually in advance.

**15. PAYMENT METHODS:** Vendor must accept payment by electronic funds transfer and P-Card. (The State of West Virginia's Purchasing Card program, administered under contract by a banking institution, processes payment for goods and services through state designated credit cards.)



**16. TAXES:** The Vendor shall pay any applicable sales, use, personal property or any other taxes arising out of this Contract and the transactions contemplated thereby. The State of West Virginia is exempt from federal and state taxes and will not pay or reimburse such taxes.

**17. ADDITIONAL FEES:** Vendor is not permitted to charge additional fees or assess additional charges that were not either expressly provided for in the solicitation published by the State of West Virginia, included in the Contract, or included in the unit price or lump sum bid amount that Vendor is required by the solicitation to provide. Including such fees or charges as notes to the solicitation may result in rejection of vendor's bid. Requesting such fees or charges be paid after the contract has been awarded may result in cancellation of the contract.

**18. FUNDING:** This Contract shall continue for the term stated herein, contingent upon funds being appropriated by the Legislature or otherwise being made available. In the event funds are not appropriated or otherwise made available, this Contract becomes void and of no effect beginning on July 1 of the fiscal year for which funding has not been appropriated or otherwise made available. If that occurs, the State may notify the Vendor that an alternative source of funding has been obtained and thereby avoid the automatic termination. Non-appropriation or non-funding shall not be considered an event of default.

**19. CANCELLATION:** The Purchasing Division Director reserves the right to cancel this Contract immediately upon written notice to the vendor if the materials or workmanship supplied do not conform to the specifications contained in the Contract. The Purchasing Division Director may also cancel any purchase or Contract upon 30 days written notice to the Vendor in accordance with West Virginia Code of State Rules § 148-1-5.2.b.

**20. TIME:** Time is of the essence regarding all matters of time and performance in this Contract.

**21. APPLICABLE LAW:** This Contract is governed by and interpreted under West Virginia law without giving effect to its choice of law principles. Any information provided in specification manuals, or any other source, verbal or written, which contradicts or violates the West Virginia Constitution, West Virginia Code, or West Virginia Code of State Rules is void and of no effect.

**22. COMPLIANCE WITH LAWS:** Vendor shall comply with all applicable federal, state, and local laws, regulations and ordinances. By submitting a bid, Vendor acknowledges that it has reviewed, understands, and will comply with all applicable laws, regulations, and ordinances.

**SUBCONTRACTOR COMPLIANCE:** Vendor shall notify all subcontractors providing commodities or services related to this Contract that as subcontractors, they too are required to comply with all applicable laws, regulations, and ordinances. Notification under this provision must occur prior to the performance of any work under the contract by the subcontractor.

**23. ARBITRATION:** Any references made to arbitration contained in this Contract, Vendor's bid, or in any American Institute of Architects documents pertaining to this Contract are hereby deleted, void, and of no effect.

**24. MODIFICATIONS:** This writing is the parties' final expression of intent. Notwithstanding anything contained in this Contract to the contrary no modification of this Contract shall be binding without mutual written consent of the Agency, and the Vendor, with approval of the Purchasing Division and the Attorney General's office (Attorney General approval is as to form only). Any change to existing contracts that adds work or changes contract cost, and were not included in the original contract, must be approved by the Purchasing Division and the Attorney General's Office (as to form) prior to the implementation of the change or commencement of work affected by the change.

**25. WAIVER:** The failure of either party to insist upon a strict performance of any of the terms or provision of this Contract, or to exercise any option, right, or remedy herein contained, shall not be construed as a waiver or a relinquishment for the future of such term, provision, option, right, or remedy, but the same shall continue in full force and effect. Any waiver must be expressly stated in writing and signed by the waiving party.

**26. SUBSEQUENT FORMS:** The terms and conditions contained in this Contract shall supersede any and all subsequent terms and conditions which may appear on any form documents submitted by Vendor to the Agency or Purchasing Division such as price lists, order forms, invoices, sales agreements, or maintenance agreements, and includes internet websites or other electronic documents. Acceptance or use of Vendor's forms does not constitute acceptance of the terms and conditions contained thereon.

**27. ASSIGNMENT:** Neither this Contract nor any monies due, or to become due hereunder, may be assigned by the Vendor without the express written consent of the Agency, the Purchasing Division, the Attorney General's office (as to form only), and any other government agency or office that may be required to approve such assignments.

**28. WARRANTY:** The Vendor expressly warrants that the goods and/or services covered by this Contract will: (a) conform to the specifications, drawings, samples, or other description furnished or specified by the Agency; (b) be merchantable and fit for the purpose intended; and (c) be free from defect in material and workmanship.

**29. STATE EMPLOYEES:** State employees are not permitted to utilize this Contract for personal use and the Vendor is prohibited from permitting or facilitating the same.

**30. PRIVACY, SECURITY, AND CONFIDENTIALITY:** The Vendor agrees that it will not disclose to anyone, directly or indirectly, any such personally identifiable information or other confidential information gained from the Agency, unless the individual who is the subject of the information consents to the disclosure in writing or the disclosure is made pursuant to the Agency's policies, procedures, and rules. Vendor further agrees to comply with the Confidentiality Policies and Information Security Accountability Requirements, set forth in <http://www.state.wv.us/admin/purchase/privacy/default.html>.

**31. YOUR SUBMISSION IS A PUBLIC DOCUMENT:** Vendor's entire response to the Solicitation and the resulting Contract are public documents. As public documents, they will be disclosed to the public following the bid/proposal opening or award of the contract, as required by the competitive bidding laws of West Virginia Code §§ 5A-3-1 et seq., 5-22-1 et seq., and 5G-1-1 et seq. and the Freedom of Information Act West Virginia Code §§ 29B-1-1 et seq.

**DO NOT SUBMIT MATERIAL YOU CONSIDER TO BE CONFIDENTIAL, A TRADE SECRET, OR OTHERWISE NOT SUBJECT TO PUBLIC DISCLOSURE.**

Submission of any bid, proposal, or other document to the Purchasing Division constitutes your explicit consent to the subsequent public disclosure of the bid, proposal, or document. The Purchasing Division will disclose any document labeled "confidential," "proprietary," "trade secret," "private," or labeled with any other claim against public disclosure of the documents, to include any "trade secrets" as defined by West Virginia Code § 47-22-1 et seq. All submissions are subject to public disclosure without notice.

**32. LICENSING:** In accordance with West Virginia Code of State Rules § 148-1-6.1.e, Vendor must be licensed and in good standing in accordance with any and all state and local laws and requirements by any state or local agency of West Virginia, including, but not limited to, the West Virginia Secretary of State's Office, the West Virginia Tax Department, West Virginia Insurance Commission, or any other state agency or political subdivision. Obligations related to political subdivisions may include, but are not limited to, business licensing, business and occupation taxes, inspection compliance, permitting, etc. Upon request, the Vendor must provide all necessary releases to obtain information to enable the Purchasing Division Director or the Agency to verify that the Vendor is licensed and in good standing with the above entities.

**SUBCONTRACTOR COMPLIANCE:** Vendor shall notify all subcontractors providing commodities or services related to this Contract that as subcontractors, they too are required to be licensed, in good standing, and up-to-date on all state and local obligations as described in this section. Obligations related to political subdivisions may include, but are not limited to, business licensing, business and occupation taxes, inspection compliance, permitting, etc. Notification under this provision must occur prior to the performance of any work under the contract by the subcontractor.

**33. ANTITRUST:** In submitting a bid to, signing a contract with, or accepting a Award Document from any agency of the State of West Virginia, the Vendor agrees to convey, sell, assign, or transfer to the State of West Virginia all rights, title, and interest in and to all causes of action it may now or hereafter acquire under the antitrust laws of the United States and the State of West Virginia for price fixing and/or unreasonable restraints of trade relating to the particular commodities or services purchased or acquired by the State of West Virginia. Such assignment shall be made and become effective at the time the purchasing agency tenders the initial payment to Vendor.

**34. VENDOR CERTIFICATIONS:** By signing its bid or entering into this Contract, Vendor certifies (1) that its bid or offer was made without prior understanding, agreement, or connection with any corporation, firm, limited liability company, partnership, person or entity submitting a bid or offer for the same material, supplies, equipment or services; (2) that its bid or offer is in all respects fair and without collusion or fraud; (3) that this Contract is accepted or entered into without any prior understanding, agreement, or connection to any other entity that could be considered a violation of law; and (4) that it has reviewed this Solicitation in its entirety; understands the requirements, terms and conditions, and other information contained herein.

Vendor's signature on its bid or offer also affirms that neither it nor its representatives have any interest, nor shall acquire any interest, direct or indirect, which would compromise the performance of its services hereunder. Any such interests shall be promptly presented in detail to the Agency. The individual signing this bid or offer on behalf of Vendor certifies that he or she is authorized by the Vendor to execute this bid or offer or any documents related thereto on Vendor's behalf; that he or she is authorized to bind the Vendor in a contractual relationship; and that, to the best of his or her knowledge, the Vendor has properly registered with any State agency that may require registration.

**35. VENDOR RELATIONSHIP:** The relationship of the Vendor to the State shall be that of an independent contractor and no principal-agent relationship or employer-employee relationship is contemplated or created by this Contract. The Vendor as an independent contractor is solely liable for the acts and omissions of its employees and agents. Vendor shall be responsible for selecting, supervising, and compensating any and all individuals employed pursuant to the terms of this Solicitation and resulting contract. Neither the Vendor, nor any employees or subcontractors of the Vendor, shall be deemed to be employees of the State for any purpose whatsoever. Vendor shall be exclusively responsible for payment of employees and contractors for all wages and salaries, taxes, withholding payments, penalties, fees, fringe benefits, professional liability insurance premiums, contributions to insurance and pension, or other deferred compensation plans, including but not limited to, Workers' Compensation and Social Security obligations, licensing fees, etc. and the filing of all necessary documents, forms, and returns pertinent to all of the foregoing.

Vendor shall hold harmless the State, and shall provide the State and Agency with a defense against any and all claims including, but not limited to, the foregoing payments, withholdings, contributions, taxes, Social Security taxes, and employer income tax returns.

**36. INDEMNIFICATION:** The Vendor agrees to indemnify, defend, and hold harmless the State and the Agency, their officers, and employees from and against: (1) Any claims or losses for services rendered by any subcontractor, person, or firm performing or supplying services, materials, or supplies in connection with the performance of the Contract; (2) Any claims or losses resulting to any person or entity injured or damaged by the Vendor, its officers, employees, or subcontractors by the publication, translation, reproduction, delivery, performance, use, or disposition of any data used under the Contract in a manner not authorized by the Contract, or by Federal or State statutes or regulations; and (3) Any failure of the Vendor, its officers, employees, or subcontractors to observe State and Federal laws including, but not limited to, labor and wage and hour laws.

**37. NO DEBT CERTIFICATION:** In accordance with West Virginia Code §§ 5A-3-10a and 5-22-1(i), the State is prohibited from awarding a contract to any bidder that owes a debt to the State or a political subdivision of the State. By submitting a bid, or entering into a contract with the State, Vendor is affirming that (1) for construction contracts, the Vendor is not in default on any monetary obligation owed to the state or a political subdivision of the state, and (2) for all other contracts, neither the Vendor nor any related party owe a debt as defined above, and neither the Vendor nor any related party are in employer default as defined in the statute cited above unless the debt or employer default is permitted under the statute.

**38. CONFLICT OF INTEREST:** Vendor, its officers or members or employees, shall not presently have or acquire an interest, direct or indirect, which would conflict with or compromise the performance of its obligations hereunder. Vendor shall periodically inquire of its officers, members and employees to ensure that a conflict of interest does not arise. Any conflict of interest discovered shall be promptly presented in detail to the Agency.

**39. REPORTS:** Vendor shall provide the Agency and/or the Purchasing Division with the following reports identified by a checked box below:

☒ Such reports as the Agency and/or the Purchasing Division may request. Requested reports may include, but are not limited to, quantities purchased, agencies utilizing the contract, total contract expenditures by agency, etc.

☐ Quarterly reports detailing the total quantity of purchases in units and dollars, along with a listing of purchases by agency. Quarterly reports should be delivered to the Purchasing Division via email at [purchasing.division@wv.gov](mailto:purchasing.division@wv.gov).

**40. BACKGROUND CHECK:** In accordance with W. Va. Code § 15-2D-3, the State reserves the right to prohibit a service provider's employees from accessing sensitive or critical information or to be present at the Capitol complex based upon results addressed from a criminal background check. Service providers should contact the West Virginia Division of Protective Services by phone at (304) 558-9911 for more information.

**41. PREFERENCE FOR USE OF DOMESTIC STEEL PRODUCTS:** Except when authorized by the Director of the Purchasing Division pursuant to W. Va. Code § 5A-3-56, no contractor may use or supply steel products for a State Contract Project other than those steel products made in the United States. A contractor who uses steel products in violation of this section may be subject to civil penalties pursuant to W. Va. Code § 5A-3-56. As used in this section:

- a. "State Contract Project" means any erection or construction of, or any addition to, alteration of or other improvement to any building or structure, including, but not limited to, roads or highways, or the installation of any heating or cooling or ventilating plants or other equipment, or the supply of and materials for such projects, pursuant to a contract with the State of West Virginia for which bids were solicited on or after June 6, 2001.
- b. "Steel Products" means products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated or otherwise similarly processed, or processed by a combination of two or more or such operations, from steel made by the open heath, basic oxygen, electric furnace, Bessemer or other steel making process.



- c. The Purchasing Division Director may, in writing, authorize the use of foreign steel products if:
  1. The cost for each contract item used does not exceed one tenth of one percent (.1%) of the total contract cost or two thousand five hundred dollars (\$2,500.00), whichever is greater. For the purposes of this section, the cost is the value of the steel product as delivered to the project; or
  2. The Director of the Purchasing Division determines that specified steel materials are not produced in the United States in sufficient quantity or otherwise are not reasonably available to meet contract requirements.

**42. PREFERENCE FOR USE OF DOMESTIC ALUMINUM, GLASS, AND STEEL:** In Accordance with W. Va. Code § 5-19-1 et seq., and W. Va. CSR § 148-10-1 et seq., for every contract or subcontract, subject to the limitations contained herein, for the construction, reconstruction, alteration, repair, improvement or maintenance of public works or for the purchase of any item of machinery or equipment to be used at sites of public works, only domestic aluminum, glass or steel products shall be supplied unless the spending officer determines, in writing, after the receipt of offers or bids, (1) that the cost of domestic aluminum, glass or steel products is unreasonable or inconsistent with the public interest of the State of West Virginia, (2) that domestic aluminum, glass or steel products are not produced in sufficient quantities to meet the contract requirements, or (3) the available domestic aluminum, glass, or steel do not meet the contract specifications. This provision only applies to public works contracts awarded in an amount more than fifty thousand dollars (\$50,000) or public works contracts that require more than ten thousand pounds of steel products.

The cost of domestic aluminum, glass, or steel products may be unreasonable if the cost is more than twenty percent (20%) of the bid or offered price for foreign made aluminum, glass, or steel products. If the domestic aluminum, glass or steel products to be supplied or produced in a "substantial labor surplus area", as defined by the United States Department of Labor, the cost of domestic aluminum, glass, or steel products may be unreasonable if the cost is more than thirty percent (30%) of the bid or offered price for foreign made aluminum, glass, or steel products. This preference shall be applied to an item of machinery or equipment, as indicated above, when the item is a single unit of equipment or machinery manufactured primarily of aluminum, glass or steel, is part of a public works contract and has the sole purpose or of being a permanent part of a single public works project. This provision does not apply to equipment or machinery purchased by a spending unit for use by that spending unit and not as part of a single public works project.

All bids and offers including domestic aluminum, glass or steel products that exceed bid or offer prices including foreign aluminum, glass or steel products after application of the preferences provided in this provision may be reduced to a price equal to or lower than the lowest bid or offer price for foreign aluminum, glass or steel products plus the applicable preference. If the reduced bid or offer prices are made in writing and supersede the prior bid or offer prices, all bids or offers, including the reduced bid or offer prices, will be reevaluated in accordance with this rule.

**43. INTERESTED PARTY SUPPLEMENTAL DISCLOSURE:** W. Va. Code § 6D-1-2 requires that for contracts with an actual or estimated value of at least \$1 million, the Vendor must submit to the Agency a disclosure of interested parties prior to beginning work under this Contract. Additionally, the Vendor must submit a supplemental disclosure of interested parties reflecting any new or differing interested parties to the contract, which were not included in the original pre-work interested party disclosure, within 30 days following the completion or termination of the contract. A copy of that form is included with this solicitation or can be obtained from the WV Ethics Commission. This requirement does not apply to publicly traded companies listed on a national or international stock exchange. A more detailed definition of interested parties can be obtained from the form referenced above.

**44. PROHIBITION AGAINST USED OR REFURBISHED:** Unless expressly permitted in the solicitation published by the State, Vendor must provide new, unused commodities, and is prohibited from supplying used or refurbished commodities, in fulfilling its responsibilities under this Contract.

**45. VOID CONTRACT CLAUSES** – This Contract is subject to the provisions of West Virginia Code § 5A-3-62, which automatically voids certain contract clauses that violate State law.

**46. ISRAEL BOYCOTT:** Bidder understands and agrees that, pursuant to W. Va. Code § 5A-3-63, it is prohibited from engaging in a boycott of Israel during the term of this contract.

**Exhibit E to License, Maintenance and Support Agreement**  
**WV STATE GOVERNMENT**

**HIPAA BUSINESS ASSOCIATE ADDENDUM**

This Health Insurance Portability and Accountability Act of 1996 (hereafter, HIPAA) Business Associate Addendum ("Addendum") is made a part of the License, Maintenance and Support Agreement (the "License Agreement") by and between the State of West Virginia ("Agency"), and Journal Technologies, Inc., a Utah corporation ("Associate"), and is effective as of the date of execution of the Addendum.

The Associate performs certain services on behalf of or for the Agency pursuant to the underlying License Agreement that requires the exchange of information including protected health information protected by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as amended by the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5) (the "HITECH Act"), any associated regulations and the federal regulations published at 45 CFR parts 160 and 164 (sometimes collectively referred to as "HIPAA"). The Agency is a "Covered Entity" as that term is defined in HIPAA, and the parties to the underlying License Agreement are entering into this Addendum to establish the responsibilities of both parties regarding HIPAA-covered information and to bring the underlying License Agreement into compliance with HIPAA.

Whereas it is desirable, in order to further the continued efficient operations of Agency to disclose to its Associate certain information which may contain confidential individually identifiable health information (hereafter, Protected Health Information or PHI); and

Whereas, it is the desire of both parties that the confidentiality of the PHI disclosed hereunder be maintained and treated in accordance with all applicable laws relating to confidentiality, including the Privacy and Security Rules, the HITECH Act and its associated regulations, and the parties do agree to at all times treat the PHI and interpret this Addendum consistent with that desire.

NOW THEREFORE: the parties agree that in consideration of the mutual promises herein, in the License Agreement, and of the exchange of PHI hereunder that:

1. **Definitions.** Terms used, but not otherwise defined, in this Addendum shall have the same meaning as those terms in the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.
  - a. **Agency Procurement Officer** shall mean the appropriate Agency individual listed at: <http://www.state.wv.us/admin/purchase/vrc/agencyli.html>.
  - b. **Agent** shall mean those person(s) who are agent(s) of the Business Associate, in accordance with the Federal common law of agency, as referenced in 45 CFR § 160.402(c).
  - c. **Breach** shall mean the acquisition, access, use or disclosure of protected health information which compromises the security or privacy of such information, except as excluded in the definition of Breach in 45 CFR § 164.402.
  - d. **Business Associate** shall have the meaning given to such term in 45 CFR § 160.103.
  - e. **HITECH Act** shall mean the Health Information Technology for Economic and Clinical Health Act. Public Law No. 111-05. 111<sup>th</sup> Congress (2009).

- f. **License Agreement** means the License, Maintenance and Support Agreement, of even date herewith (as it may be amended from time to time hereunder), between the Agency and the Associate, including all Exhibits thereto.
- g. **Privacy Rule** means the Standards for Privacy of Individually Identifiable Health Information found at 45 CFR Parts 160 and 164.
- h. **Protected Health Information or PHI** shall have the meaning given to such term in 45 CFR § 160.103, limited to the information created or received by Associate from or on behalf of Agency.
- i. **Security Incident** means any known successful or unsuccessful attempt by an authorized or unauthorized individual to inappropriately use, disclose, modify, access, or destroy any information or interference with system operations in an information system.
- j. **Security Rule** means the Security Standards for the Protection of Electronic Protected Health Information found at 45 CFR Parts 160 and 164.
- k. **Subcontractor** means a person to whom a business associate delegates a function, activity, or service, other than in the capacity of a member of the workforce of such business associate.

## 2. Permitted Uses and Disclosures.

- a. **PHI Described.** This means PHI created, received, maintained or transmitted on behalf of the Agency by the Associate. This PHI is governed by this Addendum and is limited to the minimum necessary, to complete the tasks or to provide the services associated with the terms of the License Agreement, and is described in Appendix A.
- b. **Purposes.** Except as otherwise limited in this Addendum, Associate may use or disclose the PHI on behalf of, or to provide services to, Agency for the purposes necessary to complete the tasks, or provide the services, associated with, and required by the terms of the License Agreement, or as required by law, if such use or disclosure of the PHI would not violate the Privacy or Security Rules or applicable state law if done by Agency or Associate, or violate the minimum necessary and related Privacy and Security policies and procedures of the Agency. The Associate is directly liable under HIPAA for impermissible uses and disclosures of the PHI it handles on behalf of Agency.
- c. **Further Uses and Disclosures.** Except as otherwise limited in this Addendum, the Associate may disclose PHI to third parties for the purpose of its own proper management and administration, or as required by law, provided that (i) the disclosure is required by law, or (ii) the Associate has obtained from the third party reasonable assurances that the PHI will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the third party by the Associate; and, (iii) an agreement to notify the Associate and Agency of any instances of which it (the third party) is aware in which the confidentiality of the information has been breached. To the extent practical, the information should be in a limited data set or the minimum necessary information pursuant to 45 CFR § 164.502, or take other measures as necessary to satisfy the Agency's obligations under 45 CFR § 164.502.

## 3. Obligations of Associate.

- a. **Stated Purposes Only.** The PHI may not be used by the Associate for any

purpose other than as stated in this Addendum or as required or permitted by law.

**b. Limited Disclosure.** The PHI is confidential and will not be disclosed by the Associate other than as stated in this Addendum or as required or permitted by law. Associate is prohibited from directly or indirectly receiving any remuneration in exchange for an individual's PHI unless Agency gives written approval and the individual provides a valid authorization. Associate will refrain from marketing activities that would violate HIPAA, including specifically Section 13406 of the HITECH Act. Associate will report to Agency any use or disclosure of the PHI, including any Security Incident not provided for by this Addendum of which it becomes aware.

**c. Safeguards.** The Associate will use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent use or disclosure of the PHI, except as provided for in this Addendum. This shall include, but not be limited to:

- i. Limitation of the groups of its workforce and agents, to whom the PHI is disclosed to those reasonably required to accomplish the purposes stated in this Addendum, and the use and disclosure of the minimum PHI necessary or a Limited Data Set;
- ii. Appropriate notification and training of its workforce and agents in order to protect the PHI from unauthorized use and disclosure;
- iii. Maintenance of a comprehensive, reasonable and appropriate written PHI privacy and security program that includes administrative, technical and physical safeguards appropriate to the size, nature, scope and complexity of the Associate's operations, in compliance with the Security Rule;
- iv. In accordance with 45 CFR §§ 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of the business associate agree to the same restrictions, conditions, and requirements that apply to the business associate with respect to such information; provided, however, that notwithstanding the previous sentence, Associate shall enter into Amazon AWS' standard HIPAA business associate addendum in order to utilize Amazon AWS' cloud storage services to provide the Hosted Services (as such term is defined in the License Agreement) requested by the Agency pursuant to the terms of the License Agreement. Associate will ensure that Amazon AWS' standard HIPAA business associate addendum complies with 45 C.F.R. §164.314. Notwithstanding any other provision of this Addendum to the contrary, the parties understand and agree that Amazon AWS' use, access and disclosure of PHI will be subject to the terms of Amazon AWS' standard HIPAA business associate addendum rather than the terms of this Addendum for all purposes.

**d. Compliance With Law.** The Associate will not use or disclose the PHI in a manner in violation of existing law and specifically not in violation of laws relating to confidentiality of PHI, including but not limited to, the Privacy and Security Rules.

**e. Mitigation.** Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Associate of a use or disclosure of the PHI by Associate in violation of the requirements of this Addendum, and report its mitigation activity back to the Agency.

**f. Support of Individual Rights.**

- i. **Access to PHI.** Associate shall make the PHI maintained by Associate or its agents or subcontractors in Designated Record Sets available to Agency for inspection and copying, and in electronic format, if requested, within



ten (10) days of a request by Agency to enable Agency to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR § 164.524 and consistent with Section 13405 of the HITECH Act.

- ii. **Amendment of PHI.** Within ten (10) days of receipt of a request from Agency for an amendment of the PHI or a record about an individual contained in a Designated Record Set, Associate or its agents or subcontractors shall make such PHI available to Agency for amendment and incorporate any such amendment to enable Agency to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR § 164.526.
- iii. **Accounting Rights.** Within ten (10) days of notice of a request for an accounting of disclosures of the PHI, Associate and its agents or subcontractors shall make available to Agency the documentation required to provide an accounting of disclosures to enable Agency to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR §164.528 and consistent with Section 13405 of the HITECH Act. Associate agrees to document disclosures of the PHI and information related to such disclosures as would be required for Agency to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528. This should include a process that allows for an accounting to be collected and maintained by Associate and its agents or subcontractors for at least six (6) years from the date of disclosure, or longer if required by state law. At a minimum, such documentation shall include:
  - the date of disclosure;
  - the name of the entity or person who received the PHI, and if known, the address of the entity or person;
  - a brief description of the PHI disclosed; and
  - a brief statement of purposes of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure.
- iv. **Request for Restriction.** Under the direction of the Agency, abide by any individual's request to restrict the disclosure of PHI, consistent with the requirements of Section 13405 of the HITECH Act and 45 CFR § 164.522, when the Agency determines to do so (except as required by law) and if the disclosure is to a health plan for payment or health care operations and it pertains to a health care item or service for which the health care provider was paid in full "out-of-pocket."
- v. **Immediate Discontinuance of Use or Disclosure.** The Associate will immediately discontinue use or disclosure of Agency PHI pertaining to any individual when so requested by Agency. This includes, but is not limited to, cases in which an individual has withdrawn or modified an authorization to use or disclose PHI.
- g. **Retention of PHI.** Upon termination of the License Agreement, Associate shall dispose of the PHI in accordance with Section 4.a. of this Addendum.
- h. **Agent's, Subcontractor's Compliance.** The Associate shall notify the Agency of all subcontracts and agreements relating to the License Agreement, where the subcontractor or agent receives PHI as described in section 2.a. of this Addendum. Such notification shall occur within 30 (thirty) calendar days of the execution of the

subcontract and shall be delivered to the Agency Procurement Officer. The Associate will ensure that any of its subcontractors, to whom it provides any of the PHI it receives hereunder, or to whom it provides any PHI which the Associate creates or receives on behalf of the Agency, agree to the restrictions and conditions which apply to the Associate hereunder. The Agency may request copies of downstream subcontracts and agreements to determine whether all restrictions, terms and conditions have been flowed down. Failure to ensure that downstream contracts, subcontracts and agreements contain the required restrictions, terms and conditions may result in termination of the License Agreement.

- j. **Federal and Agency Access.** The Associate shall make its internal practices, books, and records relating to the use and disclosure of PHI, as well as the PHI, received from, or created or received by the Associate on behalf of the Agency available to Agency and the U.S. Secretary of Health and Human Services consistent with 45 CFR § 164.504. The Associate shall also make these records available to Agency, or Agency's contractor, for periodic audit of Associate's compliance with the Privacy and Security Rules. Upon Agency's request, the Associate shall provide the Agency with the internal practices, books and records referenced in this section to enable Agency to determine compliance with HIPAA and HITECH data privacy/protection guidelines, certification of a secure network and other assurance relative to compliance with the Privacy and Security Rules. This section shall also apply to Associate's subcontractors, if any.
- k. **Security.** The Associate shall use appropriate safeguards and comply with Subpart C of 45 CFR § 164 with respect to all PHI and data systems containing PHI to prevent use or disclosure of protected health information other than as provided for by this Addendum. In addition, compliance with 74 FR 19006 Guidance Specifying the Technologies and Methodologies That Render PHI Unusable, Unreadable, or Indecipherable to Unauthorized Individuals for Purposes of the Breach Notification Requirements under Section 13402 of Title XIII is required, to the extent practicable. If Associate chooses not to adopt such methodologies as defined in 74 FR 19006 to secure the PHI governed by this Addendum, it must submit such written rationale, including its Security Risk Analysis, to the Agency Procurement Officer for review prior to the execution of the Addendum. This review may take up to ten (10) days.
- l. **Notification of Breach.** During the term of this Addendum, the Associate shall notify the Agency and, unless otherwise directed by the Agency in writing, the WV Office of Technology without unreasonable delay and in no case later than fifteen (15) calendar days by e-mail or web form upon the discovery of any Breach of unsecured PHI; or by e-mail or web form of any verified Security Incident, intrusion or unauthorized use or disclosure of PHI in violation of the License Agreement and this Addendum, or potential loss of confidential data affecting the License Agreement. Notification shall be provided to the Agency Procurement Officer at [www.state.wv.us/admin/purchase/vrc/agencyli.htm](http://www.state.wv.us/admin/purchase/vrc/agencyli.htm) and, unless otherwise directed by the Agency in writing, the Office of Technology at [incident@wv.gov](mailto:incident@wv.gov) or <https://apps.wv.gov/ot/ir/Default.aspx>.

The Associate shall immediately investigate such Security Incident, Breach, or unauthorized use or disclosure of PHI or confidential data. With Associate's notice described in the previous paragraph, the Associate shall provide the Agency Procurement Officer, and, unless otherwise directed by the Agency in writing, the Office of Technology with the following information, to the fullest extent known by Associate: (a) Date of discovery; (b) What data elements were involved and the extent of the data involved in the Breach; (c) A description of the unauthorized persons known or reasonably believed to have improperly used or disclosed PHI or

confidential data; (d) A description of where the PHI or confidential data is believed to have been improperly transmitted, sent, or utilized; (e) A description of the probable causes of the improper use or disclosure; (f) the identification of each individual whose unsecured protected health information has been, or is reasonably believed by the Associate to have been, accessed, acquired, used or disclosed during the breach; and (g) any other information that the Agency is required to include in notifications to the individual under 45 CFR §164.404(c).

Agency will determine additional specific actions that will be required for mitigation of the Breach, which may include notification by Agency to the individual or other authorities. Upon learning new or additional information regarding the Breach or Security Incident, Associate shall provide corrected supplemental information to Agency

Subject to Section 5 ("LIMITATIONS ON LIABILITY") of the License Agreement and the WV-96, all associated costs with Breach notifications shall be borne by the Associate. This may include, but not be limited to costs associated with Agency notifying affected individuals. The provisions of such Section 5 ("LIMITATIONS ON LIABILITY") and the WV-96 are incorporated herein by this reference and shall control and apply to any and all claims or matters arising under this BAA.

If the Associate enters into a subcontract relating to the License Agreement where the subcontractor or agent receives PHI as described in section 2.a. of this Addendum, all such subcontracts or downstream agreements shall contain the same incident notification requirements as contained herein, with reporting directly to the Agency Procurement Officer. Failure to include such requirement in any subcontract or agreement may result in the Agency's termination of the License Agreement.

- m. **Assistance in Litigation or Administrative Proceedings.** The Associate shall reasonably cooperate with Agency by making itself and any subcontractors, workforce or agents assisting Associate in the performance of its obligations under this Agreement, available to the Agency at no cost to the Agency to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against the Agency, its officers or employees based upon claimed violations of HIPAA, the HIPAA regulations or other laws relating to security and privacy, which involves inaction or actions by the Associate, except where Associate or its subcontractor, workforce or agent is a named as an adverse party.

#### 4. Addendum Administration.

- a. **Term.** This Addendum shall terminate on termination of the underlying License Agreement or on the date the Agency terminates for cause as authorized in paragraph (c) of this Section, whichever is sooner.
- b. **Duties at Termination.** Upon any termination of the underlying License Agreement, the Associate shall return or destroy, at the Agency's option, all PHI received from, or created or received by the Associate on behalf of the Agency that the Associate still maintains in any form and retain no copies of such PHI or, if such return or destruction is not feasible, the Associate shall extend the protections of this Addendum to the PHI and limit further uses and disclosures to the purposes that make the return or destruction of the PHI infeasible. This shall also apply to all agents and subcontractors of Associate. The duty of the Associate and its agents and subcontractors to assist the Agency with any HIPAA required accounting of disclosures survives the termination of the underlying License Agreement.
- c. **Termination for Cause.** Associate authorizes termination of this Addendum by Agency,

if Agency determines Associate has violated a material term of the Addendum. Agency may, at its sole discretion, allow Associate a reasonable period of time not less than thirty (30) days to cure the material breach before termination.

- d. **Judicial or Administrative Proceedings.** The Agency may terminate this Addendum if the Associate is found guilty of a criminal violation of HIPAA. The Agency may terminate this Addendum if a finding or stipulation that the Associate has violated any standard or requirement of HIPAA/HITECH, or other security or privacy laws is made in any administrative or civil proceeding in which the Associate is a party or has been joined. Associate shall be subject to prosecution by the Department of Justice for violations of HIPAA/HITECH and shall be responsible for any and all costs associated with prosecution.
- e. **Survival.** The respective rights and obligations of Associate under this Addendum shall survive the termination of the underlying License Agreement.

#### 5. General Provisions/Ownership of PHI.

- a. **Retention of Ownership.** Ownership of the PHI resides with the Agency and is to be returned on demand or destroyed at the Agency's option, at any time, and subject to the restrictions found within section 4.b. above.
- b. **Secondary PHI.** Any data or PHI generated from the PHI disclosed hereunder which would permit identification of an individual must be held confidential and is also the property of Agency.
- c. **Electronic Transmission.** Except as permitted by law or this Addendum, the PHI or any data generated from the PHI which would permit identification of an individual must not be transmitted to another party by electronic or other means for additional uses or disclosures not authorized by this Addendum or to another contractor, or allied agency, or affiliate without prior written approval of Agency.
- d. **No Sales.** Reports or data containing the PHI may not be sold without Agency's or the affected individual's written consent.
- e. **No Third-Party Beneficiaries.** Nothing express or implied in this Addendum is intended to confer, nor shall anything herein confer, upon any person other than Agency, Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.
- f. **Interpretation.** The provisions of this Addendum shall prevail over any provisions in the License Agreement that may conflict or appear inconsistent with any provisions in this Addendum. The interpretation of this Addendum shall be made under the laws of the state of West Virginia.
- g. **Amendment.** The parties agree that to the extent necessary to comply with applicable law they will agree to further amend this Addendum.
- h. **Additional Terms and Conditions.** Additional discretionary terms may be included in the release order or change order process, provided that any terms affecting the Associate's obligations hereunder must be mutually agreed to in writing.
- i. This BAA, including such agreement and portions as are incorporated by reference herein, and the signed unedited WV-96, constitutes the entire agreement by, between and among the parties as required by 45 C.F.R § 164.504(e), and such parties acknowledge by their signature hereto that they do not rely upon any representations or undertakings by any person or party, past or future, not expressly set forth in writing herein.

- j. Agency shall strictly comply with all obligations of Agency ("Licensee," as referred to in the License Agreement), including without limitation the provisions of Section 2.2.3, 3.3, 6.1 and 6.3 thereof and of Exhibit D ("Hosted Services") thereto. All of the provisions of the License Agreement and the WV-96 are incorporated herein by reference.



**AGREED:**

Name of Agency: Attorney General

Signature: [Handwritten Signature]

Title: Chief Deputy

Date: 6/30/22

Name of Associate: Journal Technologies, Inc.

Signature: [Handwritten Signature]

Title: Maryjoe Rodriguez, President

Date: 8/10/2022

## **FEDERAL FUNDS ADDENDUM**

2 C.F.R. §§ 200.317 – 200.327

**Purpose:** This addendum is intended to modify the solicitation in an attempt to make the contract compliant with the requirements of 2 C.F.R. §§ 200.317 through 200.327 relating to the expenditure of certain federal funds. This solicitation will allow the State to obtain one or more contracts that satisfy standard state procurement, state federal funds procurement, and county/local federal funds procurement requirements.

**Instructions:** Vendors who are willing to extend their contract to procurements with federal funds and the requirements that go along with doing so, should sign the attached document identified as: “REQUIRED CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS (2 C.F.R. § 200.317)”

Should the awarded vendor be unwilling to extend the contract to federal funds procurement, the State reserves the right to award additional contracts to vendors that can and are willing to meet federal funds procurement requirements.

**Changes to Specifications:** Vendors should consider this solicitation as containing two separate solicitations, one for state level procurement and one for county/local procurement.

**State Level:** In the first solicitation, bid responses will be evaluated with applicable preferences identified in sections 15, 15A, and 16 of the “Instructions to Vendors Submitting Bids” to establish a contract for both standard state procurements and state federal funds procurements.

**County Level:** In the second solicitation, bid responses will be evaluated with applicable preferences identified in Sections 15, 15A, and 16 of the “Instructions to Vendors Submitting Bids” omitted to establish a contract for County/Local federal funds procurement.

**Award:** If the two evaluations result in the same vendor being identified as the winning bidder, the two solicitations will be combined into a single contract award. If the evaluations result in a different bidder being identified as the winning bidder, multiple contracts may be awarded. The State reserves the right to award to multiple different entities should it be required to satisfy standard state procurement, state federal funds procurement, and county/local federal funds procurement requirements.

**State Government Use Caution:** State agencies planning to utilize this contract for procurements subject to the above identified federal regulations should first consult with the federal agency providing the applicable funding to ensure the contract is compliant.

**County/Local Government Use Caution:** County and Local government entities planning to utilize this contract for procurements subject to the above identified federal regulation should first consult with the federal agency providing the applicable funding to ensure the contract is compliant. For purposes of County/Local government use, the solicitation resulting in this contract was conducted in accordance with the procurement laws, rules, and procedures governing the West Virginia Department of Administration, Purchasing Division, except that vendor preference has been omitted for County/Local use purposes and the contract terms contained in the document entitled “REQUIRED CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS (2 C.F.R. § 200.317)” have been added.

## **FEDERAL FUNDS ADDENDUM**

### **REQUIRED CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS (2 C.F.R. § 200.317):**

The State of West Virginia Department of Administration, Purchasing Division, and the Vendor awarded this Contract intend that this Contract be compliant with the requirements of the Procurement Standards contained in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements found in 2 C.F.R. § 200.317, et seq. for procurements conducted by a Non-Federal Entity. Accordingly, the Parties agree that the following provisions are included in the Contract.

#### **1. MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS: (2 C.F.R. § 200.321)**

- a. The State confirms that it has taken all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Those affirmative steps include:
  - (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
  - (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
  - (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
  - (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
  - (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
  - (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) above.
- b. Vendor confirms that if it utilizes subcontractors, it will take the same affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

#### **2. DOMESTIC PREFERENCES: (2 C.F.R. § 200.322)**

- a. The State confirms that as appropriate and to the extent consistent with law, it has, to the greatest extent practicable under a Federal award, provided a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United

States (including but not limited to iron, aluminum, steel, cement, and other manufactured products).

b. Vendor confirms that will include the requirements of this Section 2. Domestic Preference in all subawards including all contracts and purchase orders for work or products under this award.

c. Definitions: For purposes of this section:

(1) “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

**3. BREACH OF CONTRACT REMEDIES AND PENALTIES:**

(2 C.F.R. § 200.327 and Appendix II)

(a) The provisions of West Virginia Code of State Rules § 148-1-5 provide for breach of contract remedies, and penalties. A copy of that rule is attached hereto as Exhibit A and expressly incorporated herein by reference.

**4. TERMINATION FOR CAUSE AND CONVENIENCE:**

(2 C.F.R. § 200.327 and Appendix II)

(a) The provisions of West Virginia Code of State Rules § 148-1-5 govern Contract termination. A copy of that rule is attached hereto as Exhibit A and expressly incorporated herein by reference.

**5. EQUAL EMPLOYMENT OPPORTUNITY:**

(2 C.F.R. § 200.327 and Appendix II)

Except as otherwise provided under 41 CFR Part 60, and if this contract meets the definition of “federally assisted construction contract” in 41 CFR Part 60–1.3, this contract includes the equal opportunity clause provided under 41 CFR 60–1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964–1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

**6. DAVIS-BACON WAGE RATES:**  
(2 C.F.R. § 200.327 and Appendix II)

Vendor agrees that if this Contract includes construction, all construction work in excess of \$2,000 will be completed and paid for in compliance with the Davis–Bacon Act (40 U.S.C. 3141–3144, and 3146–3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must:

- (a) pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.
- (b) pay wages not less than once a week.

A copy of the current prevailing wage determination issued by the Department of Labor is attached hereto as Exhibit B. The decision to award a contract or subcontract is conditioned upon the acceptance of the wage determination. The State will report all suspected or reported violations to the Federal awarding agency.

**7. ANTI-KICKBACK ACT:**  
(2 C.F.R. § 200.327 and Appendix II)

Vendor agrees that it will comply with the Copeland Anti-KickBack Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). Accordingly, Vendor, Subcontractors, and anyone performing under this contract are prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The State must report all suspected or reported violations to the Federal awarding agency.

**8. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**  
(2 C.F.R. § 200.327 and Appendix II)

Where applicable, and only for contracts awarded by the State in excess of \$100,000 that involve the employment of mechanics or laborers, Vendor agrees to comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, Vendor is required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

**9. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT.**  
(2 C.F.R. § 200.327 and Appendix II)

If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

**10. CLEAN AIR ACT**  
(2 C.F.R. § 200.327 and Appendix II)

Vendor agrees that if this contract exceeds \$150,000, Vendor is to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

**11. DEBARMENT AND SUSPENSION**  
(2 C.F.R. § 200.327 and Appendix II)

The State will not award to any vendor that is listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

**12. BYRD ANTI-LOBBYING AMENDMENT**  
(2 C.F.R. § 200.327 and Appendix II)

Vendors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.



### **13. PROCUREMENT OF RECOVERED MATERIALS**

(2 C.F.R. § 200.327 and Appendix II; 2 C.F.R. § 200.323)

Vendor agrees that it and the State must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

### **14. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT.**

(2 C.F.R. § 200.327 and Appendix II; 2 CFR § 200.216)

Vendor and State agree that both are prohibited from obligating or expending funds under this Contract to:

- (1) Procure or obtain;
- (2) Extend or renew a contract to procure or obtain; or
- (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
  - (i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
  - (ii) Telecommunications or video surveillance services provided by such entities or using such equipment.
  - (iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

State of West Virginia  
Purchasing Division

By: 

Printed Name: Heather White

Title: Procurement Officer

Date: 9/27/2022

Vendor Name:

By: 

Printed Name: Danny Hemnani

Title: CEO

Date: 12/13/2022

EXHIBIT A To:  
REQUIRED CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY  
CONTRACTS UNDER FEDERAL AWARDS (2 C.F.R. § 200.317):

W. Va. CSR § 148-1-5

West Virginia Code of State Rules
Title 148. Department of Administration
Legislative Rule (Ser. 1)
Series 1. Purchasing

W. Va. Code St. R. § 148-1-5  
§ 148-1-5. Remedies.  
Currentness

5.1. The Director may require that the spending unit attempt to resolve any issues that it may have with the vendor prior to pursuing a remedy contained herein. The spending unit must document any resolution efforts and provide copies of those documents to the Purchasing Division.

5.2. Contract Cancellation.

5.2.1. Cancellation. The Director may cancel a purchase or contract immediately under any one of the following conditions including, but not limited to:

5.2.1.a. The vendor agrees to the cancellation;

5.2.1.b. The vendor has obtained the contract by fraud, collusion, conspiracy, or is in conflict with any statutory or constitutional provision of the State of West Virginia;

5.2.1.c. Failure to honor any contractual term or condition or to honor standard commercial practices;

5.2.1.d. The existence of an organizational conflict of interest is identified;

5.2.1.e. Funds are not appropriated or an appropriation is discontinued by the legislature for the acquisition;

5.2.1.f. Violation of any federal, state, or local law, regulation, or ordinance, and

5.2.1.g. The contract was awarded in error.

5.2.2. The Director may cancel a purchase or contract for any reason or no reason, upon providing

the vendor with 30 days' notice of the cancellation.

5.2.3. Opportunity to Cure. In the event that a vendor fails to honor any contractual term or condition, or violates any provision of federal, state, or local law, regulation, or ordinance, the Director may request that the vendor remedy the contract breach or legal violation within a time frame the Director determines to be appropriate. If the vendor fails to remedy the contract breach or legal violation or the Director determines, at his or her sole discretion, that such a request is unlikely to yield a satisfactory result, then he or she may cancel immediately without providing the vendor an opportunity to perform a remedy.

5.2.4. Re-Award. The Director may award the cancelled contract to the next lowest responsible bidder (or next highest scoring bidder if best value procurement) without a subsequent solicitation if the following conditions are met:

5.2.4.a. The next lowest responsible bidder (or next highest scoring bidder if best value procurement) is able to perform at the price contained in its original bid submission, and

5.2.4.b. The contract is an open-end contract, a one-time purchase contract, or a contract for work which has not yet commenced.

Award to the next lowest responsible bidder (or next highest scoring bidder if best value procurement) will not be an option if the vendor's failure has in any way increased or significantly changed the scope of the original contract. The vendor failing to honor contractual and legal obligations is responsible for any increase in cost the state incurs as a result of the re-award.

5.3. Non-Responsible. If the Director believes that a vendor may be non-responsible, the Director may request that a vendor or spending unit provide evidence that the vendor either does or does not have the capability to fully perform the contract requirements, and the integrity and reliability necessary to assure good faith performance. If the Director determines that the vendor is non-responsible, the Director shall reject that vendor's bid and shall not award the contract to that vendor. A determination of non-responsibility must be evaluated on a case-by-case basis and can only be made after the vendor in question has submitted a bid. A determination of non-responsibility will only extend to the contract for which the vendor has submitted a bid and does not operate as a bar against submitting future bids.

5.4. Suspension.

5.4.1. The Director may suspend, for a period not to exceed 1 year, the right of a vendor to bid on

procurements issued by the Purchasing Division or any state spending unit under its authority if:

5.4.1.a. The vendor has submitted a bid and then requested that its bid be withdrawn after bids have been publicly opened.

5.4.1.b. The vendor has exhibited poor performance in fulfilling his or her contractual obligations to the State. Poor performance includes, but is not limited to any of the following: violations of law, regulation, or ordinance; failure to deliver timely; failure to deliver quantities ordered; poor performance reports; or failure to deliver commodities, services, or printing at the quality level required by the contract.

5.4.1.c. The vendor has breached a contract issued by the Purchasing Division or any state spending unit under its authority and refuses to remedy that breach.

5.4.1.d. The vendor's actions have given rise to one or more of the grounds for debarment listed in W. Va. Code § 5A-3-33d.

5.4.2. Vendor suspension for the reasons listed in section 5.4 above shall occur as follows:

5.4.2.a. Upon a determination by the Director that a suspension is warranted, the Director will serve a notice of suspension to the vendor.

5.4.2.b. A notice of suspension must inform the vendor:

5.4.2.b.1. Of the grounds for the suspension;

5.4.2.b.2. Of the duration of the suspension;

5.4.2.b.3. Of the right to request a hearing contesting the suspension;

5.4.2.b.4. That a request for a hearing must be served on the Director no later than 5 working days of the vendor's receipt of the notice of suspension;

5.4.2.b.5. That the vendor's failure to request a hearing no later than 5 working days of



the receipt of the notice of suspension will be deemed a waiver of the right to a hearing and result in the automatic enforcement of the suspension without further notice or an opportunity to respond; and

5.4.2.b.6. That a request for a hearing must include an explanation of why the vendor believes the Director's asserted grounds for suspension do not apply and why the vendor should not be suspended.

5.4.2.c. A vendor's failure to serve a request for hearing on the Director no later than 5 working days of the vendor's receipt of the notice of suspension will be deemed a waiver of the right to a hearing and may result in the automatic enforcement of the suspension without further notice or an opportunity to respond.

5.4.2.d. A vendor who files a timely request for hearing but nevertheless fails to provide an explanation of why the asserted grounds for suspension are inapplicable or should not result in a suspension, may result in a denial of the vendor's hearing request.

5.4.2.e. Within 5 working days of receiving the vendor's request for a hearing, the Director will serve on the vendor a notice of hearing that includes the date, time and place of the hearing.

5.4.2.f. The hearing will be recorded and an official record prepared. Within 10 working days of the conclusion of the hearing, the Director will issue and serve on the vendor, a written decision either confirming or reversing the suspension.

5.4.3. A vendor may appeal a decision of the Director to the Secretary of the Department of Administration. The appeal must be in writing and served on the Secretary no later than 5 working days of receipt of the Director's decision.

5.4.4. The Secretary, or his or her designee, will schedule an appeal hearing and serve on the vendor, a notice of hearing that includes the date, time and place of the hearing. The appeal hearing will be recorded and an official record prepared. Within 10 working days of the conclusion of the appeal hearing, the Secretary will issue and serve on the vendor a written decision either confirming or reversing the suspension.

5.4.5. Any notice or service related to suspension actions or proceedings must be provided by certified mail, return receipt requested.

5.5. Vendor Debarment. The Director may debar a vendor on the basis of one or more of the grounds for debarment contained in W. Va. Code § 5A-3-33d or if the vendor has been declared ineligible to participate in procurement related activities under federal laws and regulation.

5.5.1. Debarment proceedings shall be conducted in accordance with W. Va. Code § 5A-3-33e and these rules. A vendor that has received notice of the proposed debarment by certified mail, return receipt requested, must respond to the proposed debarment within 30 working days after receipt of notice or the debarment will be instituted without further notice. A vendor is deemed to have received notice, notwithstanding the vendor's failure to accept the certified mail, if the letter is addressed to the vendor at its last known address. After considering the matter and reaching a decision, the Director shall notify the vendor of his or her decision by certified mail, return receipt requested.

5.5.2. Any vendor, other than a vendor prohibited from participating in federal procurement, undergoing debarment proceedings is permitted to continue participating in the state's procurement process until a final debarment decision has been reached. Any contract that a debarred vendor obtains prior to a final debarment decision shall remain in effect for the current term, but may not be extended or renewed. Notwithstanding the foregoing, the Director may cancel a contract held by a debarred vendor if the Director determines, in his or her sole discretion, that doing so is in the best interest of the State. A vendor prohibited from participating in federal procurement will not be permitted to participate in the state's procurement process during debarment proceedings.

5.5.3. If the Director's final debarment decision is that debarment is warranted and notice of the final debarment decision is mailed, the Purchasing Division shall reject any bid submitted by the debarred vendor, including any bid submitted prior to the final debarment decision if that bid has not yet been accepted and a contract consummated.

5.5.4. Pursuant to W.Va. Code § 5A-3-33e(e), the length of the debarment period will be specified in the debarment decision and will be for a period of time that the Director finds necessary and proper to protect the public from an irresponsible vendor.

5.5.5. List of Debarred Vendors. The Director shall maintain and publicly post a list of debarred vendors on the Purchasing Division's website.

5.5.6. Related Party Debarment. The Director may pursue debarment of a related party at the same time that debarment of the original vendor is proceeding or at any time thereafter that the Director determines a related party debarment is warranted. Any entity that fails to provide the Director with full, complete, and accurate information requested by the Director to determine related party

status will be presumed to be a related party subject to debarment.

#### 5.6. Damages.

5.6.1. A vendor who fails to perform as required under a contract shall be liable for actual damages and costs incurred by the state.

5.6.2. If any commodities delivered under a contract have been used or consumed by a spending unit and on testing the commodities are found not to comply with specifications, no payment may be approved by the Spending Unit for the merchandise until the amount of actual damages incurred has been determined.

5.6.3. The Spending Unit shall seek to collect damages by following the procedures established by the Office of the Attorney General for the collection of delinquent obligations.

#### **Credits**

History: Filed 4-1-19, eff. 4-1-19; Filed 4-16-21, eff. 5-1-21.

Current through register dated May 7, 2021. Some sections may be more current. See credits for details.

W. Va. C.S.R. § 148-1-5, WV ADC § 148-1-5

**End of Document**

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EXHIBIT B To:  
REQUIRED CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY  
CONTRACTS UNDER FEDERAL AWARDS (2 C.F.R. § 200.317):

Prevailing Wage Determination

☒ – Not Applicable Because Contract Not for Construction

☐ – Federal Prevailing Wage Determination on Next Page

## **Journal Technologies, Inc.**

### PROFESSIONAL SERVICES AGREEMENT

This PROFESSIONAL SERVICES AGREEMENT (this “**Agreement**”), by and between **Journal Technologies, Inc.**, a Utah corporation (hereinafter “**Journal Technologies**”), and the **West Virginia Medicaid Fraud Control Unit**, a political subdivision of the State of West Virginia (hereinafter “**Client**”), is made as of the date executed by both Journal Technologies and Client (the “**Effective Date**”).

In consideration for the representations and agreements contained herein, the parties hereby covenant and agree as follows:

#### 1. DEFINITIONS

1.1 **Deliverable(s)** means one or more items (which may include software, services or other items) to be delivered by Journal Technologies to Client under a Statement of Work or this Agreement.

1.2 **eProsecutor® Go Live** has the meaning ascribed to such term in the License, Maintenance and Support Agreement.

1.3 **Legacy Data** means information stored on the case management system JustWare (and related programs), a version of which Client licensed from Journal Technologies prior to the Effective Date of this Agreement.

1.4 **License Agreement** means that certain Software License, Maintenance and Support Agreement entered into by Journal Technologies (as Licensor) and Client (as Licensee) concurrently herewith (as such agreement may be amended from time to time pursuant to the terms thereof).

1.5 **eProsecutor Software** has the meaning ascribed to such term in the License Agreement.

1.6 **Project** means each project undertaken by Journal Technologies under Section 2 (“Services”) pursuant to a Statement of Work.

1.7 **Service Fees** means the fees to be paid by Client for Services, as set forth in the Pricing Proposal attached hereto as Exhibit A for the initial Services or in the applicable Statement of Work for additional Services.

1.8 **Services** means those services provided by Journal Technologies to Client under Section 2 (“Services”) of this Agreement.

1.9 **Statement of Work** means a statement of work, prepared and executed pursuant to the provisions of Section 2 (“Services”) of this Agreement.

## 2. SERVICES

2.1 Projects. Journal Technologies agrees to provide Services to Client, as such may be determined from time to time in accordance with the provisions of this Section 2 ("Services"). All Services will be rendered in accordance with the provisions of this Agreement, the applicable Statement of Work, if any, and any other guidelines agreed upon in writing by Journal Technologies and Client.

2.2 Project Requests. If Client requests that Journal Technologies provide Services to Client other than those expressly set forth in this Agreement or Exhibit A hereto, Client shall submit a reasonably detailed Project request to Journal Technologies. Journal Technologies shall have the right to request additional details about the proposed Project described in the Project request. If Journal Technologies believes that it can provide the requested Services, within a commercially reasonable time, Journal Technologies shall submit a proposed Statement of Work to Client.

### 2.3 Procedure for Agreement upon Statements of Work.

2.3.1 Statement of Work. Upon Client's receipt of a proposed Statement of Work, Journal Technologies and Client shall attempt reasonably to meet, consult and agree upon a mutually approved Statement of Work which, unless otherwise agreed by the parties, shall include the agreed costs and payment terms for a Project.

2.3.2 Incorporation of Statement of Work. At such time as the parties shall have agreed upon a Statement of Work, the Statement of Work as so completed, approved and executed by their authorized representatives shall constitute an agreement under and be subject to the non-conflicting provisions of this Agreement.

2.3.3 Changes. Modifications to a Statement of Work shall be accomplished by the negotiation and execution of an amendment reasonably satisfactory to each of the parties, which may result in an increase or decrease in the overall cost of a Project.

2.4 Journal Technologies' Employees and Subcontractors: Indemnification Generally. Journal Technologies shall require all of its employees and subcontractors to comply with the terms of this Agreement and any reasonable and lawful employment and security policies and procedures adopted from time to time by Client. Journal Technologies shall procure all business permits necessary to perform under this Agreement and pay all related fees. Journal Technologies and Client shall each indemnify, defend and hold harmless the other and their respective affiliates, officers, directors, employees and agents, from and against any and all losses, liabilities, damages, causes of action, claims, demands, and expenses (including reasonable legal fees and expenses) incurred by the indemnified party, arising out of or resulting from (i) the violation by the indemnifying party or its employees, agents, or contractors of any applicable law, order, ordinance, regulation or

code or (ii) the gross negligence or intentional misconduct of the indemnifying party or its employees, agents or contractors.

2.5 Status Reporting. Journal Technologies will provide reasonable status reports to Client upon request.

2.6 Status Meetings. If Client so requests, Journal Technologies shall hold periodic status meetings with Client management in order to review the status of Journal Technologies activities.

2.7 Record Keeping and Inspection. Journal Technologies shall maintain reasonable accounting records, in a form sufficient to substantiate Journal Technologies' charges hereunder. Journal Technologies shall retain such records in accordance with its general record retention policies. Client shall have the right to inspect any such records upon reasonable notice, at Journal Technologies' main office and during Journal Technologies' normal business hours.

2.8 Go Live. Upon the occurrence of each Go Live of the eProsecutor Software for a Project, Client is deemed to have recognized that the Deliverables provided in respect of such Project satisfy the applicable requirements therefor, except to the extent otherwise expressly set forth in a writing signed by both parties in connection with such Go Live.

2.9 Ownership of Product of Services. Unless otherwise specified to the contrary in the applicable Statement of Work, all data, materials, Deliverables and other products developed by Journal Technologies under a Statement of Work or this Agreement shall be and remain the sole and exclusive property of Journal Technologies, which shall retain all rights therein; provided that upon payment of all required amounts by Client, Client shall have the right to utilize any Deliverables for Client's internal purposes in accordance with the terms and conditions of the Statement of Work and the License Agreement.

### 3. WARRANTIES

3.1 Services Warranties. Journal Technologies warrants that the Services rendered to Client pursuant to this Agreement shall be performed in a competent and professional manner, and that each of Journal Technologies' employees, contractors and agents assigned to perform Services pursuant to this Agreement shall have training, background and skills commensurate with the level of performance reasonably expected for the tasks to which he or she is assigned.

3.2 Warranty of Law. Journal Technologies warrants and represents that to the best of its knowledge: (i) Journal Technologies has full authority to enter into this Agreement and to consummate the transactions contemplated hereby and (ii) this Agreement is not prohibited by any other agreement to which Journal Technologies is a party or by which it may be bound (the "**Legal Warranty**"). In the event of a breach of the Legal Warranty, Journal Technologies shall indemnify and hold harmless Client from and against any and all losses, liabilities, damages, causes of action, claims, demands, and



expenses (including reasonable legal fees and expenses) incurred by Client, arising out of or resulting from said breach.

3.3 No Other Warranties. THE WARRANTIES AND REPRESENTATIONS STATED WITHIN THIS AGREEMENT ARE EXCLUSIVE, AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. WARRANTIES WITH RESPECT TO THE OPERATION OF ANY DELIVERABLE SHALL BE AS SET FORTH IN THE LICENSE AGREEMENT OR STATEMENT OF WORK.

#### 4. PAYMENT

Service Fees shall be payable in respect of Services provided by Journal Technologies (including its agents and contractors) to, for, or at the request of Client or those acting on its behalf under this Agreement, including but not limited to installation, configuration, training and the like. If any Services are requested and provided without a Statement of Work, they will be billed by Journal Technologies to Client in accordance with Journal Technologies' normal billing practices at the time, on a time-and-expense basis, with hourly rates at the then-standard rates, and expenses charged at cost, or as the parties may otherwise agree in writing. Unless otherwise set forth in a written agreement of the parties (including, without limitation, in any Exhibit hereto), payment for all Service Fees for the eProsecutor Software shall become due and payable when Journal Technologies has provided all necessary Deliverables for the final eProsecutor® Go Live of the eProsecutor Software for such Project, net thirty (30) days. Unless otherwise set forth in an applicable Statement of Work or other written agreement of the parties, any sales, use, excise or similar taxes levied on account of payments to Journal Technologies are the responsibility of the Client.

#### 5. LIMITATIONS ON LIABILITY

NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OR LOSS OF ANTICIPATED REVENUES (OR LIKE AMOUNTS) IN CONNECTION WITH OR ARISING OUT OF THE SUBJECT MATTER OF THIS AGREEMENT. FURTHERMORE, CLIENT'S TOTAL LIABILITY WITH RESPECT TO CLAIMS ARISING OUT OF THE SUBJECT MATTER OF THIS AGREEMENT SHALL NOT EXCEED, IN THE AGGREGATE, THE TOTAL AMOUNT OF FEES PAYABLE HEREUNDER TO JOURNAL TECHNOLOGIES. IN NO EVENT SHALL JOURNAL TECHNOLOGIES' TOTAL LIABILITY WITH RESPECT TO CLAIMS ARISING OUT OF THE SUBJECT MATTER OF THIS AGREEMENT EXCEED, IN THE AGGREGATE, THE TOTAL AMOUNT OF FEES PAID HEREUNDER TO JOURNAL TECHNOLOGIES.

#### 6. CONFIDENTIALITY

6.1 Client's Responsibilities. Client hereby agrees that (i) all materials received from Journal Technologies under this Agreement are the confidential and proprietary information of Journal Technologies, (ii) Client shall take all necessary steps to protect and ensure the confidentiality of such confidential information, and (iii) except as permitted by a Statement of Work, none of such materials shall be in any way disclosed by Client to any third party, in whole or in part, without the prior written consent of Journal Technologies, which may be granted or withheld in its sole discretion. If Client becomes aware of the unauthorized possession of such materials, it shall promptly notify Journal Technologies. Client shall also assist Journal Technologies with preventing the recurrence of such unauthorized possession and with any litigation against the third parties deemed necessary by Journal Technologies to protect its proprietary rights.

6.2 Journal Technologies' Responsibilities. Journal Technologies hereby agrees that (i) any information related to the official business of Client that Journal Technologies obtains from Client in the course of the performance of this Agreement is the confidential and proprietary information of Client, (ii) Journal Technologies shall take all necessary steps to protect and ensure the confidentiality of such information, and (iii) such information shall not be in any way disclosed by Journal Technologies to any third party, in whole or in part, without the prior written consent of Client, which may be granted or withheld in its sole discretion. If Journal Technologies becomes aware of the unauthorized possession of such information, it shall promptly notify Client. Journal Technologies shall also assist Client with preventing the recurrence of such unauthorized possession and with any litigation against the third parties deemed necessary by Client to protect its proprietary rights.

6.3 Confidentiality Breach. In the event a party breaches any of its obligations under this Section 6 ("Confidentiality"), the breaching party shall indemnify, defend and hold harmless the non-breaching party from and against any and all losses, liabilities, damages, causes of action, claims, demands, and expenses (including reasonable legal fees and expenses) incurred by the non-breaching party arising out of such breach. In addition, the non-breaching party will be entitled to obtain injunctive relief against the breaching party.

6.4 Exclusions. The provisions of this Section 6 ("Confidentiality") shall not apply to any information (i) that is in the public domain prior to the disclosure or that becomes part of the public domain other than by way of a breach of this Agreement, (ii) that was in the lawful possession of Journal Technologies or Client, as the case may be, prior to the disclosure without a confidentiality obligation to any person, (iii) that was disclosed to Journal Technologies or Client, as the case may be, by a third party who was in lawful possession of the information without a confidentiality obligation to any person, (iv) that was independently developed by Journal Technologies or Client, as the case may be, outside the scope of this Agreement or (v) that Journal Technologies or Client, as the case may be, is required to disclose by law or legal process.

## 7. TERM AND TERMINATION

7.1 Term. The term of this Agreement shall commence on the Effective Date and shall continue until terminated in accordance with the terms of this Section 7 (“Term and Termination”).

7.2 Term of Statements of Work. Each Statement of Work pertaining to the provision of Services, and each other written agreement for such Services, shall commence on the date of execution of such Statement of Work or other agreement and shall continue in full force and effect thereafter until terminated in accordance with the provisions thereof or until the Services required have been provided and paid for. A termination of this Agreement shall simultaneously terminate any outstanding Statements of Work or other agreement for Services.

7.3 Termination by Journal Technologies.

7.3.1 Payment Default. Journal Technologies shall have the right to terminate this Agreement (but reserving cumulatively all other rights and remedies under this Agreement, in law and/or in equity), for any failure of Client to make payments of amounts due when the same are due, and such failure continues for a period of thirty (30) days after written notice thereof by Journal Technologies to Client.

7.3.2 Other Client Defaults. Journal Technologies may terminate this Agreement (but reserving cumulatively all other rights and remedies under this Agreement, in law and/or in equity), for any other material breach by Client which violation or breach continues for a period of thirty (30) days after written notice thereof by Journal Technologies to Client.

7.4 Termination by Client. Client shall have the right to terminate this Agreement (reserving cumulatively all other rights and remedies under this Agreement, in law and/or in equity) without further obligation or liability to Journal Technologies (except as specified in Subsection 7.5 below) if Journal Technologies commits any material breach of this Agreement and fails to remedy such breach within thirty (30) days after written notice by Client to Journal Technologies of such breach. Client shall have the right to terminate this Agreement effective immediately and without prior notice if Journal Technologies goes into liquidation or files for bankruptcy.

7.5 Effect of Termination. Termination of this Agreement or any Statement of Work shall not affect any rights and/or obligations of the parties which arose prior to any such termination and such rights and/or obligations shall survive any such termination. Within thirty (30) days after the effective date of any such termination, Client shall pay Journal Technologies’ fees and expenses at its then-standard rates for all Services rendered under the applicable Statement of Work or this Agreement up to the effective date of termination, including, without limitation, all work in process. Upon termination, each party shall return the confidential property of the other party obtained under the terminated Statement of Work or this Agreement, as applicable. This includes, without limitation, all work product of Journal Technologies produced pursuant to this Agreement or any Statement of Work, and Client shall have no further right to retain or use such work

product following termination. In addition, the confidentiality obligations of the parties in Section 6 ("Confidentiality") shall survive the termination of this Agreement.

## 8. GENERAL

8.1 Waiver, Amendment or Modification. The waiver, amendment or modification of any provision of this Agreement or any right, power or remedy hereunder shall not be effective unless made in writing and signed by both parties. No failure or delay by either party in exercising any right, power or remedy with respect to any of its rights hereunder shall operate as a waiver thereof.

8.2 Notice. All notices under this Agreement shall be in writing and shall be deemed to have been duly given if delivered in person, by commercial overnight courier or by registered or certified mail, postage prepaid, return receipt requested, and addressed as follows:

To Journal Technologies:

Journal Technologies, Inc.  
915 East First Street  
Los Angeles, CA 90012  
Attention: Maryjoe Rodriguez, President

and

Munger, Tolles & Olson LLP  
1155 F St. NW  
Washington, DC 20004  
Attention: Brett Rodda

To Client:

Brent W. Wolfingbarger - Sr. Deputy Attorney General  
State Capitol, Bldg 1 Room E-26, Charleston, WV 25305

8.3 No Third Party Beneficiaries. This Agreement is not intended to create any right in or for the public, or any member of the public, any subcontractor, supplier or any other third party, or to authorize anyone not a party to this Agreement to maintain a suit to enforce or take advantage of its terms.

8.4 Successors and Assigns. Neither party may assign this Agreement in whole or part without the prior written consent of the other party; provided that Journal Technologies may assign this Agreement to another subsidiary of Daily Journal Corporation, directly or by operation of law, without the prior written consent of Client. Any attempt to assign this Agreement without the prior written consent of the other party is void and without legal effect, and such an attempt constitutes a material breach and

grounds for termination by the other party. Subject to the foregoing, all of the terms, conditions, covenants and agreements contained herein shall inure to the benefit of, and be binding upon, any successor and any permitted assignees of the respective parties hereto. It is further understood and agreed that consent by either party to such assignment in one instance shall not constitute consent by the party to any other assignment. A transfer of corporate control, merger, sale of substantially all of a party's assets and the like, even though including this Agreement as an assigned asset or contract, shall not be considered an assignment for these purposes.

8.5 Dispute Resolution. Any dispute arising under or related to this Agreement shall be resolved exclusively as follows, with the costs of any mediation and arbitration to be shared equally by both parties:

8.5.1 Initial Resolution by Meeting. The parties shall first attempt to resolve amicably the dispute by meeting with each other, by telephone or in person at a mutually convenient time and location, within thirty (30) days after written notice of a dispute is delivered from one party to the other. Subsequent meetings may be held upon mutual agreement of the parties.

8.5.2 Mediation. If the dispute is not resolved within sixty (60) days of the first meeting, the parties shall submit the dispute to mediation by an organization or company specializing in providing neutral, third-party mediators. Client shall be entitled to select either (i) the location of the mediation or (ii) the organization or company, and Journal Technologies shall select the other. The mediation shall be conducted within sixty (60) days of the date the dispute is submitted to mediation, unless the parties mutually agree on a later date.

8.5.3 Arbitration. Any dispute that is not otherwise resolved by meeting or mediation shall be exclusively resolved by arbitration between the parties in accordance with the Comprehensive Arbitration Rules & Procedures of JAMS, with the arbitration to be conducted in Los Angeles, California, or another location mutually agreed by the parties. The results of such arbitration shall be binding on the parties, and judgment may be entered in any court having jurisdiction. Notwithstanding the foregoing, either party may seek interim injunctive relief from any court of competent jurisdiction.

8.6 Control of Defense. All indemnification obligations under this Agreement are conditioned upon (i) written notice by the indemnified party to the indemnifying party within thirty (30) days of the indemnified party's receipt of any claim for which indemnification is sought, (ii) tender of control over the defense and settlement to the indemnifying party and (iii) such reasonable cooperation by the indemnified party in the defense as the indemnifying party may request; provided, however, the indemnifying party shall not, without the prior written consent of the indemnified party, settle, compromise or consent to the entry of any judgment with respect to any pending or threatened claim unless the settlement, compromise or consent provides for and includes an express, unconditional release of such claim against the indemnified party.

8.7 Force Majeure. Neither party will be liable for any delay or failure to perform any obligation under this Agreement (except for any obligations to make payments) where the delay or failure results from any cause beyond such party's reasonable control including, without limitation, acts of God, labor disputes or other industrial disturbances, electrical or power outages, utilities or other telecommunications failures, internet service provider failures or delays, denial of service attacks, earthquake, storms or other elements of nature, blockages, embargoes, riots, acts or orders of government, acts of terrorism, war, epidemics, or pandemics.

8.8 Governing Law. The validity, construction and performance of this Agreement and the legal relations among the parties to this Agreement shall be governed by and construed in accordance with the laws of the State of Hawai'i without giving effect to its conflict of law principles.

8.9 Independent Contractor. Journal Technologies, in performance of this Agreement, is acting as an independent contractor. Personnel supplied by Journal Technologies (including personnel supplied by subcontractors) hereunder are not Client's personnel or agents, and Journal Technologies assumes full responsibility for their acts. Journal Technologies shall be solely responsible for the payment of compensation of Journal Technologies employees and contractors assigned to perform services hereunder, and such employees and contractors shall be informed that they are not entitled to the provision of any Client employee benefits. Client shall not be responsible for payment of worker's compensation, disability or other similar benefits, unemployment or other similar insurance or for withholding income or other similar taxes or social security for any Journal Technologies employee, and such responsibility shall solely be that of Journal Technologies.

8.10 Severability. In the event any one or more of the provisions of the Agreement shall for any reason be held to be invalid, illegal or unenforceable, the remaining provisions of this Agreement shall be unimpaired, and the invalid, illegal or unenforceable provision shall be replaced by a provision, which, being valid, legal and enforceable, comes closest to the intention of the parties underlying the invalid, illegal or unenforceable provision.

8.11 Entire Agreement. This Agreement, together with the License Agreement and all Exhibits attached hereto and thereto, constitutes the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein and therein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter.

8.12 Counterparts. This Agreement and any Statement of Work may be executed in counterparts and by the exchange of signatures by facsimile or PDF.

*[Continued on Next Page]*

IN WITNESS WHEREOF, the parties have caused this instrument to be duly executed as of the date last written below.

**JOURNAL TECHNOLOGIES, INC.:**

By: M. Rodriguez

Date: 8/10/2022

Printed Name and Title: Maryjoe Rodriguez, President

**WEST VIRGINIA MEDICAID FRAUD CONTROL UNIT:**

By: [Signature]

Date: 6/30/22

Printed Name and Title: James P. B. Hinton II



**EXHIBIT A**  
**PRICING FOR PROFESSIONAL SERVICES**  
**(excluding license, maintenance and support fees)**

	<u>One-Time Cost</u>
Professional services, including expenses (Notes)	
Implementation services (includes portal configuration)	\$ 135,000
 Data Conversion (JustWare Database and file migration)	<u>included</u>
	<u>\$ 135,000</u>

**Notes -**

The parties acknowledge that there must be significant involvement from the Client's IT personnel during the JustWare ("Legacy Data") conversion.

Data conversions included herein shall be as set forth below in accordance with the initial Statements of Work. Any additional interfaces and conversions will be done pursuant to subsequent Statements of Work with additional costs. With the Client's approval, Journal Technologies might use a third-party to assist with the conversion. The Client will be responsible for ensuring the cooperation of its other contractors that are counterparties to the conversions and interfaces.

There are no up front or implementation progress payments. The \$135,000 professional service fees are due when Journal Technologies has provided the Deliverables, as set forth herein and in the Statement of Work, for eProsecutor Go Live.

Journal Technologies does not provide or install hardware or operating system software, or provide its maintenance and support. The Client acknowledges and agrees that Journal Technologies has prepared this EXHIBIT A on the assumption that the Client is exempt from federal excise taxes and without the inclusion of any West Virginia or local sales or use taxes. Any sales, use, excise or similar taxes levied on account of payments to Journal Technologies are the responsibility of the Client.

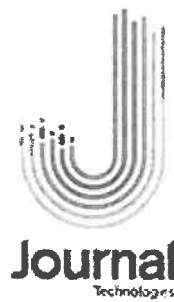
Non-routine projects, including legislative-type updates and subsequent training, will be done pursuant to a Statement of Work using an agreed upon hourly rate plus expenses. Journal Technologies' current hourly rate is \$175.

## **Statement of Work**

West Virginia Medicaid Fraud Control Unit (“Client”)

and

Journal Technologies, Inc. (“JTI”)



# JTI Project Phases and Plan

eProsecutor installed as a functional configuration of Folder Views, Add and Update forms, selected workflows, and Searches. We will work with designated Client project managers, business analysts, subject matter experts, and IT staff to configure eProsecutor. The availability of the Client personnel will be a critical factor in timely meeting the project goals herein.

## Project Phases and Plan

We will work together under these general phases to implement the system.

### *A. Project Planning and Initiation*

During this phase, the project schedule will be solidified, JTI/Client personnel (including staff that will be a part of the Client Help Desk) will be assigned tasks. For on-prem installations, the Client IT department will setup necessary instances of the system for purposes of Configuration, Conversion, Testing and Production etc. Initiating and other documents and tools will be provided, and the foundation for communication and requirements gathering will be established.

### *B. Case Structure*

The purpose of this phase is to ensure that the Client can capture all of the case data required in the system.

- JTI will install the system and demonstrate the system to the Client.
- Client and JTI will identify the adequate number of sample cases to enter in the system to identify missing data elements.
- Client will enter the cases in the system, identify missing data elements, and report back in a requirements document.
- JTI will update the system to capture the missing elements per the requirements document.
- Client will verify and report any instances where the system does not meet the requirements specified in the requirements document within 15 workdays. If no issues are reported within 15 days, then the system configuration will be deemed to be accepted.
- JTI will fix any issues and the Client will test again.

### *C. Financial Structure (if applicable)*

In this phase, the Client's fines and fees are set-up to distribute according to statute, and for the Client to test to verify that all fines and fees are distributing correctly.

- Statute Table
  - JTI will train Client personnel on statute management.
  - JTI will provide statute table spreadsheet to Client personnel.
  - Client will complete statute table spreadsheet.
  - JTI review statute table spreadsheet with Client, and Client will update as needed.
  - JTI will replace the baseline system statutes with the Client's statutes.
  - Client will thereafter maintain its statute table.

- Financials

- JTI will discuss fines and fees distribution configuration and the disposition widget with Client to obtain an understanding of the requirements.
- Client will provide chart of accounts and written breakdown of assessments.
- JTI will document the proposed configuration of financials and receive approval from the Client before configuration.
- JTI will load statutes, chart of accounts, and distributions.
- JTI will configure assessments and update statutes based on assessments.
- Client will test all financial configuration and report back any issues where the configuration does not match the requirements within 15 workdays. If no issues are reported within 15 days, then the system configuration will be deemed to be accepted.
- JTI will fix any issues and the Client will test again.

***D) Data Conversion (JustWare to eProsecutor)***

For each database there will be a maximum of three full conversion iterations plus the Go Live iteration. JTI will use a data conversion tool that JTI build to convert the JustWare database to eProsecutor. The tool operates directly from JustWare production and loads the eProsecutor databases.

Data Conversion Test

- JTI and Client will identify a sample set of Cases for which data conversion will be tested. This sample set of cases will not change during the data conversion process.
- After each conversion, Client will test conversion and within 15 workdays report issues that are not in compliance with the mapping specification and requirements. If no issues are reported within 15 days, then the system configuration will be deemed to be accepted.
- JTI will fix any issues and the Client will test again.
- If financial conversion is performed, then the Client will verify that remaining balances on invoices are distributed correctly
- The client will be responsible for ensuring the cooperation of its other contractors that are counterparties to the conversions.

***E) Interfaces (if any)***

- For each interface, Client will provide Interface Specification Document. The document will include all information necessary to develop the interface, including:
  - File layouts, sample files to be used in testing, existing specification documents, and will assist JTI with the data element mappings between the two systems.
  - Other requirements such as filtering, throttling, queuing, transaction record retention period, and resending/republishing of messages.
  - Frequency/trigger information, specification of data transport mechanism requirements, port and firewall rules, and secure networking requirements.

- Monitoring and reporting requirements, identification of exception types and processing of transactions, and bandwidth requirements based on expected transaction volumes.
- JTI will develop the interface to the requirements in the Interface Specification Document.
- Client will test the interface and report issues where the interface does not match the requirements specified in the Interface Specification Document within 15 workdays. If no issues are reported within 15 days, then the system configuration will be deemed to be accepted.
- JTI will fix any issues and the client will test again.
- There will be a maximum of 3 iterations of testing
- The client will be responsible for ensuring the cooperation of its other contractors that are counterparties to the interfaces.

#### ***F) Document Templates***

- Client will convert document templates as a part of the data conversion process using JTI's conversion tool.
- Client will test and report issues where the configuration of the new document templates does not match the existing document templates within 15 workdays. If no issues are reported within 15 days, then the system configuration will be deemed to be accepted.
- Client and JTI will fix any issues and the Client will test again.
- There will be a maximum of 3 iterations for testing.

#### ***G) Workflow Processes***

- Client will document configuration requirements with JTI's assistance.
- JTI and Client will identify changes and will finalize the new workflows.
- JTI will configure the new workflows in the system.
- Client will test if the configuration meets the requirements and report issues where the configuration does not meet the requirements within 15 workdays. If no issues are reported within 15 days, then the system configuration will be deemed to be accepted.
- JTI will fix any issues and the Client will test again.
- There will be a maximum of 3 iterations for testing.

#### ***H) Searches and Reports***

- Client will provide a list of searches and reports, including samples, specifications and distributions.
- JTI and Client will determine the searches and reports needed in the future system.
- Client will document the search/report requirements with JTI's assistance.
- Client and JTI will configure the searches and reports.

- Client will test configured search/reports within 15 workdays and report any issues. If no issues are reported within 15 days, then the system configuration will be deemed to be accepted.
- JTI will fix the issues and the Client will test again.
- There will be a maximum of 3 iterations for testing.

#### *I) Public Portal*

- JTI will demonstrate the functionality to the Client's IT staff for evaluation.
- Client will provide JTI a set of written use cases that they want the Portal to support.
- JTI and Client will determine the use cases to be implemented in the portal.
- JTI will implement the necessary Portal configuration to support the use cases.
- Once JTI completes the initial configuration, Client will begin acceptance testing against the functionality defined in the use cases.
- Client will report issues where the configuration does not match the specification within 15 workdays to JTI and the appropriate configuration changes will be made. If no issues are reported within 15 days, then the system configuration will be deemed to be accepted.
- JTI will fix any issues and the client will test again.
- There will be a maximum of 3 iterations for testing.

#### *J) Full system testing*

- Client and JTI will develop a testing plan.
- Client will conduct full system testing per the testing plan report issues where the configuration does not match the specification within 15 workdays to JTI and appropriate configuration changes will be made. If no issues are reported within 15 days, then the system configuration will be deemed to be accepted.
- JTI will fix any issues and the client will test again.
- There will be a maximum of 3 iterations for testing.

#### *K) Cutover Plan, Implementation Training and Deployment*

- Client and JTI will determine the deployment plan and schedule.
- Client, with JTI's assistance, will develop a training plan.
- Client will deliver end user training.
- JTI will create a deployment plan with Client's assistance.
- Prior to the go-live Client will sign a formal acceptance that the system configurations fulfill its requirements and will pay fees outlined in the Professional Services Agreement and License, Maintenance and Support Agreement.
- Final conversion and deployment will bring the system live in the production environment.

**Journal Technologies, Inc.**

**SOFTWARE LICENSE, MAINTENANCE AND SUPPORT AGREEMENT**

This SOFTWARE LICENSE, MAINTENANCE AND SUPPORT AGREEMENT (this “**Agreement**”), by and between **Journal Technologies, Inc.**, a Utah corporation (hereinafter “**Licensor**”), and West Virginia Medicaid Fraud Control Unit, a political subdivision of the State of West Virginia (hereinafter “**Licensee**”), is made as of

DECEMBER 01, 2022 (the “**Effective Date**”). In consideration for the representations and agreements contained herein, the parties hereby covenant and agree as follows:

WHEREAS, prior to the Effective Date Licensee has leased subscriptions from Licensor for the JustWare case management system (defined as the “**Legacy System**” below); and

WHEREAS, Licensee has agreed, pursuant to the terms of this Agreement and the Professional Services Agreement, of even date herewith, to replace the Legacy System and have Licensor implement and provide licenses, Maintenance and Support for an enhanced case management software (defined as the “**eProsecutor Software**” below); and

WHEREAS, Licensor and Licensee have agreed that Licensee will continue to license the Legacy System, pursuant to terms and conditions herein, during the implementation of the eProsecutor Software and up to but no later than eProsecutor Go Live, as that term is defined herein.

NOW, THEREFORE, in consideration for the representations and agreements contained herein the parties hereby covenant and agree as follows:

**1. DEFINITIONS**

1.1 **Application Administrator** is a designated employee or contractor of Licensee responsible for managing the case management system. This role includes communicating with Licensor staff for support, troubleshooting problems, and coordinating maintenance tasks.

1.2 **Customer Data** means all non-configuration, case-related data entered into, contained in, modified in, or deleted from the Legacy System or eProsecutor Software, but not the Legacy System or eProsecutor Software itself.

1.3 **Documentation** includes user, administrative and technical electronic guides which facilitate the use of and relate to the Legacy System and eProsecutor Software, together with any written product information, instructions, specifications or use guidelines made available by Licensor.

1.4 **eProsecutor\* Go Live** means that the eProsecutor Software is being Used (as defined below) in an operational capacity with operational data in Licensee’s production environment.



**1.5 Legacy System** means the proprietary computer software program JustWare and related software, and hosting services therefor, which Licensee first licensed from Licensor prior to the Effective Date of this Agreement, and which Licensor is replacing under the terms of this Agreement (and those of the Professional Services Agreement), with the eProsecutor Software. For the avoidance of doubt Licensee shall continue to use the Legacy System under the terms and conditions of this Agreement until the date of eProsecutor® Go Live.

**1.6 eProsecutor Software** means the proprietary computer software program or programs identified in Exhibit A ("LICENSE, MAINTENANCE AND SUPPORT FEES"), together with all related Documentation.

**1.7 License, Maintenance and Support Fees** means the fees to be paid by Licensee to Licensor annually in advance of each year of the Legacy System License Term and eProsecutor License Term pursuant to Sections 2.3.3 ("License, Maintenance and Support Fees").

**1.8 Loss Event Expenses** means all losses, liabilities, damages, causes of action, claims, demands, expenses, professional services (including fees and costs for attorneys, crisis management, public relations, investigation, and remediation), and breach notification costs arising from, in connection with, or related to any of the following:

- (1) a data security breach involving Customer Data;
- (2) a violation of any law, statute, or regulation related to data security or data privacy involving Customer Data;
- (3) unauthorized access to or acquisition of Customer Data;
- (4) a loss of Customer Data;
- (5) a ransom or cyber extortion demand involving Customer Data;
- (6) misuse of Customer Data; or
- (7) an actual or alleged failure to:
  - (a) provide adequate notice, choice, consent, access, or security regarding Customer Data;
  - (b) take appropriate steps to ensure the accuracy of Customer Data;
  - (c) adequately minimize the collection, processing, use, or retention of Customer Data; or
  - (d) comply with cross-border data transfer laws and regulations regarding Customer Data.

**1.9 Maintenance** means enhancements, upgrades and new releases of the eProsecutor Software, which includes only those additions and/or modifications to the eProsecutor Software which (A) enhance functionality and/or performance without fundamentally altering the nature or manner in which the eProsecutor Software operates, and (B) are made generally available without additional or increased charges to other persons entitled to receive maintenance from Licensor. For the avoidance of doubt, Maintenance for the Legacy System that Licensee is replacing with the eProsecutor Software shall be limited to updates to the Legacy System to address critical bugs, which are defined as errors in the Legacy System recognized by JTI, that if not fixed prevent Licensee from conducting its normal operations, and for which there is no workaround.

**1.10 Professional Services Agreement** means that certain Professional Services Agreement between Licensor and Licensee, of even date herewith.

**1.11 Support** means access to technical assistance for the Legacy System or eProsecutor Software, including support for questions about functionality, the resolution of error messages, bug fixes and troubleshooting. For the avoidance of doubt, Support for the Legacy System Licensee if replacing with the eProsecutor Software shall be limited to access to technical assistance for the Legacy System, which shall include only: (i) the resolution of error messages, (ii) critical bug fixes and (iii) troubleshooting.

**1.12 Use or Using** means (i) transferring any portion of the Legacy System or eProsecutor Software from storage units or media into computer or terminal equipment for utilization or processing; (ii) accessing any portion of the Legacy System or eProsecutor Software for any purpose (including, without limitation, viewing information already in the Legacy System of eProsecutor Software); or (iii) merging any Legacy System or eProsecutor Software in machine readable form into another program.

**1.13 User** means (a) any individual person, computer terminal or computer system (including, without limitation, any workstation, pc/cpu, laptop and wireless or network node) that has been authorized by the Licensee (through a username and password) to use the Legacy System or eProsecutor Software, (b) any other non-court government employees who are performing their jobs, or a computer terminal or computer system used by such a person, in each case, interfacing with or accessing the Legacy System or eProsecutor Software through an interface or its public portal or (c) any individual person who is a member of the general public (including litigants and their attorneys, reporters and interested citizens, but not government employees who are performing their jobs), or a computer terminal or computer system used by such a person, accessing the Legacy System or eProsecutor Software at any given time for any reason through its public portal (including to file documents electronically or to view information already in or accessible through the Legacy System or eProsecutor Software).

## **2. LICENSE**

**2.1 Grant of Legacy System License.** Upon the Effective Date, Licensor grants to Licensee and Licensee hereby accepts from Licensor a non-exclusive, non-transferable, personal license to install and Use the Legacy System; provided, however, that Licensee's

rights with respect to the Legacy System are at all times and in all respects subject to the terms and conditions of this Agreement. Licensee's authorized Users may Use the Legacy System only during the Legacy System License Term and only so long as Licensee has paid the required License, Maintenance and Support Fees for such Users and is not otherwise in default under this Agreement. The Legacy System is the proprietary information and a trade secret of Licensor and this Agreement grants Licensee no title or rights of ownership in the Legacy System. The Legacy System is being licensed and not sold to the Licensee. The Legacy System is protected by United States copyright laws and international copyright treaties, as well as other intellectual property laws.

**2.2 Grant of eProsecutor License.** Upon commencement of the eProsecutor License Term, Licensor grants to Licensee and Licensee hereby accepts from Licensor a non-exclusive, non-transferable, personal license to install and Use eProsecutor; provided, however, that Licensee's rights with respect to eProsecutor are at all times and in all respects subject to the terms and conditions of this Agreement. Licensee's authorized Users may Use the eProsecutor Software only during the eProsecutor License Term and only so long as Licensee has paid the required License, Maintenance and Support Fees for such Users and is not otherwise in default under this Agreement. This license includes the right to make one copy of the eProsecutor Software in machine-readable form solely for Licensee's back-up purposes. The eProsecutor Software is the proprietary information and a trade secret of Licensor and this Agreement grants Licensee no title or rights of ownership in the eProsecutor Software. The eProsecutor Software is being licensed and not sold to the Licensee. The eProsecutor Software is protected by United States copyright laws and international copyright treaties, as well as other intellectual property laws.

**2.3 License Term and License, Maintenance and Support Fees.**

**2.3.1 Legacy System License Term.** The Legacy System License Term shall commence on the Effective Date; provided that the License, Maintenance and Support Fees for the first year of the Legacy System License Term for any Users that will Use the Legacy System as of or immediately following the Effective Date must have been received prior to such date. The Legacy System License Term shall continue until the date of eProsecutor Go Live, which is estimated to occur twelve (12) months after the Effective Date. Upon the date of eProsecutor Go Live, the Legacy System License Term shall terminate, as shall Licensor's obligations to provide licenses, Maintenance and Support for the Legacy System. If the date of eProsecutor Go Live has not occurred when the initial year of the Legacy System License Term ends, the Legacy System License Term shall renew for a successive twelve (12) month term; provided, however, that notwithstanding such renewal, the Legacy System License Term shall terminate on the date of eProsecutor Go Live. Any unused Legacy System License, Maintenance and Support Fees shall be applied to License, Maintenance and Support Fees to be paid for the eProsecutor Software.

**2.3.2 eProsecutor License Term.** The eProsecutor License Term shall commence on the date of initial eProsecutor® Go Live; provided that the License, Maintenance and Support Fees for the first year of the eProsecutor License Term for any Users that will Use the eProsecutor Software as of or immediately following such eProsecutor® Go Live must have been received prior to such date (and the license file shall

not be delivered, and the eProsecutor License Term shall not begin, until such License, Maintenance and Support Fees have been received by Licensor). The eProsecutor License Term shall continue until the fifth anniversary of the date of final eProsecutor® Go Live, and shall thereafter automatically renew for successive one-year periods (the "eProsecutor License Term"), unless Licensee elects to not renew the eProsecutor License Term upon written notice to Licensor given not less than ninety (90) days prior to the end of the then-current eProsecutor License Term.

**2.3.3 License, Maintenance and Support Fees.** Licensee shall make payment of the License, Maintenance and Support Fees to Licensor based on the number of Users and calculated in accordance with Exhibit A, in advance of each applicable year of the Legacy System License Term and eProsecutor License Term, including each year of the original eProsecutor License Term and each one-year extension; provided that the License, Maintenance and Support Fees for the first year of the eProsecutor License Term must be paid prior to initial eProsecutor® Go Live in accordance with the proviso set forth in Section 2.3.2. Annual License, Maintenance and Support Fees are subject to increase in accordance with Exhibit A. Licensee may increase the number of Users at any time upon written notice to Licensor, which shall be promptly followed by payment reflecting the increased License, Maintenance and Support Fees, calculated according to Exhibit A, and pro-rated for any partial year of the eProsecutor License Term. Licensee may also reduce the number of Users of the eProsecutor Software, and the commensurate fee payable, but such reduction shall only become effective at the beginning of the following year of the eProsecutor License Term, and the written reduction notice must be given at least sixty (60) days before the next anniversary of the start of the eProsecutor License Term. All sales taxes or similar fees levied on account of payments to Licensor are the responsibility of Licensee.

**2.3.4 Certain Specific Limitations.** Licensee shall not, and shall not permit any User or other party to, (a) copy or otherwise reproduce, reverse engineer or decompile all or any part of the Legacy System or eProsecutor Software, (b) make alterations to or modify the Legacy System or eProsecutor Software, (c) grant sublicenses, leases or other rights in or to the Legacy System or eProsecutor Software, or (d) permit any party access to the Legacy System or eProsecutor Software for purposes of programming against it. Licensee shall be solely responsible for preventing improper, unauthorized, accidental, or unlawful (1) misuse of User accounts for the Legacy System or eProsecutor Software; (2) changes by the Licensee to the Legacy System or eProsecutor Software or its database; or (3) software scripts from being added to the Legacy System or eProsecutor Software or its database by the Licensee. Licensee is also solely responsible for, and shall indemnify, defend, and hold harmless Licensor regarding, any Loss Event Expenses that arise from unlawful or accidental access or disclosure of Customer Data that is stored on a computer system, network, server, workstation, PC, desktop, notebook, or mobile device of the Licensee or one of its agents or contractors (other than Licensor or one of its agents or contractors). Section 6.2 ("Licensor's Responsibilities") shall apply to Customer Data stored on computer systems of Licensor or one of its agents or contractors.

**2.3.5 E-Commerce Functionality Fees.** If Public Portal is included in the Legacy System or eProsecutor Software and the e-commerce functionality of Public Portal

is utilized, Licensor shall provide a PCI compliant payment gateway and payment processing functionality. A merchant services agreement will be provided to Licensee upon request. If Licensee requires an alternate payment processor provider, Licensee is responsible for all additional development costs to connect Public Portal with the payment processor provider.

**2.3.6 Source Code Escrow.** Licensee shall have the opportunity to be added as a beneficiary under the eSeries Source Code Agreement between Licensor and InnovaSafe, Inc., as it may be amended from time to time, a copy of which is attached as Exhibit B ("SOURCE CODE ESCROW AGREEMENT"). Licensee shall complete the beneficiary enrollment form and provide the completed form to Licensor for submission to InnovaSafe.

**2.3.7 Hosted Services.** If Licensee desires for Licensor to provide hosted services for the Legacy System or eProsecutor Software, Licensor can provide such services subject to the terms and conditions set forth in Exhibit D ("HOSTED SERVICES"), and to Licensee's payment of the requisite hosting and storage fees referenced therein and set forth in Exhibit A for all periods during which Licensor provides Hosted Service, in addition to Licensee's payment of the License, Maintenance and Support Fees in accordance with Section 2.2.2 and Exhibit A. Notwithstanding the foregoing, Licensor shall not provide hosted services unless Licensor has attached Exhibit D to this Agreement upon Licensee's request therefor, or Licensee and Licensor have entered into a separate written agreement for such services. In the event Licensee is receiving hosted services as set forth in Exhibit D, but desires to transfer the Licensed Software to Licensee's on-premise servers, Licensor can perform the transfer pursuant to the terms of a Statement of Work and the payment by Licensee of professional services fees based on Licensor's then-current hourly rate. Licensee shall provide Licensor with reasonable notice not less than ninety (90) days of its intent to host the Licensed Software on Licensee's on-premise servers, and the transfer shall only be effected upon the execution of a mutually agreed Statement of Work incorporated into the Professional Services Agreement, of even date herewith.

## **MAINTENANCE AND SUPPORT**

**2.4 Maintenance.** Maintenance will be provided for the Legacy System and eProsecutor Software provided that Licensee has paid the applicable License, Maintenance and Support Fees described in Section 2.3.3, and subject to all of the terms and conditions of this Agreement. Maintenance for the eProsecutor Software will be available when the applicable enhancement, upgrade or release is first made generally available to persons entitled to receive maintenance from Licensor. For the avoidance of doubt, Maintenance for the Legacy System that Licensee is replacing with the eProsecutor Software shall be limited to updates to the Legacy System to address critical bugs, which are defined as errors in the Legacy System recognized by JTI, that if not fixed prevent Licensee from conducting its normal operations, and for which there is no workaround.

**2.5 Support.** Support for the Legacy System and eProsecutor Software and its Public Portal is available by telephone, e-mail, or internet support forum from 5:00 am to

6:00 pm Mountain time, Monday through Friday, except for federal holidays. Support for interfaces provided by Licensor using the Legacy System and eProsecutor Software's application programming interface (API) is available by the same contact methods and during the same times for ninety (90) days following eProsecutor® Go Live. Licensor shall generally provide an initial response within four (4) hours of first contact. Licensor shall use all reasonable diligence in correcting verifiable and reproducible errors reported to Licensor. Licensor shall, after verifying that such an error is present, initiate work in a diligent manner toward development of a solution. If the error is categorized as "Critical" (meaning an error for which there is no workaround and which causes data loss, affects a mission critical task or poses a possible security risk that could compromise the system), Licensor shall provide a solution through a service release as soon as possible. Licensor shall not be responsible for correcting errors in any version of the Legacy System or eProsecutor other than the current version, with the exception of Critical errors, for which a service release will be provided for the most recent previous version as well. Licensor shall not be responsible for errors caused by hardware limitations or failures, network infrastructure, operating system problems, operator errors or any errors related to processes, interfaces or other software. Notwithstanding anything to the contrary in the foregoing, any technical assistance for configuration, conversion or interfaces provided by Licensor using the Legacy System or eProsecutor Software's application programming interface (API) is available by the same contact methods and during the same times as set forth in the first sentence of this subsection and for ninety (90) days following eProsecutor® Go Live. For the avoidance of doubt, Support for the Legacy System Licensee if replacing with the eProsecutor Software shall be limited to access to technical assistance for the Legacy System, which shall include only: (i) the resolution of error messages, (ii) critical bug fixes and (iii) troubleshooting.

## **2.6 Conditions to Receive Support.**

2.6.1 Licensee must designate one or more Application Administrators, each of whom shall be an employee or contractor of Licensee. Only a designated Application Administrator may request Support. It is the responsibility of Licensee to instruct Users to route Support requests through the Application Administrator.

2.6.2 Licensee must maintain a dedicated connection, approved by Licensor, to the Legacy System or eProsecutor Software's database and/or application server, with full screen access to the server and full administrative rights to publish information and make changes.

2.6.3 Licensee must maintain all related hardware and software systems required for the operation of the Legacy System or eProsecutor Software. Minimum System requirements are attached as Exhibit C ("SYSTEM REQUIREMENTS"). Licensor shall have no responsibility for configuring, maintaining or upgrading Licensee's operating system, hardware, network, or any other software not provided by Licensor. Licensor is not responsible for creating or maintaining database or storage backup files.

2.6.4 Licensee must keep current and have installed the latest generally available version of the Legacy System or eProsecutor Software or the most recent previous version.

2.6.5 Licensee must provide Licensor's support personnel with accurate configuration information, screen shots, or other files and documentation as required for each support request.

2.7 Other Support. Services that go beyond routine Support may be provided under the terms of a professional services agreement upon agreement of the parties.

### 3. WARRANTY

3.1 Legacy System and eProsecutor Software Warranty. Licensor warrants that the Legacy System and eProsecutor Software will perform in all material respects during the Legacy System License Term and eProsecutor License Term, in accordance with the applicable user, administrative, and technical electronic guides. Notwithstanding the foregoing, this warranty shall not apply and Licensor will incur no liability whatsoever if there is or has been (a) the use of any non-current version (or the most recent previous version) of the Legacy System or eProsecutor Software, (b) the combination of the Legacy System or eProsecutor Software with any other software not recommended, provided or authorized by Licensor, (c) modification of the Legacy System or eProsecutor Software, (d) any use of the Legacy System or eProsecutor Software in breach of this Agreement or (e) any failure to satisfy the conditions to receive Support under Section 3.3 ("Conditions to Receive Support") above. If at any time during the Legacy System License Term or eProsecutor License Term the Legacy System or eProsecutor Software fails to perform according to this warranty, Licensee shall promptly notify Licensor in writing of such alleged nonconformance, and Licensor shall provide bug fixes and other Support, but only so long as the alleged nonconformance is not caused by an act of Licensee or any third party not under the control of or authorized by Licensor; and, in the case of the Legacy System, subject to the express limitations on Maintenance and Support set forth in Section 3.1 ("Maintenance") and Section 3.2 ("Support"). After the bug fixes and Support have been provided, if any such non-performance materially impairs the ability of Licensee to utilize the Legacy System or eProsecutor Software, Licensee shall have the right, on thirty (30) days' notice, to terminate the license and this Agreement (with a credit for License, Maintenance and Support Fees paid with respect to the period in which utilization was materially impaired).

3.2 Warranty of Law. Licensor represents and warrants that to the best of Licensor's knowledge: (i) there is no claim, litigation or proceeding pending or threatened against Licensor with respect to the Legacy System or eProsecutor Software or any component thereof alleging infringement of any patent or copyright or any trade secret or any proprietary right of any person; (ii) the Legacy System and eProsecutor Software comply in all material respects with applicable laws, rules and regulations; (iii) Licensor has full authority to enter into this Agreement and to consummate the transactions contemplated hereby; and (iv) this Agreement is not prohibited by any other agreement to which Licensor is a party or by which it may be bound (the "Legal Warranty"). In the



event of a breach of the Legal Warranty, Licensor shall indemnify and hold harmless Licensee from and against any and all losses, liabilities, damages, causes of action, claims, demands, and expenses (including reasonable legal fees and expenses) incurred by Licensee, arising out of or resulting from said breach.

**3.3 Warranty of Title.** Licensor further warrants that (i) it has good title to the Legacy System and eProsecutor Software; (ii) it has the absolute right to license the Legacy System or eProsecutor Software; (iii) as long as Licensee is not in material default hereunder, Licensee shall be able to quietly and peacefully possess and Use the Legacy System and eProsecutor Software provided hereunder subject to and in accordance with the provisions of this Agreement; and (iv) Licensor shall be responsible for and have full authority to license all proprietary and/or third party software modules, algorithms and protocols that are incorporated into the Legacy System and eProsecutor Software (the "Title Warranty"). In the event of a breach of the Title Warranty, Licensor shall indemnify and hold harmless Licensee from and against any and all losses, liabilities, damages, causes of action, claims, demands, and expenses (including reasonable legal fees and expenses) incurred by Licensee, arising out of or resulting from said breach.

**3.4 No Other Warranties.** THE WARRANTIES AND REPRESENTATIONS STATED WITHIN THIS AGREEMENT ARE EXCLUSIVE, AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

#### **4. LIMITATIONS ON LIABILITY**

NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OR LOSS OF ANTICIPATED REVENUES (OR LIKE AMOUNTS) IN CONNECTION WITH OR ARISING OUT OF THE SUBJECT MATTER OF THIS AGREEMENT. FURTHERMORE, LICENSEE'S TOTAL LIABILITY WITH RESPECT TO CLAIMS ARISING OUT OF THE SUBJECT MATTER OF THIS AGREEMENT SHALL NOT EXCEED, IN THE AGGREGATE, THE TOTAL AMOUNT OF FEES PAYABLE HEREUNDER TO LICENSOR. IN NO EVENT SHALL LICENSOR'S TOTAL LIABILITY WITH RESPECT TO CLAIMS ARISING OUT OF THE SUBJECT MATTER OF THIS AGREEMENT EXCEED, IN THE AGGREGATE, THE TOTAL AMOUNT OF FEES PAID HEREUNDER TO LICENSOR FOR THE FIRST THREE YEARS OF THE EPROSECUTOR LICENSE TERM. MOREOVER, IN NO EVENT SHALL LICENSOR'S TOTAL LIABILITY WITH RESPECT TO CLAIMS ARISING OUT OF THE SUBJECT MATTER OF EXHIBIT D OR THE HOSTED SERVICE PROVIDED FOR THEREIN EXCEED, IN THE AGGREGATE, THE TOTAL AMOUNT OF HOSTING FEES PAID HEREUNDER TO LICENSOR FOR THE PRIOR TWELVE MONTHS OF THE HOSTING TERM.

#### **5. CONFIDENTIALITY**

**5.1 Licensee's Responsibilities.** Licensee shall implement reasonable and appropriate measures designed to help secure the Legacy System and eProsecutor Software and other materials received from Licensor under this Agreement from accidental or unlawful access or unauthorized or improper disclosure. Except as permitted by the terms of Section 2.1 ("Grant of License") or as required by law, Licensee shall not voluntarily and affirmatively disclose the Legacy System or eProsecutor Software or any of such materials to any third party, in whole or in part, without the prior written consent of Licensor, which may be granted or withheld in its sole discretion. If Licensee becomes aware of any accidental or unlawful access to or unauthorized or improper disclosure of the Legacy System or eProsecutor Software or any of such materials, it shall notify Licensor promptly, and in any event within 5 business days. Licensee shall also reasonably assist Licensor with preventing the recurrence of such accidental or unlawful access or unauthorized or improper disclosure and with any litigation against the third parties deemed necessary by Licensor to protect its proprietary rights.

**5.2 Licensor's Responsibilities.** Licensor shall implement reasonable and appropriate measures designed to help secure confidential Customer Data of Licensee that Licensor obtains from Licensee in the course of the performance of this Agreement from accidental or unlawful access or unauthorized or improper disclosure. Except as required by law, Licensor shall not voluntarily and affirmatively disclose to any third party confidential Customer Data that Licensor obtains from Licensee without the prior written consent of Licensee, which may be granted or withheld in its sole discretion. If Licensor becomes aware of any accidental or unlawful access to or unauthorized or improper disclosure of confidential Customer Data, it shall notify Licensee promptly, and in any event within 5 business days. Licensor shall also reasonably assist Licensee with preventing the recurrence of such accidental or unlawful access or unauthorized or improper disclosure and with any litigation against third parties deemed necessary by Licensee to protect its confidential Customer Data. For the avoidance of doubt, this Section is not intended to prevent Licensor's support personnel from accessing Licensee's Customer Data for purposes of investigating or resolving a Support request.

**5.3 Confidentiality Breach.** In the event a party breaches any of its obligations under this Section 6 ("Confidentiality"), the breaching party shall indemnify, defend and hold harmless the non-breaching party from and against any and all losses, liabilities, damages, causes of action, claims, demands, and expenses (including reasonable legal fees and expenses) incurred by the non-breaching party arising out of such breach. In addition, the non-breaching party will be entitled to obtain injunctive relief against the breaching party.

**5.4 Exclusions.** The provisions of this Section 6 ("Confidentiality") shall not apply to any information (a) that is in the public domain prior to the disclosure or that becomes part of the public domain other than by way of a breach of this Agreement, (b) that was in the lawful possession of the Licensor or Licensee, as the case may be, prior to the disclosure without a confidentiality obligation to any person, (c) that was disclosed to the Licensor or Licensee, as the case may be, by a third party who was in lawful possession of the information without a confidentiality obligation to any person, (d) that was independently developed by Licensor or Licensee, as the case may be, outside the scope of

this Agreement or (v) that Licensor or Licensee, as the case may be, is required to disclose by law or legal process.

## **6. TERM AND TERMINATION**

**6.1 Term.** The term of this Agreement shall expire at the end of the eProsecutor License Term or, if earlier, upon termination of this Agreement in accordance with the terms of this Section 7 ("Term and Termination").

### **6.2 Termination by Licensor.**

**6.2.1 Payment Default.** Licensor shall have the right to terminate the license granted in Section 2.2 ("License Term and License, Maintenance and Support Fees"), and this Agreement (but reserving cumulatively all other rights and remedies under this Agreement, the Professional Services Agreement, in law and/or in equity), for any failure of Licensee to make payments of amounts due to Licensor when the same are due (including, without limitation, any fees or other amounts due and payable to Licensor for implementation services under the Professional Services Agreement), and such failure continues for a period of thirty (30) days after written notice thereof by Licensor to Licensee.

**6.2.2 Other Licensee Defaults.** Licensor may terminate the license granted in Section 2.2 ("License Term and License, Maintenance and Support Fees"), and this Agreement (but reserving cumulatively all other rights and remedies under this Agreement, the Professional Services Agreement, in law and/or in equity), for any other material breach by Licensee which breach continues for a period of thirty (30) days after written notice thereof by Licensor to Licensee.

**6.3 Termination by Licensee.** Licensee shall have the right to terminate this Agreement (reserving cumulatively all other rights and remedies under this Agreement, the Professional Services Agreement, in law and/or in equity) without further obligation or liability to Licensor (except as specified herein and/or in the Professional Services Agreement) if Licensor commits any material violation or breach of this Agreement and fails to remedy such breach within thirty (30) days after written notice by Licensee to Licensor of such breach. Licensee shall have the right to terminate this Agreement effective immediately and without prior notice if Licensor goes into liquidation or bankruptcy, or if Licensor permanently discontinues Maintenance and Support for the eProsecutor Software.

**6.4 Actions Upon and Following Termination.** Termination of this Agreement shall not affect any rights and/or obligations of the parties which arose prior to any such termination and such rights and/or obligations shall survive any such termination. Licensee must cease use of the Legacy System or eProsecutor Software (as applicable) immediately upon termination, and must remove and return the Legacy System or eProsecutor Software (as applicable) and all other products and information received by Licensee from Licensor within thirty (30) days after termination. If not removed and returned within such thirty (30) day period, Licensee hereby grants Licensor the right to

remove the Legacy System or eProsecutor Software (as applicable). In addition, the confidentiality obligations of the parties in Section 6 ("Confidentiality") shall survive the termination of this Agreement.

## 7. GENERAL

7.1 Waiver, Amendment or Modification. The waiver, amendment or modification of any provision of this Agreement or any right, power or remedy hereunder shall not be effective unless made in writing and signed by both parties. No failure or delay by either party in exercising any right, power or remedy with respect to any of its rights hereunder shall operate as a waiver thereof.

7.2 Notice. All notices under this Agreement shall be in writing and shall be deemed to have been duly given if delivered in person, by commercial overnight courier or by registered or certified mail, postage prepaid, return receipt requested, and addressed as follows:

To Licensor: Journal Technologies, Inc.  
915 East First Street  
Los Angeles, CA 90012  
Attention: Maryjoe Rodriguez, President

and

Munger, Tolles & Olson LLP  
1155 F St. NW  
Washington, DC 20004  
Attention: Brett Rodda

Brent W. Wolfingbarger - Sr. Deputy Attorney General

To Licensee: State Capitol, Bldg 1 Room E-26, Charleston, WV 25305

8.3 No Third Party Beneficiaries. This Agreement is not intended to create any right in or for the public, or any member of the public, any subcontractor, supplier or any other third party, or to authorize anyone not a party to this Agreement to maintain a suit to enforce or take advantage of its terms.

8.4 Successors and Assigns. Neither party may assign this Agreement in whole or part without the prior written consent of the other party; provided that Licensor may assign this Agreement to another subsidiary of Daily Journal Corporation, directly or by operation of law, without the prior written consent of Licensee. Any attempt to assign this Agreement without the prior written consent of the other party is void and without legal effect, and such an attempt constitutes grounds for termination by the other party. Subject to the foregoing, all of the terms, conditions, covenants, and agreements contained herein shall inure to the benefit of, and be binding upon, any successor and any permitted assignees of the respective parties hereto. It is further understood and agreed that consent by either party to such assignment in one instance shall not constitute consent by the party to any other assignment. A transfer of corporate control, merger, sale of substantially all of

a party's assets and the like, even though including this Agreement as an assigned asset or contract, shall not be considered an assignment for these purposes.

8.5 Dispute Resolution. Any dispute arising under or related to this Agreement shall be resolved exclusively as follows, with the costs of any mediation and arbitration to be shared equally by both parties:

8.5.1 Initial Resolution by Meeting. The parties shall first attempt to resolve amicably the dispute by meeting with each other, by telephone or in person at a mutually convenient time and location, within thirty (30) days after written notice of a dispute is delivered from one party to the other. Subsequent meetings may be held upon mutual agreement of the parties.

8.5.2 Mediation. If the dispute is not resolved within sixty (60) days of the first meeting, the parties shall submit the dispute to mediation by an organization or company specializing in providing neutral, third-party mediators. Licensee shall be entitled to select either (i) the location of the mediation or (ii) the organization or company, and Licensor shall select the other. The mediation shall be conducted within sixty (60) days of the date the dispute is submitted to mediation, unless the parties mutually agree on a later date.

8.5.3 Arbitration. Any dispute that is not otherwise resolved by meeting or mediation shall be exclusively resolved by arbitration between the parties in accordance with the Comprehensive Arbitration Rules & Procedures of JAMS, with the arbitration to be conducted in Los Angeles, California, or another location mutually agreed by the parties. The results of such arbitration shall be binding on the parties, and judgment may be entered in any court having jurisdiction. Notwithstanding the foregoing, either party may seek interim injunctive relief from any court of competent jurisdiction.

8.6 Control of Defense. All indemnification obligations under this Agreement are conditioned upon (i) written notice by the indemnified party to the indemnifying party within thirty (30) days of the indemnified party's receipt of any claim for which indemnification is sought, (ii) tender of control over the defense and settlement to the indemnifying party and (iii) such reasonable cooperation by the indemnified party in the defense as the indemnifying party may request; provided, however, the indemnifying party shall not, without the prior written consent of the indemnified party, settle, compromise or consent to the entry of any judgment with respect to any pending or threatened claim unless the settlement, compromise or consent provides for and includes an express, unconditional release of such claim against the indemnified party.

8.7 Force Majeure. Neither party will be liable for any delay or failure to perform any obligation under this Agreement (except for any obligations to make payments) where the delay or failure results from any cause beyond such party's reasonable control including, without limitation, acts of God, labor disputes or other industrial disturbances, electrical or power outages, utilities or other telecommunications failures, internet service provider failures or delays, denial of service attacks, earthquake,

storms or other elements of nature, blockages, embargoes, riots, acts or orders of government, acts of terrorism, war, epidemics, or pandemics.

8.8 **Governing Law.** The validity, construction and performance of this Agreement and the legal relations among the parties to this Agreement shall be governed by and construed in accordance with the laws of the State of Hawai'i without giving effect to its conflict of law principles.

8.9 **Severability.** In the event any one or more of the provisions of the Agreement shall for any reason be held to be invalid, illegal or unenforceable, the remaining provisions of this Agreement shall be unimpaired, and the invalid, illegal or unenforceable provision shall be replaced by a provision, which, being valid, legal and enforceable, comes closest to the intention of the parties underlying the invalid, illegal or unenforceable provision.

8.10 **Entire Agreement.** This Agreement, together with the Professional Services Agreement and all Exhibits attached hereto and thereto, constitutes the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein and therein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter.

8.11 **Counterparts.** This Agreement may be executed in counterparts and by the exchange of signatures by facsimile or PDF.

*[Continued on Next Page]*

IN WITNESS WHEREOF, the parties have caused this instrument to be duly executed as of the date last written below.

**JOURNAL TECHNOLOGIES, INC:**

By: M Rodriguez

Date: 8/10/2022

Printed Name and Title: Maryjoe Rodriguez, President

**WEST VIRGINIA MEDICAID FRAUD CONTROL UNIT:**

By: [Signature]

Date: 6/30/22

Printed Name and Title: Debra P. B. Harrison II  
Chief Deputy AG



**EXHIBIT A**  
**LICENSE, MAINTENANCE AND SUPPORT FEES**

**A. Legacy System Fees**

Upon the Effective Date, License, Maintenance and Support and Hosting and Storage Fees for the Legacy System shall be due and payable by Licensee, covering the initial twelve (12) month period of the Legacy System License Term, in the amount of \$42,491.40 for JustWare support and hosting services for 25 users.

If the date of eProsecutor Go Live has not occurred when the initial twelve (12) month period of the Legacy System License Term ends, the Legacy System License Term shall renew pursuant to Section 2.2.2 and License, Maintenance and Support and Hosting and Storage Fees for such subsequent period shall be due and payable by Licensee, and such fees shall include an increase not to exceed five (5) percent.

Upon eProsecutor Go Live, any unused Legacy System License, Maintenance and Support and Hosting and Storage Fees shall be applied to the License, Maintenance and Support and Hosting and Storage Fees to be paid for eProsecutor, set forth in Section B ("eProsecutor License, Maintenance and Support and Hosting and Storage Fees") of this Exhibit A.

**B. eProsecutor® License, Maintenance and Support and Hosting and Storage Fees**

Upon eProsecutor® Go Live, Licensee shall be responsible for the License, Maintenance and Support and Hosting and Storage Fees set forth in this Section B.

1. **eProsecutor Software:** The annual License, Maintenance and Support Fees include eProsecutor Software licenses, maintenance updates, upgrades and routine Support as described in the Agreement.
2. **Annual eProsecutor® License, Maintenance and Support Fees: \$50,000** (and adjusted for any CPI increase after the first year), which includes:
  - (a) eProsecutor Software licenses for up to a total of 38 agency Users (i.e., Users identified in clause (a) of the definition of "User" in Section 1.12).
  - (b) 8 additional licenses (i.e., 20% of agency Users) for unlimited use of the Public Portal by other governmental agencies including those accessing the eProsecutor Software via interfaces or the Public Portal, (i.e., Users identified in clause (b) of such "User" definition).
  - (c) 4 additional licenses (i.e., 10% of agency Users) for unlimited use of Public Portal by public Users (i.e., Users identified in clause (c) of such "User" definition).

For a total of up to 50 User licenses.



If the number of agency Users increases or decreases, the annual License, Maintenance and Support Fees will be adjusted pursuant to the pricing table set forth below, but subject in all events to a minimum annual License, Maintenance and Support Fee of \$50,000:

**Pricing Table for System User Licenses for Centralized System**

<u>User Groups*</u>	<u>User Licenses</u>	<u>Annual License, Maintenance and Support Fees</u>	
		<u>Per License</u>	<u>For Group</u>
1-50	50	\$ 1,000	\$ 50,000
51-100	50	800	40,000

\*The actual number of User licenses will be used to determine the annual fee, with 50 licenses being the minimum. Each additional agency User shall require the purchase of 1.3 additional User licenses.

An annual CPI adjustment will automatically be applied to the annual License, Maintenance and Support Fees for each year of the eProsecutor License Term after the first year.

3. **Annual eProsecutor® Hosting and Storage Fees:** \$40,000 (and adjusted for any CPI increase after the first year), which includes 1TB of database storage, with each additional TB priced at \$4,000 annually. Document storage shall be charged in accordance with Licensee's usage, and pursuant to the table set forth below. Document storage fees are subject to change throughout the course of the Agreement upon 60 days prior notice by Journal Technologies.

All Cloud Storage fees are NON-REFUNDABLE for any reason. Journal Technologies will NOT refund, and will not be obligated or required to refund, any storage fees under any circumstances.

**a. DOCUMENT STORAGE**

**1. PRICING/FEES**

<b>Service</b>	<b>Price per month</b>
Storage – Frequent Access Tier	\$0.093 per GB
Storage – Infrequent Access Tier	\$0.055 per GB

\* Storage usage is calculated in binary gigabytes (GB), where 1GB is 1,073,741,824 bytes. This unit of measurement is also known as a gibibyte (GiB), defined by the International Electrotechnical Commission (IEC)

**2. PAYMENTS**

Journal Technologies shall automatically bill County on a monthly basis for Document Storage. County shall have two options for paying for these monthly fees:

**Option #1: Invoice**

County will be sent a monthly invoice for average daily storage usage. County may use ACH to make its monthly Invoice Payments.

**Option #2: Automated**

If County wishes to automatically pay for their monthly storage, County may setup an automatic payment plan with Journal Technologies.

**B. DATABASE STORAGE**

**1. PRICING/FEES**

<b>Description</b>	<b>Price</b>
First 1TB	Free
Cost per year for each additional TB	\$4,000

**2. PAYMENTS**

If database storage is either (i) automatically expanded or (ii) clients request purchase of additional storage, clients are invoiced immediately with the prorated rate calculated to the end of your annual license renewal period. Thereafter the additional storage is billed annually along with the Hosting Fee.

If the number of agency Users increases or decreases, the annual Hosting and Storage Fees will be adjusted pursuant to the pricing table set forth below, but subject in all events to a minimum annual Hosting and Storage Fees of \$40,000:

**Pricing Table for System User Licenses for Centralized System**

<u>User Groups*</u>	<u>User Licenses</u>	<u>Annual License, Maintenance and Support Fees</u>	
		<u>Per License</u>	<u>For Group</u>
1-50	50	\$800	\$40,000
51-100	50	500	25,000

\*The actual number of User licenses will be used to determine the annual fee, with 50 licenses being the minimum. Each additional

agency User shall require the purchase of 1.3 additional User licenses.

Payment of the Annual Hosting and Storage Fees shall be subject to the same payment schedule as the annual License Fees and shall also be subject to an annual CPI increase adjustment. For the avoidance of doubt, Licensee shall continue to pay both the annual License, Maintenance and Support Fees and the Annual Hosting and Storage Fees.

In addition to the annual Hosting and Storage Fees that will be charged during the eProsecutor License Term as set forth above, if Licensee elects to have Licensor host the data conversion testing environment during the eProsecutor project implementation phase prior to eProsecutor Go Live, then Licensee shall pay Licensor a monthly fee of \$3,300/month for such hosted services provided prior to eProsecutor Go Live (but there shall be no monthly fee payable for the first two months of such pre-Go Live hosted services). The aggregate total monthly fees for such pre-Go Live hosting services (which shall be pro-rated for any partial month) shall be payable by Licensee in two equal installments, the first payable prior to eProsecutor Go Live with Licensee's payment of the annual License, Maintenance and Support Fees and Hosting and Storage Fees for the first year of the eProsecutor License Term, and the second payable upon the first anniversary of the date of eProsecutor Go Live with Licensee's payment of the annual License, Maintenance and Support Fees and Hosting and Storage Fees for the second year of the eProsecutor License Term.

**EXHIBIT B**  
**SOURCE CODE ESCROW AGREEMENT**



License Agreement -  
Ex B - Innovasafe Escr

**Exhibit B - Source Code Escrow Agreement**



**IS2ex**

**Software Escrow Agreement**

**This Agreement is between the Depositor and InnovaSafe.  
Licensees are enrolled as a Beneficiary.**

**Use This Agreement if:**

- Multiple Licensees will be added and management of single or multiple deposits are needed.
- Beneficiary specific terms and conditions may be required.
- Modifiable Agreement is required
- Services include:
  - Complete client service
  - Fees Locked For the Initial Term
  - Physical or Electronic Deposits
  - Quarterly Deposits Included
  - No Additional Storage Fee
  - Toll Free Telephone Support (800) 239-3989

**Questions? Please call (800) 239-3989 or  
Live Online Support at [www.innovasafe.com](http://www.innovasafe.com)**

This Software Source Code Escrow Agreement ("Agreement"), number 2738, effective as of the date signed by the Depositor ("Effective Date"), is made and entered into by InnovaSafe, Inc. ("InnovaSafe"), a California corporation, located at 28502 Constellation Road, Valencia, California, 91355-5082, and Journal Technologies, Inc. successor in interest to Sustain Technologies, Inc. ("Depositor"), located at 915 East First Street, Los Angeles, California 90012 and each additional person or entity subscribed hereto as a Beneficiary or Designated Beneficiary in accordance with the requirements of this Agreement. In consideration of the covenants, conditions, warranties and restrictions contained in this Agreement, the parties agree as follows:

## 1. DEFINITIONS

For purposes of this Agreement, the following capitalized terms shall have the meanings set forth below, unless expressly defined otherwise in this Agreement:

**"Beneficiary"** means and includes a person or entity that has subscribed hereto as a Beneficiary in accordance with the requirements of Paragraphs 3.1 and 3.2(a) of this Agreement and each Designated Beneficiary.

**"Beneficiary Enrollment Form"** means the form used by InnovaSafe for the addition of a Beneficiary or Beneficiaries to this Agreement in accordance with the requirements of Paragraph 3 hereof, as such form may be modified or replaced by InnovaSafe in its sole discretion from time to time during the term of this Agreement. A copy of the current Beneficiary Enrollment Form is attached hereto as Exhibit B and incorporated herein.

**"Designated Beneficiary"** means and includes any person or entity that has not subscribed hereto as a Beneficiary pursuant to Paragraph 3.2(a), but has been designated by Depositor as a Beneficiary hereof in accordance with the requirements of Paragraphs 3.1 and 3.2(b) of this Agreement. Each Designated Beneficiary shall have the rights and obligations of a Beneficiary under this Agreement, including but not limited to the conditional rights set forth in Paragraph 4 of this Agreement.

**"Description of Escrow Deposit"** means a general description of the Software and the Escrow Deposit as set forth on Exhibit A attached hereto and incorporated herein.

**"Escrow Deposit" or "Deposit"** means the copies of the Source Code, drawings, computer intellectual property, documentation, web site content, trade secrets, and other related material, deposited with InnovaSafe by the Depositor, or otherwise held by InnovaSafe pursuant to the terms of this Agreement.

**"License Agreement"** means any agreement pursuant to which Depositor licenses the Software to a Beneficiary in object code form.

**"Replacement"** means a Deposit relating to any complete change, modification, enhancement or alteration of the Source Code since the last Deposit which completely replaces all of the previous Deposits.

**"Software"** means the software that as of the date hereof is licensed by the Depositor to a Beneficiary pursuant to a License Agreement, and which is generally described in the Description of Escrow Deposit.

**"Source Code"** means the Software in source code form, including all documentation and instructions necessary to maintain, duplicate, compile, interpret and install the source code for the Software.

**"Update"** means any modification, update or revision of any Software that is subject of the Escrow Deposits currently being held by InnovaSafe.

## 2. DEPOSIT PROCEDURES

**2.1 Initial, Additional, and Duplicate Deposits:** (a) Within thirty (30) days of the Effective Date of this Agreement, Depositor agrees to deposit with InnovaSafe, copies of the Source Code for the version of the Software as licensed under a License Agreement. With such delivery, Depositor agrees to provide InnovaSafe with a completed Description of Deposit (Exhibit A). (b) Depositor also agrees to deposit with InnovaSafe the Deposit for each Update or Replacement within thirty (30) days after its

release, distribution, or other publication by Depositor in the ordinary course of business. With each such delivery, Depositor agrees to provide InnovaSafe with a completed Description of Deposit (Exhibit A). (c) Depositor shall deliver a duplicate Deposit (including all Updates) within five (5) days of receipt of a written request from an authorized representative of InnovaSafe. Without limiting the foregoing, Depositor shall deliver a duplicate Deposit (including all Updates) to replace any previous Deposit that is impaired due to a defect in or natural degeneration of the recorded medium. All duplicate Deposits may not be encrypted, except for an Update or Replacement Deposit that is transmitted to InnovaSafe in accordance with Paragraph 2.2. (d) Notwithstanding any other provision of this Agreement, InnovaSafe shall have no obligation to return to Depositor any Deposit.

**2.2 Encrypted Electronic Deliveries:** Subject to the prior agreement of InnovaSafe and Depositor regarding delivery and decryption protocols, Depositor shall have the option but not the obligation to encrypt and transmit the encrypted Deposit for each Deposit over the Internet using InnovaSafe's SafeDeposit services. InnovaSafe shall not be liable to Depositor or Beneficiary for any encrypted Deposit, or any part thereof that is transmitted over the Internet..

**2.3 Deposit Receipt Notification:** For each Deposit, InnovaSafe will issue a receipt to Depositor, accompanied by a general list or description of the materials deposited. InnovaSafe shall notify Depositor and Beneficiary of receipt of each Deposit by electronic mail ("email") to the email address described in Paragraph 10 of this Agreement or the Beneficiary Enrollment Form, as applicable, within thirty (30) days following receipt by InnovaSafe of the Deposit.

**2.4 Technical Verification of Deposit:** Any party may request that InnovaSafe perform a deposit verification of the Deposit. Any charges and expenses incurred by InnovaSafe in carrying out a deposit verification will be paid by the party requesting the deposit verification, unless otherwise agreed to in writing. **Limitations:** Except solely in connection with the performance by InnovaSafe of a deposit verification or another technical verification that has been requested and agreed to by the parties in accordance with this Agreement, InnovaSafe shall have no obligation to determine the physical condition, accuracy, completeness, functionality, performance or non-performance of any Deposit or whether the Deposit contains Source Code.

**2.5 Failed Deliveries, Duty of Care and Sub-Contractors:** (a) InnovaSafe will not be responsible for procuring the delivery of any Deposit. (b) InnovaSafe shall perform all of the duties required by this Agreement diligently and in good faith. Except as expressly stated in Section 2 of this Agreement, InnovaSafe shall have no duty of care, inquiry or disclosure, whether express or implied. (c) Any and all sub-contractors performing verification or other services on behalf of InnovaSafe shall be subject to the same duty of care as InnovaSafe.

### **3. BENEFICIARY ENROLLMENT PROCEDURES**

**3.1 Enrollment of Beneficiaries:** After InnovaSafe's acceptance of the initial Deposit, Depositor may join additional Beneficiaries, or name Designated Beneficiaries to this Agreement at any time and from time to time, in its sole and absolute discretion, provided that (a) at the time of entering into this Agreement the Depositor and the proposed Beneficiary or Designated Beneficiary are parties to a License Agreement; (b) Depositor is not in breach of this Agreement; (c) all fees and costs required to be paid to InnovaSafe under this Agreement have been paid; and (d) the proposed Beneficiary completes, signs and delivers the Beneficiary Enrollment Form as required hereunder or Depositor provides a written execution and delivery of the Exhibit Bns, Beneficiary Enrollment Form for a Designated Beneficiary, as applicable.

**3.2 Beneficiary Enrollment Forms:** (a) Each person or entity that subscribes as a Beneficiary to this Agreement shall be required to agree to the terms hereof and indicate such agreement by delivering to Depositor and InnovaSafe the completed Beneficiary Enrollment Form (Exhibit B) that has been signed by an authorized representative of Beneficiary. A person or entity that has not subscribed hereto as a Beneficiary in accordance with the requirements of this Agreement, including but not limited to, any other licensees of the Software, shall not have any rights hereunder and InnovaSafe shall have no duties to any such persons or entities, except as expressly provided in clause (b) of this Paragraph 3.2. (b) Subject to Paragraph 3.1 above, Depositor may name Designated Beneficiaries to this Agreement at any time and

from time to time, in its sole and absolute discretion, upon execution and delivery of the Exhibit Bns, Beneficiary Enrollment Form for a Designated Beneficiary. InnovaSafe shall issue an enrollment letter and a copy of the Agreement, and any other applicable document required hereunder to the Designated Beneficiary upon receipt of the Exhibit Bns. All rights and obligations of a Designated Beneficiary expressly provided for hereunder, may be modified, supplemented, extended, terminated or assigned by Depositor and InnovaSafe at any time, and from time to time, by amendment of this Agreement as further provided herein. Unless otherwise expressly set forth in an amendment to this Agreement as provided for in this Agreement, the rights and obligations of a Designated Beneficiary interests established hereunder shall not be modified by (i) any waiver for the benefit of such Designated Beneficiary that is entirely conditioned upon the complete and continuous satisfaction of each of the performance of and obligation required under this Agreement, or (ii) any failure to enforce any following the execution of the form of acknowledgement attached hereto as Exhibit D in which Beneficiary accept and agrees to be bound by the terms, conditions and obligations set forth in this Agreement, including, but not limited to, all obligations of Beneficiary set forth in Paragraph 4.4 of this Agreement, and all obligations of Designated Beneficiary set forth in Sections 9, 10 and 11 of this Agreement. No Deposit shall be released to any Designated Beneficiary until the Designated Beneficiary accepts and agrees to be bound by the terms, conditions and obligations in accordance with the requirements of this Agreement.

#### **4. DEPOSIT RELEASE PROCEDURES**

**4.1 Conditions to Enforcement:** Each Beneficiary shall have the right to enforce the Release Procedures described in this Paragraph 4 only if at the time of the requested release: (a) the License Agreement between Depositor and Beneficiary is in full force and effect, and Beneficiary is not in breach thereof; (b) the Beneficiary is not in breach of this Agreement; and (c) all fees and costs then due and owing to InnovaSafe shall have been paid in full.

**4.2 Release Conditions:** The release by InnovaSafe of the Deposit to Beneficiary as further provided in this Paragraph 4, shall be subject to the occurrence of one or more of the following conditions (each a "Release Condition"): (a) Depositor requests in writing that InnovaSafe release the Deposit to Beneficiary; (b) Depositor takes any action under any state corporation or similar law that will cause both the dissolution of the corporate existence of Depositor and the liquidation by Depositor of its assets; (c) Depositor has materially breached an obligation to provide maintenance or bug fixes to which Beneficiary is entitled under the License Agreement and (i) such material breach will cause Beneficiary to incur immediate and substantial injury for which money damages, or such other remedies provided by the License Agreement, would be inadequate, (ii) Beneficiary is not in breach of the terms of the License Agreement and (iii) Beneficiary has terminated the License Agreement in accordance with the terms of the License Agreement; (d) Depositor's duly appointed trustee in a bankruptcy or dissolution proceeding of Depositor requests in writing that InnovaSafe release the Deposit to Beneficiary; or (e) A court of competent jurisdiction, or an arbitrator, if applicable, issues an order or judgment directing InnovaSafe to release the Deposit to Beneficiary.

**4.3 Release Procedures:** InnovaSafe will release the Deposit to a Beneficiary subject to and in accordance with each of the following conditions: (a) Depositor may provide InnovaSafe with a written release request at any time, and a Beneficiary may provide InnovaSafe with a written release request following the occurrence of a Release Condition; (b) Provided that InnovaSafe has been paid all fees and costs then due and owing, InnovaSafe shall promptly deliver a copy of the release request to Depositor or such Beneficiary, as applicable (the "Notice of Release Request"); (c) If Depositor or Beneficiary objects to the requested release, then within thirty (30) days of the receipt of the Notice of Release Request, such party agrees to provide InnovaSafe with written notice of such objection, and to provide a copy of such notice to the party requesting the release, stating that a Release Condition has not occurred or has been cured, and instructing InnovaSafe not to release the Deposit as requested (the "Contrary Instructions"); (d) If InnovaSafe does not receive Contrary Instructions within the time and in the manner required above, then InnovaSafe shall deliver a copy of the Deposit to such Beneficiary; (e) If InnovaSafe does receive Contrary Instructions within the time and in the manner required above, then InnovaSafe shall not deliver a copy of the Deposit to such Beneficiary, but shall continue to hold the Deposit until the first to occur of the following: (i) InnovaSafe receives joint written release instructions from Depositor and such Beneficiary;



or (ii) InnovaSafe receives a copy of an order or judgment of a court of competent jurisdiction, or the decision of an arbitrator, if applicable, directing InnovaSafe to act with regard to disposition of the Deposit.

**4.4 Rights in Bankruptcy and Effect of Release:** (a) The parties agree that this Agreement, as it may be modified, supplemented, or replaced from time to time, is not intended and shall not be construed to constitute an election of remedies by any Beneficiary, or otherwise to supersede or foreclose any rights to which Beneficiary otherwise would be entitled under Title 11 United States Bankruptcy Code §365(n), as a licensee of intellectual property. (b) Upon receipt of the Deposit, and subject to the covenants, conditions, warranties and restrictions of this Agreement and the License Agreement, each Beneficiary shall have the right and hereby agrees to use the Deposit, including copying and modification thereof, only as reasonably necessary for the sole purpose of enabling such Beneficiary to use the Software for its intended purpose (unless otherwise authorized by the express terms of the License Agreement). Each Beneficiary shall use commercially reasonable measures to protect the integrity, security and confidentiality of the Deposit. The foregoing does not grant, sell, assign or otherwise transfer to any Beneficiary any title to or ownership of all or any part of the Deposit or Software, or related documentation, or any other property of Depositor, and without limiting the foregoing, does not grant to any Beneficiary any right to publish, perform, adapt, create derivative works from, or distribute the Software or any part thereof.

## **5. FEES AND PAYMENTS**

**5.1 Fee Schedule, Payments and Suspension of Performance:** (a) The fees and charges of InnovaSafe are set forth on the fee schedule attached hereto as Exhibit C and incorporated herein. After the expiration of the initial term, InnovaSafe may increase its fees and costs on an annual basis by providing written notice of such increase at least sixty (60) days prior to the commencement of the next renewal term. (b) All fees, costs and any other amounts due and payable to InnovaSafe for annual service fees as provided hereunder, shall be paid by Depositor. Initial and annual fees must be paid to InnovaSafe within 30 days of the Effective Date and on each anniversary thereof. All other amounts payable to InnovaSafe shall be paid within thirty (30) days from the date of invoice to Depositor or Beneficiary, as applicable. Any release fee under this Agreement shall be paid by the Beneficiary requesting release of the Deposit. Neither Depositor nor any Beneficiary shall be entitled to any refunds, withholdings, offsets, reductions in, or deductions from, any payments due to InnovaSafe hereunder. (c) In addition to and without limiting any other right or remedy to which InnovaSafe may be entitled, InnovaSafe shall have the right, in its sole discretion, to suspend the performance of any or all of its obligations hereunder for so long as any amount due hereunder remains unpaid in whole or in part.

## **6. TERM AND TERMINATION**

**6.1 Term:** This Agreement shall have an initial term of one year from the date hereof unless earlier terminated as provided herein. At the expiration of the initial term, this Agreement shall automatically renew from year to year thereafter until this Agreement is terminated in accordance with the terms hereof.

**6.2 Termination for Cause:** (a) Notwithstanding the foregoing, this Agreement shall terminate as to each specific Beneficiary immediately and automatically upon either the expiration of the applicable License Agreement between such Beneficiary and Depositor, or the earlier termination of the applicable License Agreement between such Beneficiary and Depositor, whichever is applicable, provided, however, that in the case of termination (as distinguished from the expiration) of the applicable License Agreement between such Beneficiary and Depositor, such termination has been effected by Depositor in accordance with the requirements of the applicable License Agreement. (b) InnovaSafe shall have the right to terminate this Agreement as to all parties or as to any Beneficiary, in the event of non-payment of any fees or other amounts due and payable to InnovaSafe or its designee, or if Depositor otherwise breaches any material term of this Agreement, provided, however, that written notice of such breach is given to all applicable parties. If Depositor or the applicable Beneficiary fails to cure such breach within five (5) business days of the date such notice is delivered, then InnovaSafe shall have the right to terminate this Agreement by sending written notice of termination to Depositor and all applicable Beneficiaries, and further provided, however that if payment is due from a Beneficiary and not from Depositor, then InnovaSafe may terminate this Agreement only as to that Beneficiary. InnovaSafe shall have no obligation

to perform any obligations under this Agreement so long as such breach remains uncured, including but not limited to, the receipt or release of any Deposit as required under this Agreement. Any party may cure amounts past due, whether or not such party is obligated under this Agreement.

**6.3 Termination Without Cause:** (a) After the expiration of the initial term of this Agreement, Depositor shall have the right to terminate this Agreement without cause, in its sole discretion, by giving each Beneficiary and InnovaSafe written notice of its intent to terminate this Agreement at least forty-five (45) business days prior to the expiration of the initial term or the next renewal term, whichever is applicable; (b) Notwithstanding any other provision hereof, at any time during the term of this Agreement, InnovaSafe shall have the right to terminate this Agreement without cause, in its sole discretion, by giving Depositor and each Beneficiary written notice of its intent to terminate this Agreement at least ninety (90) days prior to the date set for termination. During such 90 day period Depositor shall have the right to provide InnovaSafe with written instructions authorizing InnovaSafe to return the Deposit, and if InnovaSafe does not receive such written instructions from Depositor within the foregoing 90 day period, then InnovaSafe will use good faith in an attempt to return any Deposit in its possession to Depositor, or if InnovaSafe is not able to locate the Depositor after such attempts, then InnovaSafe may destroy the Deposit. InnovaSafe shall continue to be entitled to payment at its then current fees and charges (notwithstanding the termination date specified in its notice) until the Deposits are returned or destroyed. Notwithstanding anything to the contrary herein, InnovaSafe shall refund all fees paid hereunder in the prorated amount attributable to the time period after termination of the is Agreement pursuant to this provision; (c) A Beneficiary may not terminate this Agreement; (d) This Agreement shall terminate automatically, in the event that copies of the Deposit are released to all qualified Beneficiaries as provided by this Agreement.

**6.4 Disposition of Deposit:** Upon the termination of this Agreement, the following shall apply: (a) all amounts then due and owing to InnovaSafe hereunder shall be paid in full; (b) if the termination is as to all Beneficiaries, then InnovaSafe will return any Deposit in its possession to Depositor, and (c) if InnovaSafe does not receive written instructions from Depositor authorizing InnovaSafe to return all Deposits, or if InnovaSafe is not able to locate Depositor after reasonable attempts, then InnovaSafe shall destroy the Deposit.

**6.5 Survival of Certain Obligations:** Upon the termination of this Agreement, all future and continuing rights and obligations established hereunder will terminate, except: (a) the obligations of each party to maintain confidentiality, as defined herein; (b) the obligations of the parties under Paragraphs 6.4, 8.3 and 9.4 of the Agreement; and (c) any claim or cause of action for breach of this Agreement, or for indemnity or contribution under Paragraph 9.3 of the Agreement, existing as of the date of termination, which claim or cause of action will remain in full force and effect until such rights and obligations are fully discharged.

## **7. REPRESENTATIONS AND WARRANTIES OF DEPOSITOR**

**7.1 No Conflicts:** Depositor represents and warrants to each Beneficiary and to InnovaSafe that the grant by Depositor to Beneficiary of the rights granted hereunder, the Deposits made pursuant hereto, and the implementation of this Agreement in accordance with its terms, do not and will not conflict with, violate or infringe upon (a) any rights or interests of any person or entity not a party to this Agreement, (b) any terms of any express or implied contract between Depositor and any other person or entity, or (c) any judicial or administrative order, award, judgment or decree of any state or country applicable to Depositor, or (d) any laws, rules or regulations of any country from or to which any Deposit may be delivered in accordance with the provisions of this Agreement, including but not limited to, customs laws, import, export, and re-export laws.

**7.2 Usability of Source Code:** Depositor represents and warrants that the Deposits made to InnovaSafe will, at all times, (a) be the version of the current release of the Software, as offered by Depositor to the Beneficiaries or other licensees in the ordinary course of business from time to time during the term of this Agreement, (b) be understandable and useable by a reasonably skilled programmer or other professional to understand, maintain, and correct the Software without assistance of any other person, (c) contains sufficient documentation to enable such a skilled programmer or other professional to understand and use any proprietary languages or programming components that such a skilled programmer or other

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professional could not reasonably be expected to understand, and (d) includes all the devices, programming, and documentation necessary for the maintenance of the Software by the Beneficiary upon release of the Deposit pursuant to this Agreement, except for devices, programming, and documentation commercially available to the Beneficiaries on reasonable terms through readily known sources other than the Depositor.

### **8. RECORDS, REPORTS, ADMINISTRATION**

**8.1 Records of Deposits:** InnovaSafe will maintain written records of all Deposits made by Depositor pursuant to this Agreement. InnovaSafe shall be entitled to rely on the completeness and accuracy of all information, documents and materials provided to InnovaSafe by Depositor, Beneficiary or any other person or entity, in connection with this Agreement. Depositor shall be entitled at reasonable times during normal InnovaSafe business hours and upon reasonable notice to InnovaSafe to inspect the records of Deposits maintained by InnovaSafe pursuant to this Agreement. Beneficiary shall be entitled at reasonable times during normal InnovaSafe business hours and upon reasonable notice to both Depositor and InnovaSafe, to inspect the records of Deposits maintained by InnovaSafe pursuant to this Agreement, provided, however, the right of each Beneficiary to inspect such records of Deposit shall be limited to only those records that pertain to the requesting Beneficiary.

#### **8.2 Intentionally Omitted**

**8.3 Confidentiality and Storage of Deposits:** (a) InnovaSafe will protect the confidentiality of the Deposit and all proprietary information of Depositor incorporated therein. Except as otherwise required to carry out its duties under this Agreement, InnovaSafe will not permit any unauthorized person access to the Deposit. If InnovaSafe receives any order from a court or other judicial or arbitral tribunal pertaining to the disclosure or release of the Deposit, InnovaSafe will immediately notify the parties to this Agreement unless prohibited by law. Challenge of any such disclosure or release order shall be the sole responsibility of Depositor and Beneficiary. InnovaSafe does not waive its rights to present its position with respect to any such order. No party has the right to require InnovaSafe to disobey any order from a court or other judicial or arbitral tribunal. (b) InnovaSafe shall implement measures to maintain the security of all Deposits including, but not limited to, the storage of all Deposits in secured locked facilities.

### **9. DISPUTE RESOLUTION AND CLAIMS**

**9.1 Reliance and Suspension of Performance:** (a) InnovaSafe shall have no responsibility for determining the genuineness or validity of any instruction, document or other item given to or deposited with it, and in the performance of its obligations under this Agreement shall be entitled to rely upon any email or written notice, instruction or request furnished to InnovaSafe by any of the parties hereto if such instructions are believed by InnovaSafe to have been given by a designated representative ("Designated Representative") identified by the applicable party. With respect to the Depositor, the initial Designated Representative shall be Gerald Salzman. Each Beneficiary shall identify its Designated Representatives on Exhibit B or Exhibit Bns, as applicable. If no Designated Representatives are identified, all employees of Depositor and any Beneficiary, respectively, are conclusively deemed to have proper authority to act on behalf of such party hereunder. InnovaSafe shall have no responsibility with respect to the Deposit other than to follow such instructions as may be provided herein. (b) If any controversy exists between or among the Depositor and any of the Beneficiaries hereto, or with any other person or entity with respect to the Deposit or the subject matter of this Agreement, InnovaSafe shall not be required to determine the same or take any action with respect thereto, but in addition to and without limiting any other right or remedy to which InnovaSafe may be entitled, InnovaSafe shall have the right, in its sole discretion, to suspend the performance of any or all of its obligations hereunder for so long as any such conflict or controversy may exist hereunder.

#### **9.2 Intentionally Omitted**

#### **9.3 Indemnification:**

Depositor, on the one hand, and each Beneficiary on the other hand, jointly and severally, agree to indemnify, defend and hold harmless InnovaSafe and its directors, officers, agents and employees (collectively "InnovaSafe") from and against any losses, claims, damages, judgments, assessments, costs

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and other liabilities (collectively "Liabilities"), and will reimburse InnovaSafe for all reasonable fees and expenses (including the reasonable fees and expenses of counsel) (collectively, "Expenses") as they are incurred in investigating, preparing, pursuing or defending any claim, action, proceeding or investigation, whether or not in connection with pending or threatened litigation or arbitration and whether or not InnovaSafe is a party (collectively, "Actions"), relating to this Agreement or arising out of or in connection with the services rendered or to be rendered by InnovaSafe pursuant to this Agreement, or any actions or inactions of InnovaSafe in connection with any such services or this Agreement; provided that Depositor and Beneficiary will not be responsible for any Liabilities or Expenses of InnovaSafe that are determined to have resulted from the gross negligence or willful misconduct of InnovaSafe in connection with any of the services, actions, or inactions referred to above.

**9.4 Mediation and Arbitration:** (a) In the event of any controversy, dispute or claim between InnovaSafe and any other party hereto that arises under or otherwise relates to this Agreement, the parties agree that the dispute shall be submitted to mediation facilitated by a mediator as mutually approved by the parties, which approval shall not be unreasonably withheld or delayed by either party ("Mediator"). The parties agree to participate in good faith in the mediation conferences. Each party shall bear one-half (or its proportionate share if there are more than two parties) of the costs of the mediation, including the Mediator's fees. (b) If the parties are unable to resolve the claim, controversy or dispute through mediation, then it shall be decided by arbitration in Los Angeles County, California, in front of a single retired judge through the Judicial Arbitration and Mediation Service or, in its absence, any similar organization providing the arbitration services of retired judges ("JAMS"). If for any reason within 30 days of an arbitration demand, any other party to the Agreement fails to state in writing that it will cooperate in selecting the sole arbitrator, then the remaining party shall select the arbitrator. If for any reason the sole arbitrator is not selected within 45 days of the written arbitration demand, then JAMS shall have sole authority to assign one of its retired judges as the arbitrator that has experience with intellectual property law. The parties shall be entitled to discovery to the full extent provided in civil actions pending in the Superior Court for Los Angeles County, with the arbitrator deciding any controversies arising during and with respect to discovery. The decision of the arbitrator with respect to any issues submitted for determination shall be final and binding on all of the parties to this Agreement, provided, however that the arbitrator shall not have the power to award punitive or exemplary damages. Not less than 21 days before the first scheduled session of the arbitration hearing, each party shall deliver to the other: (i) a complete list of the names of the witnesses that the party will call to testify at the hearing; and (ii) a complete and accurate copy of each document the party will offer in evidence at the hearing, excluding witnesses and documents that are used for impeachment.

**9.5 (a) Disclaimer of Warranties:** InnovaSafe expressly disclaims any and all warranties, express or implied, in connection with this Agreement, or its implementation, or arising out of a course of performance, dealing, or trade usage, including, without limitation, any warranties of title, non infringement, merchantability, fitness for a particular purpose, defect, workmanship or uninterrupted or error-free use or operation. **(b) Limitations of Claims and Consequential Damages Limitation:** (i) No action or claim against InnovaSafe arising out of or in any way relating to this Agreement may be instituted after the first to occur of the following: (a) the expiration of the period of limitation required by applicable law; (b) the expiration of two (2) years after the event giving rise to such action or claim, or (iii) the expiration of one (1) year after the date upon which the claiming party discovers, or reasonably should have discovered, the facts giving rise to such action or claim. (ii) In no event shall any party, its affiliates, or any of its or their representatives be responsible or liable for any indirect, incidental, consequential, special, exemplary, or punitive damages (including, but not limited to, loss of data, savings, revenue or profits), even if such party, its affiliates, or any of its or their representatives has been advised of the possibility of such damages, including but not limited to, any damages from the use of, interruption of use, or inability to use any software or any data related thereto. **(c) Limitation of Liability:** In no event shall the total collective liability of InnovaSafe, its affiliates, and any of its or their representatives arising out of or relating in any way to this Agreement or its implementation exceed the total amounts paid or payable by the depositor or Beneficiary to InnovaSafe hereunder, provided, however, that the foregoing limitation does not apply to damages (excluding damage to the Deposit media) that are determined by a judgment of a court of competent jurisdiction which is no longer subject to appeal or further review to have resulted from the gross negligence or willful misconduct of InnovaSafe.. **(d) Proceedings:** If InnovaSafe is threatened to be made a party, required, compelled to be a party to, assist in, otherwise participate, or otherwise becomes

involved in, whether as a witness or in any other capacity, in any investigation, audit, action or proceeding, whether judicial, arbitral or administrative, instituted by Depositor, Beneficiary, or any third party (collectively, a "Proceeding") then in any such case Depositor and Beneficiary each agree to pay in advance, upon receipt of written demand therefor from InnovaSafe, any and all reasonable expenses that may be incurred by InnovaSafe in connection therewith, which shall include, without limitation, reasonable attorneys' fees, disbursements and retainers, court costs, transcript costs, fees of accountants, experts and witnesses, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, and all other expenses of the types customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, or being or preparing to be a witness or other participant in a Proceeding.

## 10. NOTICES

10.1 **Notices and Notice Address:** Except as otherwise provided herein for Deposits or notices of Updates and Replacements, all notices, requests, demands, or other communications required or permitted under this Agreement shall be in writing. Notice shall be sufficiently given for all purposes if done by personal delivery, or electronic mail, or First Class Mail, or Certified Mail, or commercial overnight delivery service (DHL, FedEx, UPS), or facsimile transmission. Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be deemed effective as of the first date that said notice was refused, unclaimed, or deemed undeliverable by the postal authorities, messenger, or overnight delivery service. Any party may change its contact information by giving the other party notice of the change in any manner permitted by this Agreement. Any party has the option to update their contact information with InnovaSafe using the "Change of Status" form on our website, <http://www.innovasafe.com/update.html>.

### DEPOSITOR:

Contact Name:	Gerald Salzman
Title:	President
Street address:	915 E. 1 <sup>st</sup> . St.
City, State, Postal Code	Los Angeles, CA 90012
Country:	USA
Phone:	213-229-5300
Facsimile:	213-229-5481
Email:	<del>c/o claudia nading@dailyjournal.com</del> maryjoe.rodriquez@dailyjournal.com
Purchase Order (if applicable):	NA

### INNOVASAFE, INC.

Corporate Address: 28502 Constellation Road, Valencia, California, 91355-5082 USA  
Mailing Address: PO Box 800256, Valencia, California 91380-0256 USA  
Phone: USA Direct: 1-800-239-3989  
International Direct: 1-661-310-1810  
Facsimile: 1-661-295-5515  
eMail: [clientservices@innovasafe.com](mailto:clientservices@innovasafe.com)

**BENEFICIARY:** As set forth in Exhibit B or Exhibit Bns.

## 11. MISCELLANEOUS PROVISIONS

11.1 **Independent Contractors:** The parties are independent contractors, and no party shall be held to be a fiduciary or trustee, or to have any fiduciary obligation, to any other party, or shall be considered, by entering into or performing any obligation under this Agreement, to assume or become liable for any special duty, or any existing or future obligations, liabilities or debts of the other party. No employee or agent of one party shall be considered to be an employee or agent of any other party.

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**11.2 Complete Statement, Interpretation and Modification of Agreement:** The parties hereto acknowledge that each has read this Agreement, understands it, and agrees to be bound by its terms. The parties further agree that this Agreement is the complete and exclusive statement of their agreement with respect to the subject matter hereof, and supersedes all oral or written proposals, understandings, representations, warranties, covenants, and communications between the parties relating hereto. InnovaSafe is not a party to any License Agreement and no provision of any License Agreement shall be construed to apply to InnovaSafe or otherwise give rise to any obligation of InnovaSafe. Each party and its counsel have participated fully in the review and approval of this Agreement. Any statute or rule of law to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement. No supplement, amendment, or modification of this Agreement shall be binding unless it is in writing and signed by Depositor and InnovaSafe, and by each Beneficiary if it affects any material right or obligation of such Beneficiary provided hereunder. No course of performance by the parties hereunder shall be deemed to constitute an amendment of this Agreement.

**11.3 Waiver:** No waiver of a breach, failure of a condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the waiving party. No waiver of any breach, failure, right, or remedy shall be deemed a waiver of any other breach, failure, right or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.

**11.4 Attorneys' Fees:** In any litigation, arbitration or other proceeding by which one party either seeks to enforce its rights under this Agreement (whether in contract, tort, or both) or seeks a declaration of any rights or obligations under this Agreement, the prevailing party shall be awarded reasonable attorneys' fees, together with any costs and expenses, to resolve the dispute and to enforce the final judgment.

**11.5 Force Majeure:** Except for obligations to make payment as indicated herein, no party shall be held responsible for any act, failure, event, or circumstance addressed herein if such act, failure, event, or circumstance is caused by conditions beyond such party's reasonable control.

**11.6 Due Authorization, No Third Party Rights, Partial Invalidity, Headings:** (a) Each party represents and warrants that the execution, delivery and performance of this Agreement has been duly authorized by all necessary corporate, partnership, or limited liability company action. (b) This Agreement is made solely for the benefit of the parties to this Agreement, the Designated Beneficiaries, and their respective permitted, authorized and acknowledged successors and assigns, and no other person or entity shall have or acquire any right by virtue of this Agreement. (c) If any provision of this Agreement is held illegal, unenforceable, or in conflict with any law of any federal, state or local government having jurisdiction over this Agreement, the validity of the remaining provisions hereof shall not be affected thereby. (d) The headings in this Agreement are included for convenience only and shall neither effect the construction or interpretation of any provision in this Agreement nor affect any of the rights or obligations of the parties to this Agreement.

**11.7 Governing Law:** The validity of this agreement and any of its terms or provisions, as well the rights and duties of the parties under this agreement, shall be construed pursuant to and in accordance with the laws of the State of California, and each party to this agreement specifically agrees to submit to the jurisdiction of the courts of the State of California.

**11.8 Instructions to InnovaSafe:** This Agreement shall constitute instructions to InnovaSafe as escrow agent. In addition, Depositor and each Beneficiary agrees to execute, deliver and be bound by any supplemental or general policies or procedures of InnovaSafe or such other instruments as may be reasonably required by InnovaSafe in order to perform its obligations as contemplated by this Agreement. In the event of any conflict or any inconsistency between such policies or procedures and any provision of this Agreement, the provision of this Agreement shall control.

**11.9 Authorization to Copy:** Depositor authorizes InnovaSafe to use and copy the Deposit as determined by InnovaSafe in its sole discretion as necessary for the performance of its obligations hereunder, including but not limited to, performing any Deposit verification testing as authorized IS2ex v09.2

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hereunder, provided, however, that the foregoing authorization does not grant, sell, assign or otherwise transfer to InnovaSafe any title to or ownership of any part of the Deposit or Software, or related documentation, or any other property of Depositor, except for the media upon which the Deposit is recorded, title to and ownership of which shall pass to InnovaSafe as provided herein.

11.10 Counterparts, Facsimile and Scanned Copy: This Agreement may be signed in one or more counterparts, by facsimile or scanned copy each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date below the signatures.

DEPOSITOR

BY: Gerald L. Salzman  
Signature

Name: Gerald L. Salzman

Title: President

Date: 7/13/10

INNOVASAFE

BY: John J. Stulman  
Signature

Name: John J. Stulman

Title: President/CEO

Date: 19 JUL 10

**EXHIBIT A  
DESCRIPTION OF DEPOSIT  
INNOVASAFE ACCOUNT # 2738**

**THIS FORM MUST ACCOMPANY EACH DEPOSIT TO INNOVASAFE. PLEASE SEND ALL  
DEPOSITS TO THE INNOVASAFE CORPORATE OFFICES LOCATED AT:  
28502 CONSTELLATION ROAD, VALENCIA, CA, 91355 USA**

The Ex. A can also be completed online at: <http://www.innovasafe.com/exhibitA.html>

**DEPOSITOR CONTACT INFORMATION:**

<b>Company:</b>	<b>Contact:</b>
<b>Title:</b>	<b>Email:</b>
<b>St. Address:</b>	<b>City/State:</b>
<b>Postal Code:</b>	<b>Country:</b>
<b>Tel #:</b>	<b>Fax #:</b>

<b>Deposit Details</b>			
<b>Media Type (CD, DVD, DAT etc...):</b>		<b>Indicate hardware used to create deposit:</b>	
<b>Number of Media:</b>		<b>Indicate operating systems used:</b>	
<b>Copies (1 or 2):</b>		<b>Indicate backup command/software used:</b>	
<b>Product(s) Name:</b>		<b>Indicate software compression used:</b>	
<b>Product Version:</b>		<b>Indicate whether encryption/password protection was used:</b>	
		<b>What computer language was the source written:</b>	
		<b>Approximate size of the data on the media: (MB/GB)</b>	

**TYPE OF DEPOSIT (REQUIRED): \*Please Check Only One Box**

☐ Initial Deposit   ☐ Update Deposit   ☐ Replacement Deposit

**IF THIS IS A REPLACEMENT DEPOSIT, PLEASE INDICATE WHETHER WE SHOULD RETURN OR DESTROY THE PREVIOUS DEPOSIT(S):**

☐ Return   OR   ☐ Destroy (Checking this box authorizes InnovaSafe to Destroy the previous deposit(s)) If this deposit is to be returned or destroyed, please indicate in the space below the name and version of the previous deposit(s) you would like to replace. If you would like to replace all previous deposits select "All":

☐ All or Specific Deposits (list here): \_\_\_\_\_



**EXHIBIT B**  
**BENEFICIARY ENROLLMENT FORM**  
**INNOVASAFE ACCOUNT # 2738**

The undersigned Beneficiary hereby acknowledges, accepts, and agrees to be bound by the terms of the above-referenced Software Source Code Escrow Agreement by and between InnovaSafe, Inc., a California corporation, as intellectual property Escrow Agent and Journal Technologies, Inc. as Depositor, on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (the "Agreement").

**BENEFICIARY INFORMATION:**

\*This contact person will receive ALL deposit and update deposit notifications.

☐ Check here if there is an alternate contact person or additional Designated Representatives and list them on the back of this form.

Company:	Designated Representative:
Title:	Email:
St. Address:	City/State:
Postal Code:	Country:
Tel #:	Fax #:

Signature (Required): \_\_\_\_\_

**DEPOSITOR INFORMATION:**

Company:	Contact:
Title:	Email:
St. Address:	City/State:
Postal Code:	Country:
Tel #:	Fax #:

**PLEASE LIST WHICH SOFTWARE PACKAGE(S) THIS BENEFICIARY IS ENTITLED:**

See Ex. "C" Schedule of Fees	Party responsible for:	<input type="checkbox"/> Depositor	Party responsible for:	<input type="checkbox"/> Depositor
	Annual Deposit fee:	<input type="checkbox"/> Beneficiary	Annual Beneficiary fee:	<input type="checkbox"/> Beneficiary

**Invoicing Contact (Required):**

Depositor:	Beneficiary:
Contact Name:	Contact Name:
Address:	Address:
Phone:	Phone:
Fax:	Fax:
eMail:	eMail:
PO#:	PO#:
Please return this form to:	InnovaSafe, Inc. PO Box 800256 Valencia, CA 91380-0256 USA

**EXHIBIT BNS**  
**BENEFICIARY ENROLLMENT FORM**  
**INNOVASAFE ACCOUNT # 2738**

Pursuant to this Software Escrow Agreement, Depositor hereby enrolls the following as a Beneficiary.

**BENEFICIARY INFORMATION:**

\*This contact person will receive the Beneficiary enrollment notification.

☐ Check here if there is an alternate contact person or additional Designated Representatives and list them on the back of this form.

Company:	Contact:
Title:	Email:
St. Address:	City/State:
Postal Code:	Country:
Tel #:	Fax #:

**PLEASE LIST WHICH SOFTWARE PACKAGE(S) THIS BENEFICIARY IS ENTITLED:**

**DEPOSITOR INFORMATION:**

Company:	Contact:
Title:	Email:
St. Address:	City/State:
Postal Code:	Country:
Tel #:	Fax #:

Signature (Required): \_\_\_\_\_

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

See Ex. "C" Schedule of Fees	Party responsible for: Annual Deposit fee:	<input type="checkbox"/> Depositor <input type="checkbox"/> Beneficiary	Party responsible for: Annual Beneficiary fee:	<input type="checkbox"/> Depositor <input type="checkbox"/> Beneficiary
---------------------------------	---	--	---	--

**Invoicing Contact (Required):**

<b>Depositor:</b>	<b>Beneficiary:</b>
Contact Name:	Contact Name:
Address:	Address:
Phone:	Phone:
Fax:	Fax:
eMail:	eMail:
PO#:	PO#:
Please return this form to:	InnovaSafe, Inc. PO Box 800256 Valencia, CA 91380-0256 USA

**EXHIBIT C**

**SCHEDULE OF FEES**

**INNOVASAFE ACCOUNT #2738**

<b>Set Up Fee</b>	<b>No Fee</b>	
<b>Traditional Escrow Annual Deposit Fee*</b>		
▪ <b>1<sup>st</sup> Product</b>	<b>\$675</b>	
▪ <b>Additional Products – per product</b>	<b>\$350</b>	
▪ <b>Included Benefits and Services</b>		
○ 4 Free Updates/Replacements		
○ Physical or Electronic Deposits		
○ Deposit Notification – all parties		
<b>Annual Beneficiary Fee</b>	<b>\$200</b>	
<b>Dynamic Escrow Option</b>		
▪ <b>Annual Fee – Per Vault</b>	<b>\$995</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
▪ <b>Basic Report</b>	<b>No Fee</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
▪ <b>Detailed Report</b>	<b>\$95 per report</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<b>Optional Benefits and Services (annual fee)</b>		
▪ <b>Unlimited Updates</b>	<b>\$200</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
▪ <b>Dual Vaulting</b>	<b>\$200</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
▪ <b>Account Status Reports - Quarterly</b>	<b>\$200</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
▪ <b>Deposit Tracking - Quarterly</b>	<b>\$200</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
▪ <b>SafeAccess (24/7) Online Deposit History Only</b>	<b>\$200</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
▪ <b>FullAccess (24/7) Online Comprehensive</b>	<b>\$200</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
▪ <b>L1 Deposit Verification – Limited Only</b>	<b>\$200</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<b>Additional Optional Services</b>		
▪ <b>L2 Verification – File Analysis – per check</b>	<b>Quote Only</b>	
▪ <b>L3 Verification – Comprehensive – per check</b>	<b>Quote Only</b>	
<b>Release Request Fee – per request</b>	<b>\$200</b>	

*\*One product deposit and one beneficiary fee will always be invoiced*

**All Fees Are Payable in US Dollars unless otherwise agreed to in writing**

**EXHIBIT D**  
**BENEFICIARY ACKNOWLEDGEMENT FORM**  
**INNOVASAFE ACCOUNT # 2738**

The undersigned Designated Beneficiary hereby acknowledges, accepts, and agrees to be bound by the terms of the above referenced intellectual property Escrow Agreement by and between InnovaSafe, Inc., a California corporation, as intellectual property Escrow Agent and Journal Technologies, Inc. as Depositor, on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (the "Agreement"). Beneficiary further agrees to pay InnovaSafe a release request fee of \$\_\_\_\_\_ per request for release of the Deposit Material listed on the Ex Bns due immediately at the same time that the release condition notice is submitted to InnovaSafe pursuant to Paragraph 4.3 Release Procedures.

**BENEFICIARY INFORMATION:**

☐ Check here if there is an alternate contact person and list them on the back of this form.

Company:	Contact:
Title:	Email:
St. Address:	City/State:
Postal Code:	Country:
Tel #:	Fax #:

Signature (Required): \_\_\_\_\_

**PLEASE RETURN THIS FORM COMPLETED AND SIGNED TO:**

**BY FIRST CLASS MAIL:**

**INNOVASAFE, INC.**  
**PO BOX 800256**  
**VALENCIA, CA 91380-0256 USA**

**BY COMMERCIAL COURIER**

**INNOVASAFE, INC.**  
**28502 CONSTELLATION ROAD**  
**VALENCIA, CA 91355**

**BY FACSIMILE:**

**1-661-295-5515**

Exhibit C – System Requirements for On-Premise

*[Reserved]*

## **EXHIBIT D**

### **HOSTED SERVICES**

**Licensor Hosting.** In consideration for Licensee's payment to Licensor of the Annual Hosting and Storage Fees (in addition to the Annual License, Maintenance and Support Fees) set forth on **Exhibit A**, Licensor will provide Licensed Software hosted services (the "**Hosted Services**"), which Licensee may access via a secure Internet connection.

**Definitions.** Capitalized terms used and not otherwise defined in this **Exhibit D** shall have the respective meaning given to them in the Agreement.

**Licensor Responsibilities.** Licensor's responsibilities with respect to the Hosted Services are as follows:

- a. Provide Software as a Service (SaaS) for the hosting of Licensee data, in keeping with the definition of SaaS set forth in NIST Special Publication 800-145.
- b. Provide Maintenance of the Hosted Services.
- c. Provide services as described in this **Exhibit D**.
- d. Licensor shall not be responsible, for any accidental or unlawful access or disclosure of confidential Customer Data that results from Licensee's failure to comply with subparagraph b. below under the heading "Licensee Responsibilities."

**Licensee Responsibilities.** Licensee's responsibilities with respect to the Hosted Service are as follows:

- a. Pay the Annual Hosting and Storage Fees listed in **Exhibit A**.
- b. Provide a secure internet connection between Users and the hosted environment that meets necessary bandwidth requirements.
- c. Licensee is solely responsible for, and shall indemnify, defend, and hold harmless Licensor regarding, any unlawful or accidental access to or unauthorized or improper disclosure of Customer Data that results from (i) the conduct of an authorized User of Licensee, (ii) an unauthorized person obtaining an authorized User's account credentials from such a User or Licensee, (iii) changes that Licensee makes to the configuration of the Licensed Software or the hosted database, or (iv) software scripts added to the Licensed Software or the hosted database by Licensee. Without limiting the foregoing, Licensee shall: (A) notify Licensor immediately of any unauthorized use of any password or account or any other known or suspected breach of security; (B) report to Licensor immediately and use reasonable efforts to stop immediately any copying or distribution of content that is known or suspected by Licensee or Users; and (C) not impersonate another User or provide false identity information to gain access to or use the Hosted Service.
- d. Accept that Licensee and any and all third parties associated to the Licensee (i) will never have direct, privileged access to Licensor's hosted infrastructure (servers, database, file

storage, monitoring, dashboards, etc) and accordingly (ii) are restricted from installing or requiring installation of third-party software.

- e. Accept that each hosted instance allows for one (1) terabyte of database storage. Licensee will be notified when database storage usage thresholds exceed 80% of the then available storage and the database storage will automatically be expanded in accordance with Exhibit A. Additional database storage may be pre-purchased at any time.
- f. Have and maintain the following workstation configuration requirements:

<b>Component</b>	<b>Minimum Specification</b>
<b>Processor</b>	1 @ 2.0 Ghz or faster
<b>Hardware</b>	Mouse/trackpad, keyboard
<b>Memory</b>	4 GB minimum (8+ GB preferred)
<b>Monitor Size</b>	Minimum resolution: 1600x1200
<b>Video Card</b>	Standard
<b>Disc space</b>	100 GB minimum
<b>Network</b>	Secure internet connection
<b>Operating system</b>	Supported OS from Microsoft or Apple
<b>Other required software and versions</b>	Supported browser versions of Licensee's choice from the following list: Microsoft IE, Microsoft Edge, Firefox, Google Chrome, Apple Safari. Java Runtime Environment 8 only for automated printing and scanning.
<b>Third-party applications and versions, what they are used for</b>	MS Word, Adobe (This is for viewing and generating documents in Word and PDF format)

**System Period of Maintenance.**

- a. *Weekly Maintenance Window* (Wednesday, 9:00PM to Thursday, 4:00AM MT). The Hosted Service shall be subject to a maintenance window each Wednesday evening or as agreed upon by Licensee. Hosted Service maintenance window may include loss of network access, the servers, and the operating system during such window. The Hosted Service will not always be disrupted during each weekly maintenance window.
- b. *Extended Maintenance Outage*. If Licensor requires additional time for maintenance or installation, Licensor shall provide written notification to Licensee at least 24 hours prior to implementing an extended maintenance outage. Licensor's notice shall explain the nature and expected duration for the extended maintenance outage.
- c. *Critical Security Maintenance*. The Hosted Service shall be subject to immediate security maintenance with less than 24-hour notice given to the Licensee in the event a critical software vulnerability needs to be patched.

Licensor leverages world class cloud infrastructure providers like Amazon Web Service (AWS) and Microsoft Azure to host Licensee data and software. These companies provide state-of-the-art compute power, storage and security. Licensor's cloud hosting service results in a higher level of security, availability, fault tolerance and disaster preparedness than is generally available with on-premise solutions.

#### **DATABASE STORAGE**

One terabyte (TB) of database storage is included with the hosting service. Additional database storage is always available and is automatically provisioned when required. At the end of the current billing period, Licensor compares the actual storage Licensee is using to the contracted amount and both (i) adjusts the storage cost for the next period and (ii) may retroactively bill the Licensee for the actual usage, per the database storage rate table in **Exhibit A**.

Copies of the systems database are available upon request for a transfer fee of \$300 dollars and are provided as an MS SQL Backup file. Backup requests take 3 business days to process and will be made available on a secure transfer site for download.

#### **DOCUMENT STORAGE**

Licensor provides on-demand document storage to meet the Licensee's document management requirements. Licensor leverages world-class document storage solutions like AWS and Azure to store documents. Licensees are billed for the storage they use ("pay as you go") with no storage caps. The system is designed to optimize Licensee storage costs by automatically moving documents and objects to cost-effective access tiers without little performance impact or operational overhead.

Document storage incorporates two access tiers: *Frequent Access* and *Infrequent Access*. Documents that have not been accessed for a minimum 30 days are automatically moved to the *Infrequent Access* tier. If the Document is requested, it will be moved back to the *Frequent Access* tier and the lifecycle begins again.

Licensees can store any number of documents and are automatically billed according to the rate table in **Exhibit A**. Each document object can be up to 5 TB in size and is replicated automatically across multiple data centers for redundancy. All objects are versioned protecting data from the consequences of unintended overwrites and deletions.

Copies of the systems complete document file store are available upon request for a transfer fee of \$40/Day + \$0.20 USD/GB with a minimum of 10 calendar days to complete extraction. Shipping and handling will be added. For this extraction, all documents and other digital files stored in the case management system will be copied to an encrypted hard drive and delivered via a certified carrier. Transfer fee is subject to price change throughout the course of this agreement upon 60 days prior notice.

#### **SECURITY**



**Secure Hosted Environment** - AWS offers an environment specifically for government applications called AWS GovCloud (US). GovCloud is an isolated AWS region designed to host sensitive data and regulated workloads in the cloud, helping customers support their U.S. government compliance requirements, including the International Traffic in Arms Regulations (ITAR) and Federal Risk and Authorization Management Program (FedRAMP). GovCloud is operated solely by employees who are vetted U.S. Citizens on U.S. soil. Root account holders of AWS accounts must confirm they are U.S. Persons before being granted access credentials to the region. All GovCloud data centers are in the continental United States. GovCloud, in conjunction with other security and procedural practices, helps to create a JTIS and FIPS 140-2 compliant environment. More information about GovCloud is available at <https://aws.amazon.com/govcloud-us/>

Microsoft Azure provides similar services and security.

**Data Security** – Journal Technologies builds our hosted solution to meet data security standards and best practices set forth by the US Department of Justice Criminal Justice Information Services (CJIS) Security Policy. We also reference *Security Control Mapping of CJIS Security Policy Version 5.9 Requirements to NIST Special Publication 800-53 Revision 5* a mapping represents a "best fit" correlation between the CJIS Security Policy controls and NIST federal controls.

**Data at Rest** - The database in our hosted solution is attached to an encrypted volume with a data key using the industry-standard AES-256 algorithm.

**Data in Transit** - Journal Tech customers are hosted in AWS GovCloud (US). The connection to Licensee's location is established using a site-to-site virtual private network (VPN) or over HTTP over TLS (HTTPS). When CJI is transmitted outside the boundary of a physically secure AWS data center, the transmission is encrypted utilizing FIPS 140-2 compliant ciphers with a symmetric cipher key strength of at least 128-bit strength.

**Security Testing** – Licensor runs nightly vulnerability scans on our hosted infrastructure. This includes scans for vulnerabilities such as OWASP exploits, weak authentication, operating system and application versions, etc. It also checks for suspicious behaviors (or indicators of compromise) which are programs or people doing activity they don't normally do such as escalating privileges, logging into a server a named user never uses, accounts running scripts they previously did not, etc.

Licensor undergoes monthly, internal penetration and vulnerability tests across our product lines using NIST 800-30 to assess the overall risk of any vulnerabilities found. Guidance for vulnerability tests come from the OWASP Application Security Verification Standard (ASVS) 4.0.

**Security Breach** - A security breach is an incident that results in unauthorized access to data, applications, networks or devices. In the event of a potential security breach, Journal Technologies will follow its Security Incident Response Plan. If a verified security breach occurs Journal Technologies will promptly notify client IT representatives or CSO.

**SOC 2 Type 1**

Licensor has completed a System & Organization Control (SOC) 2 Type 1 audit, an independent third-party examination of Licensor's information security controls. Licensor can make available to Licensee SOC reports upon Licensee's reasonable request therefor, subject to the confidentiality provisions of this Agreement and any other procedures Licensor may deem necessary to protect the security of such reports.

**DATA OWNERSHIP**

All the hosted Customer Data remains Licensee's property during and after the lifetime of the hosting contract. Licensor interaction with Customer Data strictly limited to supporting Licensee's operation.

**DATABASE BACKUPS AND DISASTER RECOVERY**

We backup your production database every two hours to redundant storage available in multiple availability zones. At the end of the day, the final backup is archived, and the other hourly backups are overwritten the next day. We maintain fourteen days of archival data backup.

This gives us a Restore Point Objective (RPO) of two hours or less.

We snapshot your running Compute Instances (CI) once every 24 hours and rotate the CI backups every 14 days.

All backups and snapshots are encrypted at rest.

In a disaster scenario, should your compute instances in the primary availability zone cease to respond for two hours we begin to restore from backups and snapshots to a different availability zone.

Our DR Restore Point Objective (RPO) is two hours or less and our Recovery Time Objective (RTO) is twenty-four hours or less

**CLOUD MAINTENANCE**

Journal Tech (i) installs operating system (OS) updates as needed during maintenance windows and (ii) install critical OS updates within 24-48 hours of a CVSS score of 7 or above.