

EXHIBIT C: SERVICES AGREEMENT

This Services Agreement, together with any appendices and attachments, is made and entered into by and between _____ (“Contractor”) and St. Charles County, Missouri, a charter county and political subdivision of the State of Missouri (“Owner”). This Agreement is effective as of _____ (“Effective Date”). In consideration of the mutual promises, the parties agree as follows:

1. Scope.

- A. This Services Agreement provides for the performance of services by Contractor for Owner and Users. All references to this Services Agreement include this document together with any and all appendices and attachments.
- B. The initial term of this Services Agreement begins on the Effective Date and, unless otherwise earlier terminated in accordance with the provisions herein, continues for a period of ___ year(s).
- C. All services provided by Contractor are for Owner’s and Users’ internal business operations and for the functionality of the System as a whole.

2. Ordering Procedure, Invoices & Payments.

- A. **Ordering Procedure.** Owner may engage Contractor to perform services pursuant to this Services Agreement by delivering to Contractor a written order on the form attached hereto as Appendix [redacted] (“Order Form”). [*Subject to successful negotiation, the vendor’s Order Form shall be attached and shall very clearly set forth, inter alia, the initial term and any renewal terms, payment terms, and deliverables.*]
- B. **Invoices.** Contractor shall invoice Owner in advance, which invoice shall describe with particularity the amount(s) due. Owner shall pay each invoice within thirty (30) Days of receipt of the invoice.
- C. **Penalty for Late Payments.** Interest shall accrue on any past due amount (not subject to a Dispute Notice) at a rate of one and a half percent (1.5%) of the past due amount.
- D. **Disputed Invoices.** Owner shall notify Contractor of any billing discrepancies or disputes about an invoice upon twenty (20) Days of receipt of the disputed invoice, specifying with particularity the basis of such dispute (“Dispute Notice”). Tender of a Dispute Notice does not relieve Owner of its obligation to pay any undisputed portion of any invoice. The parties shall negotiate in good faith to resolve any Dispute Notice. In no event shall Contractor have the right to suspend or terminate services unless and until a Dispute has been fully resolved in writing by the parties.

3. License Grant.

Upon the Effective Date and subject to all terms, conditions, limitations and exclusions contained herein, Contractor hereby grants to Owner and Users the right to use the services, during the applicable term, and only for Owner and Users’ internal business operations and for the functionality of the System as a whole.

4. Ownership.

- A. Contractor shall retain full ownership, rights, title and interest in and to the services, including documentation, and any intellectual property rights pertaining thereto.
- B. Owner and/or Users shall retain full ownership, rights, title and interest in and to any and all records, data and information that Owner and/or Users share with Contractor or input, manipulate, create and/or store with the Services (collectively, “Customer Data,” to include Owner and Users’ Confidential Information as set forth herein) including without limitation all intellectual property rights pertaining thereto. In addition to the rights and obligations set forth in the Transition Plan attached hereto as Appendix [redacted] and hereby incorporated by reference, upon request by Owner during a term or up to ninety (90) days after Termination, Contractor shall

make Customer Data accessible to Owner, by download, data transfer, or as otherwise agreed in writing by the parties, within thirty (30) Days and at no additional cost to Owner.

- C. Contractor shall not use aggregated or statistical data derived from the services provided to Owner and/or Users pursuant to this Services Agreement, except as agreed in writing by Owner in advance of such use.

5. Use Restrictions.

- A. Owner and Users shall only use the services for their own internal business operations and for the functionality of the System as a whole. Owner shall not sublicense, rent, lease, transfer, assign, distribute, time share, sell or resell, or otherwise make the services available to a third party (other than Users). Owner shall not modify, disassemble, peel components, decompile, reverse engineer or attempt to reverse engineer, derive source code or create derivative works from, adapt, translate, or merge the Services with other software, or permit or encourage any third party to do so. The preceding sentence does not apply, however, to open source software which is governed by the standard license of the copyright owner.
- B. Owner acknowledges and agrees that the services and related documentation are proprietary to Contractor and have been developed as trade secrets at Contractor's expense. Owner shall use best efforts to keep the services and documentation confidential and to prevent any misuse, unauthorized use or unauthorized disclosure by any party.
- C. Contractor shall only use the Customer Data and Owner and Users' Confidential Information to effectuate the purposes this Services Agreement, and shall only retain such information so long as necessary to do so and subject to section 14(B) below.

6. Confidentiality.

- A. **Confidential Information.** By virtue of this Services Agreement, either party may come into contact with the other party's or Users' non-public or proprietary information ("Confidential Information"). Confidential Information shall include, but is not limited to, any information or materials supplied to, obtained by, or observed by either party or Users and their respective employees, agents, consultants or subcontractors including proprietary software, source code, documents, financial information, documentation, data, specifications, customers, marketing strategies, business practices, user identification and passwords, account information, and personally identifiable information and/or other private data of Owner or Users' employees and citizens. Confidential Information may be in written, electronic, photographic or other tangible form, and it may be provided orally or visually. Confidential Information disclosed in a tangible or electronic form may be marked or otherwise identified as such, but in no event shall the absence of such a mark or identification in any way affect the parties' obligations hereunder, including without limitation their obligation to treat such information or data as confidential. Data created or stored vis-à-vis the services is considered Confidential Information.
- B. **Treatment of Confidential Information.** The parties shall treat all information or data of which they become aware as a result of this Services Agreement as confidential unless: (a) the information/data was rightfully known to the receiving party, without restriction on disclosure, prior to its engagement with the disclosing party; (b) the information/data is or has become generally available to the public, without the fault or negligence of the receiving party; (c) the receiving party rightfully received the information/data from a third party without a duty of confidentiality; (d) the receiving party independently developed the information/data without use of the disclosing party's confidential information; or (e) authorized, in writing, by the disclosing party. Confidential Information may include information of third parties, and the source of such information or data shall not affect its treatment hereunder.

7. Non-Disclosure of Customer Data and Confidential Information.

- A. Contractor shall only access and/or use Customer Data and Owner or Users' Confidential Information to the extent necessary to perform its contractual obligations hereunder. Contractor shall not sublicense, rent, lease, transfer, assign, distribute, time share, sell or resell, or otherwise make Customer Data available to any third party.
- B. Except as specifically permitted in this Services Agreement or as otherwise authorized in writing, neither party (including their respective employees and agents) shall, at any time, in any fashion, form or manner, whether directly, indirectly or by accident, divulge, disclose, communicate or use, any Confidential Information, or methods of accessing same, that is received, obtained, acquired or developed in association with this Services Agreement, whether prior to, during or subsequent to Contractor's engagement with Owner, unless necessary to effectuate the purposes of this Services Agreement. The parties' sole purpose for accessing and/or using Confidential Information shall be to perform their contractual obligations hereunder. This section 7(B) shall also apply to Contractor with respect to Customer Data.
- C. Contractor acknowledges and agrees that it, its employees and agents are bound by all applicable federal and state laws governing confidentiality and/or privacy of information including but in no way limited to individuals' personally identifiable information, e.g., protected health information (PHI) under the Health Insurance Portability and Accountability Act of 1996 (HIPAA).
- D. The parties acknowledge and agree that this section 7 shall not apply to information that is subject to Sunshine Law requests, only to the extent disclosure is based on the good faith written opinion of the receiving party's legal counsel that disclosure is required by law; provided, however, that that the receiving party shall give prompt notice of the service of process or other documentation that underlies such requirement and use its best efforts to assist the disclosing party if the disclosing party wishes to obtain a protective order or otherwise protect the confidentiality of such Confidential Information. The disclosing party reserves the right to obtain a protective order or otherwise protect the confidentiality of its Confidential Information.

8. Security.

- A. Contractor shall ensure the security and integrity of Customer Data and Confidential Information. Contractor agrees to transmit such information only through the use of secure methods and agrees to use the same or a greater degree of care in safeguarding the information as it uses for its own data and confidential information (but no less than reasonable care).
- B. Contractor agrees to store any Customer Data and Owner and Users' Confidential Information in secure, locked containers. Where data is stored on a computer or other electronic media, Contractor must have an appropriate computer security policy that protects such information from unauthorized access and/or disclosure. The computer security policy must include provisions that address the physical security of computer resources; equipment security to protect equipment from theft and unauthorized use; software and data security; and access control. Any access to the information, wherever and however stored, must be limited to staff who have an official business need and who have read, understood and agreed to terms substantially similar to those stated in this Services Agreement. Contractor's computer security policy is attached hereto as Appendix [redacted] and hereby incorporated by reference. Contractor shall conduct regular testing of its security policy and shall submit to Owner annually a report detailing any security measures taken during the applicable year, including but not limited to the results of any such testing as well as any reported security breaches.

C. Contractor hereby certifies that its security practices conform to the following industry standards:

- Shared Assessments Program
- Common Assurance Maturity Model
- Cloud Security Alliance
- FedRAMP
- SSAE 16 SOC 2
- ISO 27001
- ISO 27002
- Other (please specify): _____

D. Owner may, in its sole discretion and at its cost, engage a third party to conduct a security assessment of Contractor's operations as they may pertain to the services to Owner and/or Users. Contractor agrees to cooperate with Owner and the third party chosen by Owner in the performance of such independent security assessment.

9. **Unauthorized Disclosure or Misuse.** Upon the discovery of any unauthorized disclosure or misuse of Customer Data or Confidential Information, the disclosing party shall immediately, but in any case within seven (7) Days, notify the other party of same, and shall act to prevent any further disclosure or misuse, including enforcing obligations of parties to whom it has disclosed Customer Data and/or Confidential Information. The disclosing party shall remediate the potential damage from the unauthorized disclosure or misuse and shall be liable for any such unauthorized disclosure or misuse.
10. **Disaster Recovery.** Contractor must have an appropriate disaster recovery plan and conduct regular testing of that plan. Such plan is attached hereto as Appendix [redacted] and hereby incorporated by reference. Contractor shall promptly notify Owner of any disaster which may involve Customer Data and/or Owner or Users' Confidential Information, shall act to mitigate any losses resulting from and shall be liable for same.
11. **System Performance & Uptime Guarantees.** [Upon successful negotiation of these terms, include here or attach document hereto as Appendix [redacted] and incorporate by reference.]
12. **Maintenance & Service Level Agreement ("SLA").** [Upon successful negotiation of the Maintenance and SLA terms, those documents shall be attached hereto as Appendix [redacted] and hereby incorporated by reference.]
13. **Suspension.** Subject to the Dispute resolution process set forth in the Contract (Book 1) to which this Services Agreement is an exhibit, in the event Owner has any past due amounts (not subject to a Dispute Notice) more than ninety (90) days past due, Contractor has the right to suspend services. Contractor shall immediately reinstate services upon Owner's payment in full of the past due amount(s) (excluding any amount(s) subject to a Dispute Notice).
14. **Termination.**
- A. **Right to Terminate.**
- i. Owner may terminate the Services Agreement for any reason upon sixty (60) days notice of cancellation to Contractor.
 - ii. Either party may terminate the Services Agreement: (a) upon sixty (60) days notice of non-renewal at the expiration of any term; or (b) upon the other party's breach of the terms set forth herein (including without limitation breach of the SLA, incorporated herein pursuant to section 11). Except as may otherwise be set forth in the SLA, the non-breaching party shall give the breaching party a detailed notice of the alleged breach and thirty (30) days opportunity to cure the breach, but one hundred and twenty (120) days for non-payment.

- iii. Contractor may terminate the Services Agreement at any time upon notice to Owner if Owner: (a) files or consents to the filing against it of any petition for relief, reorganization or liquidation under any bankruptcy or insolvency law of any jurisdiction, or has any such petition filed against it that is not dismissed within thirty (30) days thereafter; or (b) makes a general assignment for the benefit of its creditors, or consents to the appointment of a custodian, receiver, trustee or other officer with similar power over a substantial portion of its assets, or has any proceeding seeking such an appointment filed against it that is not dismissed within thirty (30) days thereafter. This section is subject to the Dispute resolution process set forth in the Contract (Book 1) to which this Services Agreement is an exhibit.

B. Effect of Termination. Upon termination of this Services Agreement:

- i. Contractor shall refund to Owner a pro-rata amount of any payments already made for services not yet performed as of the effective date of termination, and Owner shall be released from any future payment obligation on or after the effective date of termination.
 - ii. Contractor shall return all Customer Data and Owner and Users' Confidential Information, in any form and regardless of the source of such information, in accordance with the Transition Plan incorporated herein pursuant to **section 4.B.** *[such Transition Plan shall provide that Contractor will return all Customer Data and Owner and Users' Confidential Information within thirty (30) days of the effective date of termination, shall set forth the format in which the data shall be returned, and provide that, if the termination is due to Contractor's breach, Contractor shall use commercially reasonable efforts to assist Owner in securing the continuity of its operations and mitigate any loss or damages to Owner, including but not limited to providing assistance to Owner in transition to an alternative provider].* In the alternative, with the written consent of Owner, Contractor may destroy all Customer Data and Owner's Confidential Information. "Destroy" includes the complete purging of all such information from all computers and back-up media storage. Upon request by Owner, Contractor shall provide a written certification of compliance with this section.
 - iii. Contractor's right to access and/or use Customer Data and Owner and Users' Confidential Information ceases upon the effective date of termination; however, its obligations under **sections 6, 7 and 8** shall survive in perpetuity.
15. **Notice.** Any notices made pursuant to this Services Agreement shall be made as set forth in the Contract (Book 1) to which this Services Agreement is an exhibit.
16. **Indemnification.** In addition to the indemnification provisions set forth in the Contract (Book 1) to which this Services Agreement is an exhibit, Contractor further agrees to:
- A. Defend and indemnify Owner against any claim by an unaffiliated third party of this Services Agreement that the services infringe upon that party's patent, copyright, trade secret or other intellectual property right and will pay Owner's reasonable attorneys' fees and the amount of any resulting adverse final judgment issued by a court of competent jurisdiction or of any settlement. If Owner's use of the services is enjoined as a result of any such claim, or in Contractor's opinion is likely to be enjoined or subject to such a claim, then, at its expense, Contractor may: (i) procure for Owner and Users the right to continue to use the services; or (ii) replace or modify the services with a functionally-equivalent or better service so that Owner and Users' use is not subject to a claim. If Contractor determines that it cannot accomplish either of the foregoing in a commercially reasonable manner, then, upon Contractor's request: (i) Owner and Users shall surrender, at Contractor's expense, use of the services; and (ii) Contractor shall promptly refund to Owner the price of the services less a reasonable allowance for use, provided that Contractor

shall use commercially reasonable efforts to assist Owner and Users in securing the continuity of their operations and mitigate any loss or damages to Owner and/or Users.

- B. Indemnify and hold harmless Owner from any and all claims, suits, causes of action, damages, and costs of any kind (including attorneys' fees) arising out of or in any way related to Contractor's unauthorized disclosure and/or misuse of Customer Data and/or Owner's Confidential Information.

17. **Warranty.** In addition to the warranties set forth in the Contract (Book 1) to which this Services Agreement is an exhibit, Contractor further agrees as follows.

- A. **Warranty of the Services.** If the services do not perform as warranted, Contractor will use reasonable efforts, consistent with industry standards, to cure the defect. Should Contractor be unable to cure the defect or provide a reasonable replacement service, Owner shall be entitled to a full refund of the fees paid for the defective services.
- B. **Warranty of Fitness for a Particular Purpose.** Owner has presented detailed technical specifications in the Contract Documents of the particular purpose for which the System is intended. Owner has provided detailed descriptions and criteria of how the System can be defined to accomplish this particular purpose. Owner has also defined the exact procedures and techniques to be employed in testing whether the System has achieved the defined performance of this particular purpose. Given this advanced preparation concerning, and documentation about Owner's particular purpose, Contractor, at the time this Services Agreement is in force has reason and opportunity to know (i) the particular purpose for which the System is required, and (ii) Owner is relying on Contractor's experience and knowledge of the System to provide that which is most suitable and appropriate. Therefore, Contractor warrants that the System is fit for the purpose for which it is intended as described in Contractor's Proposal in response to Owner's Request for Proposals.
- C. **Noninfringement Warranty.** Contractor warrants that the services do not infringe on any copyright, patent or other proprietary right(s) of any third party.
- D. **Exclusions.** These warranties do not apply to defects resulting from acts or events beyond Contractor's reasonable control (e.g., acts of God).
- E. **Remedies.** Contractor shall be liable for actual damages resulting from its breach of these warranties and any express warranty, in addition to Owner's other rights and remedies at law or in equity.

18. **Limitation of Liability.** Notwithstanding anything contained in the Contract Documents to the contrary, Contractor's liability to Owner shall not exceed one hundred percent (100%) of the Contract Price set forth in the Contract (Book 1) to which this Services Agreement is an exhibit, plus all fees due hereunder. Neither party shall be liable for any consequential, special, indirect, incidental, contingent or punitive damages, including loss of use and profit. The parties do not waive and expressly retain all rights and remedies to actual and direct damages as provided under State law.

19. **Ineffective Training.** Should an agent or employee of Contractor provide ineffective training services to Owner, as determined by Owner in its reasonable discretion, Contractor and Owner will determine in good faith a mutually agreeable, reasonable remedy for the ineffective services, in accordance with the Dispute resolution process set forth in the Contract (Book 1) to which this Software Agreement is an Exhibit.

20. **Financial Reports.** Contractor shall promptly provide to Owner copies of all financial statements and reports required filed pursuant to federal law.

21. **Export Control.** The parties acknowledge that the services, Customer Data and Confidential Information provided pursuant to this Services Agreement may be subject to the export laws and

regulations of the United States and/or other countries (collectively, "Export Laws"). The parties agree that they will not use, distribute, export, re-export, transfer or transmit the Software Products, Customer Data and/or Confidential Information (even in incorporated into other items) in violation of any applicable Export Laws.

22. **Miscellaneous.** This Services Agreement is subject to the terms and conditions contained in the Contract (Book 1) to which this Services Agreement is an exhibit as if fully set forth herein.

IN WITNESS WHEREOF, the parties have executed this Services Agreement as of the date and year first set forth below.

CONTRACTOR

OWNER

By: _____
Signature

By: _____
Signature

Typed or Printed Name

Typed or Printed Name

Title

Date

Title

Date