

IN THE CIRCUIT COURT OF THE  
EIGHTEENTH JUDICIAL CIRCUIT IN AND  
FOR BREVARD COUNTY, FLORIDA

CASE NO.

SCOTT ELLIS, in his official capacity  
as Brevard County Clerk of the Circuit  
Court,

Plaintiff,

vs.

BLUEGEM, LLC, a Florida limited  
liability company,

Defendant.

13CA033457  
FILED IN VERA-08  
CLERK OF CIR. CT.  
BREVARD CO. FL.  
2013 APR 29 A 9 35  
SCOTT ELLIS

**COMPLAINT**

COMES NOW, Plaintiff, SCOTT ELLIS, in his official capacity as Brevard County Clerk of the Circuit Court ("Clerk Ellis"), and hereby sues Defendant, BLUEGEM, LLC ("BlueGEM"), a Florida limited liability company, and alleges:

**GENERAL ALLEGATIONS**

1. The Office of the Brevard County Clerk of the Circuit Court (the "Clerk of Court") is an independent constitutional office created and governed by Article V, Section 16 and Article VIII, Section 1(d), Florida Constitution, Chapter 28, Fla. Stat., and Section 4.2.1, Charter of Brevard County, Florida.

2. BlueGEM is a limited liability company organized and existing under the laws of the State of Florida with its principal place of business in Brevard County, Florida.

3. The contracts that form the basis for this action were awarded and executed by former Clerk of Court Mitch Needelman ("Former Clerk Needelman") on behalf of the Clerk of



Court and BlueGEM in Brevard County, Florida and was to be performed therein.

4. Furthermore, the acts or omissions giving rise to the instant action occurred in Brevard County, Florida, and the instant action accrued in Brevard County, Florida pursuant to Section 47.011, Fla. Stat.

5. All conditions precedent to the institution of this action have been performed or have been waived by BlueGEM.

6. On or before January 30, 2012, Former Clerk Needelman and members of the Clerk of Court's staff had communications and meetings with representatives of BlueGEM to discuss issues related to document scanning, indexing, redaction, and electronic storage services.

7. On or about March 20, 2012, BlueGEM sent the Clerk of Court an invoice in the amount of \$10,000.00 for services related to the evaluation of the Clerk of Court's document scanning capabilities, its software and hardware needs, and its personnel requirements. A copy of the invoice is attached as Exhibit "A."

8. To the best of the Clerk of Court's knowledge, no contract was ever executed between Former Clerk Needelman and BlueGEM establishing a basis for payment of the invoice.

9. Notwithstanding, the invoice outlined several "Professional Services" that BlueGEM was to perform including, without limitation:

- a. Evaluate and audit scanning capabilities and efficiencies;
- b. Evaluate and audit redaction and IT hardware and software available to meet digitization demands
- c. Evaluate current scanning and redacting capacities and demands;
- d. Appraise software and hardware inputting and output to industry "best practices" standards;

- e. Assess personnel time and efficiency requirements for current demand
- f. Present oral report of audits and activities
  - i. Outline current staff and technologies abilities compare to industry “best practices”;
  - ii. Analyze software and hardware needs to increase efficiencies and reduce costs;
  - iii. Suggest software/hardware/personnel deployment strategies for improved performance; and
  - iv. Suggest improvements for improving current and back compliance with record digitization “best standards”

10. As of the date hereof, BlueGEM has failed to provide the Clerk of Court’s staff with a final oral report of audits and activities as outlined in the invoice.

11. On March 22, 2012, Former Clerk Needelman approved payment of the invoice prior to a final oral report being given and any audits having been performed. The same day, the Clerk of Court transferred \$10,000.00 to BlueGEM via wire transfer. A copy of the wire transfer confirmation is attached as Exhibit “B.”

12. Around the time he authorized payment of the BlueGEM invoice, Former Clerk Needelman instructed the Clerk of Court’s staff to prepare an Invitation to Negotiate (the “ITN”) to invite private vendors to negotiate for a contract to provide document scanning and electronic storage services.

13. On April 2, 2012, an account executive from Computing Systems Innovation (“CSI”) sent an e-mail to Michael McDaniel, the Clerk of Court’s former Finance Director (“Former Finance Director McDaniel”), and to Matt DuPree, a former business partner of

Former Clerk Needelman and current Vice President of BlueGEM and/or a related entity known as BlueWare, Inc. ("Mr. DuPree"), attaching a sample ITN<sup>1</sup> (the "Palm Beach ITN") to be used as a template for the Clerk of Court's ITN.

14. On April 19, 2012, Deena Brigham, BlueWare's Vice President of Finance ("Vice President Brigham"), also sent Former Finance Director McDaniel and Mr. DuPree a copy of the Palm Beach ITN that CSI had previously provided to Former Finance Director McDaniel and DuPree on April 2, 2012.

15. Additionally, on April 19, 2012, Vice President Brigham sent a proposed contract entitled "Scanning – Historical to Forward" to Former Finance Director McDaniel that mirrors the project outlined in the ITN BlueGEM prepared prior to the ITN being publicly available. A copy of the proposed contract entitled "Scanning – Historical to Forward" is attached as Exhibit "C."

16. On April 27, 2012, the Clerk of Court transferred \$10,000.00 to BlueGEM via wire transfer. The records maintained by the Clerk of Court do not include any invoice or other documentation reflecting any basis for the payment.

17. On information and belief, BlueGEM's staff adapted the Palm Beach ITN to turn the comprehensive 113-page document into a vague 11-page document to mirror the contract BlueGEM submitted on April 19, 2012 and as further outlined in Exhibit "C."

18. On May 3, 2012, the Clerk of Court issued its 11-page ITN that BlueGEM prepared. A copy of the ITN is attached as Exhibit "D." The ITN required, *inter alia*, that:

- a. the goal of the ITN was to enter into negotiations for digitization services;
- b. a selection process was to be used to choose the winning proposal;

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<sup>1</sup> The sample ITN provided by CSI was originally issued by the Palm Beach County Clerk of Court on February 25, 2013 for Official Records System Licensing, Maintenance, and Implementation Services.



- c. cost, pricing and proposed services would be factors in the selection of the winning proposal, and;
- d. all responses would receive "fair consideration."

19. On May 11, 2012, BlueGEM responded to the ITN by submitting a response to the ITN including a "Scanning Contract for Brevard County Clerk of the Court," a copy of which is attached as Exhibit "E." In its proposed scanning contract, BlueGEM offered to provide scanning and electronic storage services over a term of 60 months for a total of \$8.64 million.

20. On or about May 11, 2012, a competing vendor named FNTI Imaging ("FNTI") responded to the ITN by submitting a bid proposal, a copy of which attached as Exhibit "F."

21. On or about May 14, 2012, another competing vendor named American Cadastre, LLC ("AMCAD") also responded to the ITN by submitting a bid proposal, a copy of which is attached as Exhibit "G."

22. During the bidding process, the Clerk of Court received inquiries from FNTI, AMCAD and other interested vendors regarding the ITN's ambiguity and vagueness as to specifications and the brevity of the selection process itself.

23. Former Finance Director McDaniel was designated as the Clerk of Court's contact for any and all questions related to the ITN.

24. Upon information and belief, rather than answering the inquiries himself, Former Finance Director McDaniel, forwarded the inquiries to BlueGEM whereby BlueGEM would then instruct Former Finance Director McDaniel or his designee on how to respond to the competing vendors' inquiries.

25. Prior to the review of the ITN submissions, which was conducted on or about May 16, 2012, Former Clerk Needelman and/or his designee appointed a formal ranking and selection committee (the "Selection Committee") to evaluate and rank the proposals submitted

by BlueGEM, FNTI and AMCAD, and to select which vendor would be awarded the Scanning Contract pursuant to the ITN.

26. The Selection Committee consisted of the following members of the Clerk of Court's staff: Former Clerk Needelman; Former Finance Director McDaniel; former Chief Staff Counsel Merrily Longacre ("Former Chief Counsel Longacre"); and former Assistant Staff Counsel Mark Cook ("Former Assistant Counsel Cook").

27. None of the members of the Selection Committee had general or specific knowledge or expertise with regard to document scanning and electronic storage services.

28. Further, none of the members of the Selection Committee were versed on how the Clerk of Court's office scanned or stored its documents as of the date of the issuance of the ITN, nor did the Selection Committee consist of any employees of the Clerk of Court who were involved with document scanning or electronic storage services<sup>2</sup>.

29. On or about May 16, 2012, the Selection Committee met in a private, undisclosed location to consider the proposals.

30. At the Selection Committee meeting, each member of the Selection Committee completed ranking matrices for the purpose of ranking each of the responsive vendors' proposals. Copies of the Selection Committee's ranking matrices are attached as Composite Exhibit "H." The Selection Committee ranked the responsive vendors based on the following criteria:

- a. Lump Sum;
- b. Payment Plan;
- c. Time Line for Performance - Liquidation Penalty Milestones;

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<sup>2</sup> Specifically, the Clerk of Court has a Records Management Department and an I.T. Department. Neither the supervisor from Records Manager nor the I.T. Director were asked to serve on the Selection Committee.

- d. Digital Pen (exclusive intellectual property licensed to and marketed by BlueGEM);
- e. Performance Location;
- f. On-site Manager;
- g. Turn Around Time Analysis;
- h. Change Order Intimated;
- i. Past Customer Review; and
- j. System Integration Available.

31. Three (3) of the ranking matrices included minimal evaluation scorings for both FNTI and AMCAD in the "Digital Pen" section, though neither FNTI nor AMCAD proposed the use of Digital Pen technology as Digital Pen is licensed to and marketed by BlueGEM.

32. According to the Selection Committee's ranking matrices, the Selection Committee did not consider contract price in its deliberations. Nor did the Selection Committee consider whether the responsive vendors had the manpower, the equipment, the experience or the expertise to accomplish the objectives set forth in the ITN. This violated the requirements of the ITN, which required pricing and cost data to be submitted and promised "fair consideration" of same.

33. Based on the atypical selection criteria established by Former Clerk Needelman, the Selection Committee ranked BlueGEM with 160 points, FNTI with a total of 116 points and AMCAD with 96 points, making BlueGEM the successful bidder.

34. Despite the ranking of BlueGEM as the highest bidder on or about May 16, 2012, the Selection Committee failed to issue any type of Notice of Intended Award. Instead, the selection process continued until the Notice of Intended Award was provided by the Clerk of Court to FNTI and AMCAD on or about May 29, 2012 through Former Finance Director

McDaniel.

35. Between the formation of the Selection Committee and the Notice of Intended Award on May 29, 2012, some or all of the members of the Selection Committee engaged in numerous private communications, gatherings, and/or meetings to discuss the ranking, selection, award, and/or contract negotiation process.

36. Sometime between May 11 and May 21, 2012, the Clerk of Court hired attorney Dale Dettmer ("Attorney Dettmer") to review and provide an opinion letter concerning the proposed BlueGEM contract.

37. On May 18, 2012, Attorney Dettmer met with Former Chief Counsel Longacre and Former Assistant Counsel Cook to discuss BlueGEM's proposed "Scanning Contract for Brevard County Clerk of the Court."

38. Thereafter, Attorney Dettmer was asked by Former Chief Counsel Longacre to contact her via her private e-mail account to communicate regarding the proposed contract<sup>3</sup>.

39. Upon information and belief, former Clerk of Court's executive staff communicated in this method regarding the proposed contract, as well as other Clerk of Court official business, in an attempt to evade and frustrate the disclosure of such communications pursuant to Chapter 119, Fla. Stat.

40. On May 21, 2012, Attorney Dettmer submitted the requested opinion letter concerning the proposed contract to Former Chief Counsel Longacre and Former Assistant Counsel Cook. The opinion letter, a copy of which is attached as Exhibit "I," outlined multiple concerns that Attorney Dettmer had with the proposed contract, including:

- a. that the definition of "Normal Working Hours" in the contract did not

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<sup>3</sup> In a May 21, 2012 e-mail between Former Chief Counsel Longacre, Former Assistant Counsel Cook and Attorney Dettmer, Former Chief Counsel Longacre requested Attorney Dettmer send documents "to [Former Chief Counsel Longacre's] private email [sic] for the reasons we discussed the other day."

reflect the requirement for scanning services to be provided on a 24-hours per day, seven (7) days per week basis;

- b. that the contract as outlined could not be completed timely within five (5) years on a Monday through Friday 8:00 a.m. to 5:00 p.m. schedule with the exclusion of national and state holidays;
- c. that the proposed contract would exonerate BlueGEM for certain delays, but failed to set established milestones for BlueGEM to meet, or any penalty for failure to meet such milestones;
- d. that the proposed contract required the Clerk of Court to pay for BlueGEM's expenses associated with travel, accommodation and sustenance without specifically outlining agreed upon charges or limitations to such charges;
- e. that the proposed contract addressed intellectual property rights and granted the Clerk of Court a license to use BlueGEM's intellectual property during the duration of the proposed contract, but failed to address the right to continue using BlueGEM's software and other intellectual property after the term of the proposed contract;
- f. that the 60-day warranty provided for BlueGEM software was insufficient and should be extended to at least two (2) years;
- g. that the proposed contract placed limitations on the nature and amount of damages that the Clerk of Court would be able to recover from BlueGEM in the event of BlueGEM's breach of the proposed contract;
- h. that the proposed contract did not specify what software and equipment

BlueGEM was required to deliver to the Clerk of Court; and

- i. that the proposed contract referenced various expenses to be incurred by the Clerk without addressing amounts or limitations on such expenses.

41. On May 23, 2012, Vice President Brigham e-mailed a proposed contract with revisions to proof of coverage verbiage, indemnity verbiage and the payment schedule to Former Finance Director McDaniel, Former Chief Counsel Longacre and Former Assistant Counsel Cook for Former Clerk Needelman's consideration.

42. Also on May 23, 2012, before any contract was awarded, BlueGEM sent the Clerk of Court two (2) invoices: one (1) for \$300,000.00 and the other for \$210,000.00. The May 23, 2012 invoices, copies of which are attached as Composite Exhibit "J," were approved by Former Clerk Needelman on the same day.

43. Also on May 23, 2012, the Clerk of Court paid \$500,000.00 to BlueGEM via wire transfer. A copy of the wire transfer confirmation is attached as Exhibit "K."

44. On information and belief, the May 23, 2012 payment was \$10,000.00 less than the combined invoices of the same date to account for the unexplained \$10,000.00 payment BlueGEM received on April 27, 2012.

45. On May 24, 2012, Vice President Brigham e-mailed a second, revised proposed contract to Former Finance Director McDaniel, Former Chief Counsel Longacre and Former Assistant Counsel Cook for Former Clerk Needelman's consideration.

46. However, at a public forum held on or about May 24, 2012, Former Clerk Needelman specifically stated that no award of the ITN had been made.

47. On May 29, 2012, Former Finance Director McDaniel responded to an inquiry from FNTI by advising FNTI and AMCAD that the contract had been awarded to another

vendor. However, neither Former Clerk Needelman nor Former Finance Director McDaniel would disclose to whom the contract had been awarded.

48. On or about June 3, 2012, Former Chief Counsel Longacre prepared a confidential, internal Memorandum and Opinion addressing the “BlueWare Digitization Contract.” The Memorandum and Opinion, which is attached as Exhibit “L,” outlined multiple concerns to Former Clerk Needelman by Former Chief Counsel Longacre regarding the proposed BlueGEM contract<sup>4</sup> and the contract selection process, including:

- a. that terms of the contract addendum had yet to be agreed between the parties;
- b. that “there may be a civilian insider who will gain a benefit from the awarding of this contract”;
- c. that public requests for information regarding the selection process were not adequately answered by the Clerk of Court;
- d. that “[Section] 119.071(1)(b)[, Fla. Stat.] may apply to cause redaction of most of the contract terms and the bid receipts”;
- e. that the Clerk of Court “selected BlueWare [BlueGEM] and rejected the other two [vendors], however, at this time, the BlueWare [BlueGEM] negotiation has gone into a kind of limbo and if the terms cannot be agreed upon ... we actually may have to withdraw the whole process [and] start again because of the flak we have gotten from the opponent sector”;
- f. that the “contract has become stale to the point that it may now have to be released under the requirements of [C]hapter 119”;

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<sup>4</sup> The Memorandum and Opinion mistakenly references a contract with BlueWare, rather than BlueGEM, because BlueWare was the related entity with whom the Clerk of Court originally dealt. However, the proposed contract under review was actually submitted by BlueGEM and named BlueGEM as the contracting party.

- g. that the proposed contract required redaction to comply with Florida law;
- h. that "there was not opportunity for the [Clerk of Court's] legal team to review the ITN solicitation before it was published"; and,
- i. that "[t]he process happened extremely quickly and any responses of the [Clerk of Court's] legal team have to carry the caveat that our responses were made under time pressures that made considered opinions and proper responses impossible."

49. Despite the grave concerns raised by Former Chief Counsel Longacre and Attorney Dettmer, on June 29, 2012, Former Clerk Needelman executed a contract for document scanning services (the "Scanning Contract") with BlueGEM on behalf of the Clerk of Court. A copy of the Scanning Contract is attached as Exhibit "M."

50. On the same date that it entered into the Scanning Contract, BlueGEM sent three (3) invoices to the Clerk of Court: 1) Invoice 999102, referencing initial payment, in the amount of \$50,000.00; 2) Invoice 999103, referencing July 2012 monthly payment, in the amount of \$40,000.00; and 3) Invoice 999105, referencing the Digital Pen Pilot Project, in the amount of \$40,000.00, copies of which are attached as Composite Exhibit "N."

51. On the same date that BlueGEM issued its invoices, Former Clerk Needelman approved the invoices and the Clerk of Court tendered payment in the amount of \$90,000.00 to BlueGEM via wire transfer to satisfy invoices 999102 and 999105. A copy of the wire transfer confirmation is attached as Exhibit "O."

52. On July 9, 2012, the Clerk of Court tendered payment in the amount of \$40,000.00 to BlueGEM to satisfy invoice 99103, as evidenced by the wire transfer confirmation attached as Exhibit "P."



53. The Clerk of Court made three (3) additional monthly installment payments in the amount of \$40,000.00 to BlueGEM during the months of August through October 2012 totaling \$120,000.00.

54. On August 13, 2012, Former Chief Counsel Longacre, on behalf of the Clerk of Court, sent a letter to FNTI in response to FNTI's request for information submitted to the Clerk of Court more than a month prior on July 2, 2012. Former Chief Counsel Longacre's response to FNTI, a copy of which is attached as Exhibit "Q," attempts to explain why FNTI's proposal was rejected in lieu of BlueGEM's.

55. The response advised FNTI that its pricing was a concern because the total project price under FNTI's proposal might exceed \$7.7 million<sup>5</sup>. In fact, based upon an estimated 45 million documents to be scanned and electronically stored, the estimated contract price under the FNTI proposal would have been just over \$5 million<sup>6</sup>. Similarly, under the AMCAD proposal, the entire scanning project would have ranged approximately between \$4 million and \$5.4 million, depending on whether the Clerk of Court chose the single or double review options AMCAD quoted. In stark contrast, the BlueGEM contract called for the Clerk of Court to pay \$8.64 million for scanning and electronic storage of the same number of documents.

56. On August 15, 2012, Former Clerk Needelman lost the election for his position as the Clerk of Court in the county's primary election. As a result thereof, Former Clerk Needelman's term as Clerk of Court was to expire on January 7, 2013.

57. Despite his loss in the primary election, on October 22, 2012, Former Clerk Needelman executed an "AMENDMENT TO BLUEGEM, LLC BREVARD COUNTY CLERK

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<sup>5</sup> Chief Counsel Longacre arrived at this figure by extrapolating numbers provided by FNTI in its ITN submission with regard to a project FNTI had completed in the State of Hawaii.

<sup>6</sup> On May 9, 2012, Finance Director McDaniel sent an e-mail to interested vendors informing them that the image count of the project roughly totaled 45 million images.

OF COURT CONTRACT DATED JUNE 29, 2012" (the "Amendment"). A copy of the Amendment is attached as Exhibit "R."

58. As referenced in the Amendment, Former Clerk Needelman executed Promissory Note No. 479236750100001 dated October 23, 2012 (the "First Note") in the amount of \$6.1 million on behalf of the Clerk of Court and in favor of Hewlett-Packard Financial Services Company ("HP"). A copy of the First Note, which is attested to by former Chief Deputy Sean Campbell ("Former Chief Deputy Campbell"), is attached as Exhibit "S."

59. Contrary to the Amendment, which called for HP to disburse \$5.1 million to BlueGEM and \$1 million (or such amount required by the bonding agency) to an un referenced "[b]onding company," the initial Payment Direction Letter from Former Clerk Needelman to HP instructed HP to make the following disbursements: (1) BlueGEM: \$5,690,526.00; (2) Brunswick Companies: \$209,474.00; and (3) The Hanover Insurance Company: \$200,000.00. A copy of the Payment Direction Letter is attached as Exhibit "T."

60. For reasons unknown to the Clerk of Court, a second, identical Promissory Note (the "Second Note") bearing the same identification number as the First Note was executed by Former Chief Deputy Campbell on behalf of the Clerk of Court and in favor of HP. A copy of the Second Note, which was attested to by Former Clerk Needelman, is attached as Exhibit "U."

61. On HP's advice and in conjunction with the approval of Former Assistant Counsel Cook, Former Chief Deputy Campbell executed a revised Payment Direction Letter, dated October 29, 2012, instructing HP to make the following disbursements: (1) BlueGEM: \$5,690,526.00; and (2) Brunswick Companies: \$409,474.00. A copy of the revised Payment Direction Letter is attached as Exhibit "V."

62. Upon information and belief, Former Clerk Needelman borrowed the money from

HP to ensure BlueGEM was paid in full under the Scanning Contract as amended (despite the fact the Scanning Contract had only been active for four (4) months and less than 10,000 pages<sup>7</sup> had been scanned on a project that involved more than 45 million pages), because the newly-elected Clerk of Court, Clerk Ellis, had publically questioned the wisdom and validity of the Scanning Contract and indicated his intention to challenge its enforceability and potentially end the Scanning Contract.

63. With roughly only 10,000 pages scanned when the First Note was executed, Former Clerk Needelman has paid BlueGEM approximately \$687.00 per page. In addition, at a scanning rate of 2,500 pages per month, it would take BlueGem more than 1,500 years to complete the job.

#### **COUNT I – DECLARATORY JUDGMENT (Scanning Contract and the Amendment)**

64. This is an action for declaratory judgment under Chapter 86, Fla. Stat.

65. Clerk Ellis re-alleges and incorporates paragraphs 1 through 63 above as if fully set forth herein.

66. On June 29, 2012, Former Clerk Needelman and BlueGEM entered into the Scanning Contract for the provision of certain information technology, scanning, and document management services for which the Clerk of Court would provide compensation to BlueGEM.

67. On October 22, 2012, Former Clerk Needelman and BlueGEM executed the Amendment to the Scanning Contract.

#### **Illegality of the Contracts**

68. The Scanning Contract and the Amendment (collectively, the “Contracts”) are

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<sup>7</sup> In an October 17, 2012 press release, BlueGEM claimed that “before the end of the year, BlueGEM will have scanned 1.5 million documents of the county’s court records and have made them accessible online,” BlueGem never broke the 10,000 document threshold before the close of 2012.

void *ab initio* because they are illegal contracts for the following reasons:

- a. the entire bidding, selection, and negotiation process regarding the ITN was fundamentally flawed and against public policy because BlueGEM was intricately involved in the preparation of the ITN itself and essentially drafted the same. BlueGEM was also integrally involved in the administration of the ITN process in that it, as a submitting vendor, BlueGEM was also responding to questions through Former Finance Director McDaniel from other competing vendors prior to vendors submitting their responses to the Clerk of Court;
- b. Former Clerk Needelman did not follow the procedures required under the ITN and failed to give cost and pricing "fair consideration" as required;
- c. the items listed in Former Chief Counsel Longacre's June 3, 2012 Memorandum and Opinion;
- d. the process adopted by Former Clerk Needelman did not give "fair consideration" to all proposals and the award to BlueGEM was arbitrary and capricious; and
- e. they potentially violate Article VII, Section 10, Florida Constitution for the pledging of the state and county's credit for private enterprise.

#### **Illegal Payments Under the Contracts**

66. All payments coming due under the Scanning Contract before the execution of the Amendment were made from the Clerk of Court's existing finances.

67. However, all payments referenced in the Amendment to be made thereafter were tendered by HP to the parties listed in the revised Payment Direction Letter at the direction of Former Clerk Needelman and Former Chief Deputy Campbell.

68. As conditions of the \$6.1 million Promissory Note and the Second Promissory Note (collectively, the "Notes"), the Clerk of Court was to make monthly payments of \$110,776.00 at 3.55% interest over the course of a 60-month term to HP.

69. Pursuant to Article VII, Section 10, Florida Constitution, "[n]either the state nor any county, school district, municipality, special district, or agency of any of them, shall become a joint owner with, or stockholder of, or give, lend or use its ... credit to aid any corporation, association, partnership or person...."

70. The Clerk of Court's budget is funded specifically from state and county revenue as outlined in the Florida Statutes and the Brevard County Charter for those services it provides both for the state's court functions in Brevard County and for the Clerk of Court's duties as ex-officio Clerk to the Board of County Commissioners of Brevard County and as Brevard County's comptroller.

71. The Clerk of Court is prohibited from entering into a promissory note or loan with a financial institution or private entity for the purposes of funding, in whole or in part, its contractual obligations.

72. Regardless, BlueGEM and Brunswick Companies received and retain all of the illegal and/or invalid proceeds of the Notes from HP as referenced in the revised Payment Direction Letter.

73. Any payments made in violation of Article VII, Section 10, Florida Constitution consisting, in whole or in part, of county funds constitutes a violation of Section 129.09, Fla. Stat.<sup>8</sup>

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<sup>8</sup> Section 129.09, Fla. Stat.: "Any clerk of the circuit court, acting as county auditor, who shall sign any warrant for the payment of any claim or bill or indebtedness against any county funds ... to pay any illegal charge against the county, or to pay any claim against the county not authorized by law, or county ordinance, shall be personally liable for such amount, and if he or she shall sign such warrant willfully and knowingly..."

### **The Void or Voidable Contract Provisions**

73. The Scanning Contract contains BlueGEM's Standard Terms and Conditions (the "Terms and Conditions"), which are comprised in part of terms that are either void *ab initio* or unenforceable as set forth below.

74. The Scanning Contract contains the following language purporting to limit BlueGEM's liability to the Clerk of Court:

#### **Paragraph 9 - Liability:**

**Paragraph 9.1** – The Supplier's liability for in respect of (i) death or personal injury; and (ii) fraud or fraudulent misrepresentation, including statements made by us fraudulently prior to the date of this Agreement shall not be limited.

**Paragraph 9.2** – The Supplier's liability for direct physical damage to the Customer's tangible property under this Agreement shall be limited to five million dollars (\$5,000,000).

**Paragraph 9.3** – The Supplier shall have no liability to the Customer for:

**Paragraph 9.3.1** – Loss of profits, revenue, savings, data, programs or electronic records, business, goodwill, loss of productivity, loss of use, or loss of contracts; and

**Paragraph 9.3.2** – Any type of indirect or consequential loss or damage; and

**Paragraph 9.3.3** – Supplier shall be liable to Customer for provable damages caused by Supplier.

**Paragraph 9.4** – The Supplier has no liability hereunder unless written notice has been received within six (6) months of the cause of action giving rise to the claim occurring, giving reasonable details of the subject matter of the claim. Notwithstanding the foregoing, no action, regardless of form, arising out of the subject matter of the Agreement may be brought by either party more than one year after completion of the Services except that action for non-payment may be brought by the Supplier within one year after the expiry or termination of the Agreement or one year after the date of last payment whichever is later.

**Paragraph 9.5** – There are no implied warranties or liabilities.

75. The limitation on liability provisions set out in Paragraphs 9.1 through 9.5 of the Terms and Conditions are either void or unenforceable for one or more of the following reasons:

- a. The Clerk of Court, as an independent constitutional county officer, may only employ powers that are expressly authorized by the Florida Constitution or Florida Statute, or necessarily implied from such express powers, and the Clerk of Court does not have the power to enter into contracts limiting its legal remedies that potentially:
  - i. greatly shorten the statute of limitation on breaches of contracts from five (5) years to six (6) months;
  - ii. limit BlueGEM's liability for physical damage to tangible property to \$5,000,000.00; and
  - iii. exclude any liability on the part of BlueGEM for loss of profits, revenue, data programs or electronic records, business, goodwill or contracts and indirect or consequential damages.
- b. The subject provisions are confusing, ambiguous, contradictory and do not clearly state the conditions for limitation of BlueGEM's liability.
- c. The subject provisions are against public policy, for one or more of the following reasons:
  - i. because they prevent newly-elected officials from enforcing contracts that could be based upon fraud, collusion and/or a scheme to sabotage public offices or newly elected officials, and ultimately harm the taxpayers;
  - ii. any attempt to abridge or shorten the statute of limitations is void as against public policy of the State of Florida; and

iii. any attempt to relieve or indemnify a party from its own negligence is void as against public policy of the State of Florida.

d. The subject provisions are unconscionable as they serve no purpose other than to insulate BlueGEM from liability, including liability for its own negligence, at the expense of the Clerk of Court.

76. Paragraph 12 of the Terms and Conditions states, in pertinent part:

**Duration and Termination -**

**Paragraph 12.3** – In the event, Customer seeks early termination of the Contract, the term of performance of the Contract will be accelerated to end upon termination and the full amount owed under the Contract will be owed without any set off for any work that has not yet been completed. The remaining unpaid balance owed under the contract shall become immediately due without setoff or reduction for work that has not yet been completed. By terminating this Contract early, Customer accepts all work is being fully completed and satisfactory and shall have no claims against Supplier.

77. Paragraph 12.3 of the Terms and Conditions is void and unenforceable for one or more of the following reasons:

a. Pursuant to the operation of the provisions of Article V, Section 14, Florida Constitution and Sections 28.35 and 28.36, Fla. Stat., the Clerk of Court does not have the power to enter into contracts that would require the advance expenditure of budgeted funds for services not provided in any given fiscal year.

b. Complete exculpatory clauses are against public policy and violate Article VII, Section 10, Florida Constitution.

c. The exculpatory clauses are unconscionable as they serve no purpose other than to insulate and protect BlueGEM at the expense of the Clerk or Court.



d. Paragraph 12.3 is too confusing, vague and ambiguous to be enforceable.

78. Paragraph 2.3 of the Terms and Conditions states:

**Performance of Services –**

**Paragraph 2.3** – Customer shall provide Supplier free of charge with such office space and facilities as may be reasonably necessary to enable Supplier to fulfill its obligations under the terms of the Agreement.

79. Paragraph 2.3 of the Terms and Conditions is void and unenforceable as being in violation of Article VII, Section 10, Florida Constitution. Said provision also violated Section 125.35(3), Fla. Stat. and 2-244, Code of Ordinances of Brevard County, Florida regarding leasing of county-owned property and regulations regarding taxation related to the same.

80. Paragraph 4.1 of the Terms and Conditions states:

**Price and Payment –**

**Paragraph 4.1** – The Professional Services charged does not include travel time, the cost of travel, accommodation and subsistence and expenses incurred by Supplier ... which shall be charged to Customer and payable pursuant to State of Florida Statutes Clause 6.2.

81. Paragraph 4.1 of the Terms and Conditions is void and unenforceable in that there is no quantifiable limit as to such expenses in violation of Article VII, Section 10, Florida Constitution.

82. Upon information and belief, BlueGEM contends or will contend that the above provisions in the Scanning Contract are valid and enforceable as is the Scanning Contract itself.

83. BlueGEM has stated that it intends to perform the Scanning Contract.

84. In that the Scanning Contract is void *ab initio*, the Clerk of Court maintains that it is not obligated to adhere to the terms regarding the same and intends to reject BlueGEM's attempts to perform the same.

85. Similarly, the Clerk of Court maintains that payments made by the Clerk of Court under the void Contracts were invalid and illegal. However, on information and belief, BlueGEM contends or will contend that such payments were valid and legal.

86. Accordingly, the Clerk of Court and BlueGEM have a bona fide, actual need for a declaration concerning a present, ascertained or ascertainable state of facts and a present controversy, namely the validity and enforceability of the Contracts and payments made thereunder.

87. The parties have an actual, present, adverse and antagonistic interest in the subject matter of this action.

88. The relief sought herein is not merely the giving of legal advice or answers to questions propounded for mere curiosity. Rather, Clerk Ellis seeks a declaration that the Contracts are void and invalid in their entireties as illegal and/or that the exculpatory clauses and additional provisions set forth herein are void and unenforceable, and that payments made under the Contracts were illegal or otherwise invalid.

89. Clerk Ellis has reservations about the validity of the Contracts in their entireties and/or the effect of the exculpatory clauses and additional provisions set forth in the Contracts, and the payments made thereunder.

WHEREFORE, Plaintiff, SCOTT ELLIS, in his official capacity as Brevard County Clerk of the Circuit Court, demands a judgment, declaring that the Scanning Contract and the Amendment are void in their entireties and/or that the above specified provisions within the Contracts are void and unenforceable; declaring that payments made by the Clerk of Court under the Contracts were illegal or otherwise invalid; ordering BlueGEM to return to the Clerk of Court all sums paid by the Clerk of Court to BlueGEM pursuant to the Contracts; awarding the

Clerk of Court damages, interest and its costs of suit, including reasonable attorneys' fees, and granting any additional relief deemed appropriate under the circumstances.

## **COUNT II – BREACH OF CONTRACT**

90. This is an action for damages in excess of Fifteen Thousand Dollars (\$15,000.00) exclusive of costs, interest and attorneys' fees, and it is pled in the alternative to Count III, below.

91. Clerk Ellis re-alleges and incorporates the general allegations in paragraphs 1 through 63 above as if fully set forth herein.

92. On June 29, 2012, Former Clerk Needelman and BlueGEM entered into the Scanning Contract for the provision of certain information technology, scanning, and document management services for which the Clerk of Court would provide compensation to BlueGEM.

93. BlueGEM had various obligations under the Scanning Contract, including, without limitation, creating a final project plan delineating each step of the document management process, each deliverable and the specifications required to meet the goals of the Clerk of Court within its budget; providing a project timeline and budget; providing process-specific end-user training documentation prior to the start of training; providing "complete and robust" procedural documentation for the Clerk of Court's staff; providing documentation detailing disaster recovery systems, plans and failover testing; implementing a complete "Digital Pen Solution Pilot" testing program and training users on Digital Pen usage.

94. In exchange for full performance of BlueGEM's obligations under the Scanning Contract, the Clerk of Court was to pay BlueGEM the contract price of \$8,640,000.00.

95. Prior to the execution of the Scanning Contract, Former Clerk Needelman paid to BlueGEM the sum of \$520,000.00, and made additional monthly payments to BlueGEM after

execution of the Contract. In total, the Clerk of Court paid \$770,000.00 to BlueGEM in connection with the Scanning Contract.

96. Despite performance and payment by the Clerk of Court, BlueGEM breached the Scanning Contract by failing to perform some or all of its obligations there under including, without limitation:

- a. failing to create a final project plan delineating each step of the document management process, each deliverable and the specifications required to meet the goals of the Clerk of Court within its budget;
- b. failing to provide a project timeline and a budget;
- c. failing to provide process-specific end-user training documentation prior to the start of training;
- d. failing to provide "complete and robust" procedural documentation for the Clerk of Court's staff;
- e. failing to provide documentation detailing disaster recovery systems, plans and failover testing;
- f. failing to implement and complete a "Digital Pen Solution Pilot" testing program<sup>9</sup>;
- g. failing to fully and appropriately train users on Digital Pen usage; and
- h. otherwise failing to perform all of its obligations under the Scanning Contract.

97. Additionally, BlueGEM breached its duty of good faith and fair dealing owed to the Clerk of Court by, among other things, failing to allocate necessary personnel and resources to fully and properly perform under the Scanning Contract and failing to diligently continue

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<sup>9</sup> BlueGEM never implemented Digital Pen technology with the Clerk of Court.

progress under the Scanning Contract after completion of the testing phases.

98. As a result of BlueGEM's breaches of the Scanning Contract, as well as its breach of its duty of good faith and fair dealing, the Clerk of Court suffered damages including, without limitation, economic damages for sums paid to BlueGEM under the Scanning Contract.

99. As a result of BlueGEM's actions as alleged herein, Clerk Ellis has retained the law firm GrayRobinson, P.A. as undersigned counsel to represent the Clerk of Court's interests in this action and is obligated to pay them reasonable attorneys' fees.

100. Clerk Ellis is entitled to recover his reasonable attorneys' fees incurred in this action pursuant to Paragraph 25.1 of the Scanning Contract.

WHEREFORE, Plaintiff, SCOTT ELLIS, in his official capacity as Brevard County Clerk of the Circuit Court, demands judgment in its favor and against Defendant, BLUEGEM, LLC, for damages together with interest, costs, attorneys' fees and any additional relief deemed appropriate under the circumstances.

### COUNT III - RESCISSION

101. This is an action for rescission, and it is pled in the alternative to Count II above.

102. Clerk Ellis re-alleges and incorporates the general allegations in paragraphs 1 through 63, and the allegations of Count I above as if fully set forth herein.

103. The acts and omissions of BlueGEM described above, which constitute violations of Florida law in connection with the creation and submission of the ITN, the selection and ranking process, the bidding and negotiation process, the formation of the Contracts, as well as payments made thereunder, warrant rescission of the Contracts.

104. Further, the description of services and attendant obligations of BlueGEM under the Scanning Contract are so vague and confusing as to render them illusory.

105. Because BlueGEM's obligations under the Scanning Contract are ill-defined,

vague and illusory, the Scanning Contract lacks essential terms necessary for the formation of an enforceable agreement.

WHEREFORE, Plaintiff, SCOTT ELLIS, in his official capacity as Brevard County Clerk of the Circuit Court, demands judgment in his favor and against Defendant, BLUEGEM, LLC, rescinding the Scanning Contracts, ordering BlueGEM to return to the Clerk of Court all sums paid by the Clerk of Court to BlueGEM pursuant to the Scanning Contract, with interest, and awarding Clerk Ellis his costs of suit, and any additional relief deemed appropriate under the circumstances.

DATED this 28 day of March, 2013.

**GRAYROBINSON, P.A.**  
Attorneys for Plaintiff



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A

# BlueGem

BlueGem  
3050 W. 135th Street  
Cadillac, MI 49801  
Phone: 231-775-0224  
Fax: 231-775-1002

INVOICE  
9990320

TO: Brevard County Clerk  
ATTN: Accounts Payable  
700 South Park Avenue  
Titusville, FL 32780

Customer	Bill To	Terms	Contact
BREVARD	3/20/2012	Due Upon Receipt	Accounts Payable
Description			Charge

## Professional Services

- a. Evaluate and audit scanning capabilities and efficiencies
- b. Evaluate and audit redaction and IT hardware and software available to meet digitization demands
- c. Evaluate current scanning and redacting capabilities and demands
- d. Appraise software and hardware inputting and output to industry "best practices" standards
- e. Assess personnel time and efficiency requirements for current demand
- f. Present oral report of audits and activities
  - i. Outline current staff and technologies abilities compare to industry "best practices"
  - ii. Analyze software and hardware needs to increase efficiencies and reduce costs
  - iii. Suggest software/hardware/personnel deployment strategies for improved performance
  - iv. Suggest improvements for improving current and back compliance with record digitization "best standards"

\$ 10,000.00

Invoice total

\$ 10,000.00

Beneficiary: BlueWare, Inc.  
Currency: USD  
Correspondent Bank: Firstbank  
Location: 114 West Pine Street  
Cadillac, MI 49801  
(231) 775-9000

Routing Number: [REDACTED]  
Account Number: [REDACTED]

*Manuel J. [Signature]*  
22 MARCH 2012

OK TO PAY  
*[Signature]*

3/27/12  
0500 54000 5240000



B



Wire Transfer Debit Advice As Of 03/22/12 Distributed 03/22/12 2:43:13 PM EDT

Account: [REDACTED]  
CLERK OF COURT BREVARD CTY AGENCY

Wire Transfer Debit

Amount: \$10,000.00 USD

Fed/IMAD Reference: [REDACTED]

SunTrust Reference Number: [REDACTED]

Beneficiary: [REDACTED]  
Blue Gem

Beneficiary Bank: [REDACTED]  
FIRSTBANK  
SHEPHERD, MI

Originator: [REDACTED]  
CLERK OF THE COURT-BREVARD COUNTY  
AGENCY ACCOUNT  
400 SOUTH STREET  
TITUSVILLE FL 32780-7683

Sender Reference: 9990320

Money Transfer Customer Service

Please contact us for further information about this or other funds transfers. You may reach us at 1-800-947-3786 for information regarding domestic or international transfers. When inquiring about this transaction, please have the SunTrust Reference Number (above) available.

Thank you for banking with SunTrust.

C

# BlueGEM

BlueGEM  
3060 West 13<sup>th</sup> Street  
Cadillac, MI 49601

("Supplier")

Brevard County Clerk  
700 South Park Avenue  
Titusville, FL 32780

("Customer")

## Scanning – Historical and Forward

IT IS AGREED as follows:

1. This Agreement is made between Supplier and Customer for the provision of the Services described in Schedule A ("Statement of Work") in consideration of the Total Charge set out in Schedule B ("Pricing Schedule").
2. This Agreement shall comprise:
  - 2.1. Supplier's Standard Terms and Conditions for IT Services;
  - 2.2. The Statement of Work; and
  - 2.3. The Total Charge
  - 2.4. Clause 3 set out below.
3. This Agreement shall commence on or before \_\_\_\_\_ and, subject to the provisions of the Supplier's Standard Terms and Conditions for IT Services, shall continue for 60 Months (the "Term").

For and on behalf of:

BlueGEM

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

Signed by: \_\_\_\_\_

\_\_\_\_\_ (print name)

For and on behalf of:

Brevard County Clerk

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

Signed by: \_\_\_\_\_

\_\_\_\_\_ (print name)

## STANDARD TERMS AND CONDITIONS FOR I.T. SERVICES

### 1. Definitions

- 1.1. In this Agreement the following expressions shall have the following means:

*"Agreement"* means this agreement between the parties which incorporates the documents referred to a paragraph 2 on the front sheet;

*"Associated Company"* means any subsidiary for the time being of a party to this Agreement or the holding company of such party or any subsidiary of any such holding company.

*"Commencement Date"* means the date specified in the Agreement on which the Agreement comes into force or, if no such date is specified, the date on which the Services commence;

*"Force Majeure"* means any of the following: (i) Act of God, (ii) outbreak of hostilities, riot civil disturbance, acts of terrorism, (iii) the act of any government or authority (including refusal or revocation of any license or consent), (iv) fire, explosion, flood, fog or bad weather, (v) power failure, failure of telecommunication lines, failure or breakdown of plant, machinery or vehicles, (vi) default of suppliers or sub-contractors, (vii) theft, malicious damage, strike, lock-out or industrial action of any kind and (viii) any cause or circumstance whatsoever beyond either party's reasonable control;

*"Intellectual Property Rights"* means all patents, utility models, petty patents, design patents, design rights (whether registered or unregistered), semiconductor topography rights, trademarks, trade secrets, services marks, and copyright, and applications in any country of the World for any of the foregoing;

*"Normal Working Hours"* means the days and hours as specified in the Pricing Schedule;

*"Services"* means the services to be provided by Supplier to Customer, more particularly described in the Agreement and where the context admits shall include any part thereof;

*"Software"* means the computer software (if any) which Supplier has agreed to create for Customer as part of the Services;

*"Project Change Control"* means any change to the Services including but not limited to: (i) the addition or reduction of features or services, (ii) the addition or reduction of equipment and/or software, (iii) the use of existing equipment and/or software in a different configuration or for a different purpose;

*"Year"* means a period of 12 months after the Commencement Date and each anniversary of the Commencement Date thereafter.

### 1.2. Interpretation

- 1.2.1. All references to a statutory provision shall be construed as including references to any statutory provision, modification, consolidation or re-enactment (whether

before or after today's date) for the time being in force;

- 1.2.2. Except where the context otherwise requires, words denoting the singular include the plural and vice versa; words denoting any gender include all genders; words denoting persons include firms and corporations and vice versa;

- 1.2.3. Unless otherwise stated, a reference to a Clause or Schedule is a reference to a Clause or Schedule to this Agreement, and each Schedule shall be deemed to form part of this Agreement;

- 1.2.4. Clause headings are for ease of reference only and do not affect the construction of this Agreement;

- 1.2.5. Any reference to a party to the Agreement includes reference to its successors in title and permitted assigns.

### 2. Terms of Agreement

This Agreement shall come into force on the Commencement Date and subject as hereinafter provided in Clause 15 shall continue in force for the period specified in the Agreement or if no such period is specified until the Services have been substantially completed.

### 3. Performance of Services

- 3.1. Supplier shall diligently perform the Services with reasonable skill and care and in accordance with the terms of the Agreement. The Services shall be performed by Supplier during Normal Working Hours and any hours worked outside Normal Working Hours shall be charged separately as may be provided in the Pricing Schedule;

- 3.2. To the extent that they are reasonably required by Supplier to enable Supplier to perform the Services, Customer shall throughout the period of the Agreement, whether or not requested by Supplier, promptly provide Supplier with all information requested by Supplier and answer any questions from Supplier (including, without limitation, complete and accurate information concerning its requirements, organization, operations and activities and any decisions made by Customer in relation to the Services). Supplier reserves the right to charge Customer for extra costs incurred by Supplier as a result of any failure to comply with the provisions of this Clause limited to the scope of the contract.

- 3.3. Customer shall provide Supplier free of charge with such office space and facilities as may reasonably be necessary to enable Supplier to fulfill its obligations under the terms of the Agreement;

### 4. Extension of Time

- 4.1. Supplier shall incur no liability whatsoever to Customer by reason of any delay in the performance of the Services:

- 4.1.1. If the delay is due wholly or partly to any act, omission or default on the part of the Customer, including but not limited to failure to provide information, or to approve any documents, reports, specifications or results of the Services for which approval is required by Customer within any periods agreed in writing between Supplier and Customer or if there is no such period within a reasonable time;
- 4.1.2. If the delay is due to Force Majeure pursuant to Clause 13.  
In the event of any such delay as aforesaid, Supplier shall have the right to an extension of time to perform the Services by such reasonable period having regard to the nature of such delay, and the right to be paid all reasonable costs charges and losses sustained or incurred by Supplier as a result thereof and any such act or omission have been payable pursuant to the Pricing Schedule.
5. **Project Change Control Procedure**
  - 5.1. Either party may at any time propose a Project Change Control. Such party shall give notice of such proposed Project Change Control together with full particulars to the other party. Subject to the agreement of Customer, Supplier shall within a reasonable time of the service of the Project Change Control prepare at its discretion and at Customer's cost at Supplier's current rate, either a feasibility study or proposal or, if it is satisfied that the proposed Project Change can be implemented without such a study or proposal, an implementation plan incorporating (without limitation) Supplier's recommendation for the scope and period of performance.
  - 5.2. As part of the preparation by Supplier of the feasibility study, proposal and/or plan Customer shall promptly furnish such information as Supplier may reasonably require, to enable Supplier to prepare a quotation for the proposed Project Change, which quotation shall include (without limitation):
    - 5.2.1. Any cost of implementing the Project Change and/or any price for carrying out any new service;
    - 5.2.2. Any proposal for amending the Agreement;
    - 5.2.3. The scope of work to implement the Project Change including any effect on existing Services;
    - 5.2.4. The timetable for such implementation; and
    - 5.2.5. Any change to the duration of the Agreement.
  - 5.3. In proposing a Project Change, both parties shall take due account of any current plans or developments of which it is aware and which the other may be considering in connection with the Services, provided always that this shall not restrict either party's right to request a Project Change if it considers it appropriate.
- 5.4. If Customer accepts Supplier's quotation under Clause 5.2, Supplier shall prepare a Project Change schedule to the Agreement incorporating the agreed Project Change, which schedule shall be binding upon signature by both parties. If Customer does not accept Supplier's quotation under Clause 5.2, Customer shall forthwith notify Supplier in writing and, if applicable, shall pay to Supplier such reasonable costs as may have been incurred by Supplier in connection with the preparation of the quotation.
6. **Price and Payment**
  - 6.1. The Professional Services charge does not include travel time, the cost of travel, accommodation and subsistence, and expenses incurred by Supplier in the course of providing the Services which shall be charged to Customer and payable pursuant to State of Florida statutes Clause 6.2 provided that Supplier shall on written request of Customer provide Customer with such evidence of such costs and expenses as Customer may reasonably require.
  - 6.2. Supplier shall invoice Customer in accordance with the Pricing Schedule. Unless specified otherwise, payment of all amounts due under the Agreement shall be made within 45 days of the date of invoice.
  - 6.3. If Customer disputes the contents of any invoice, it shall provide Supplier in writing with reasons for non-payment and supporting evidence. In such event, Customer shall be entitled to suspend payment of the disputed part of the invoice. The parties shall discuss the disputed amount of the invoice as soon as possible. If it is established that the reasons are justified, the invoice shall be adjusted and Customer shall pay the remaining balance within thirty days after receipt of the adjusted invoice. If it is established that the reasons are unjustified, Customer shall pay the disputed balance immediately, together with interest in accordance with Clause 6.4 if applicable. Any part of an invoice properly disputed by Customer shall not affect payment of the undisputed portion. If no notification of dispute is received by Supplier within the credit period following the dispatch of the invoice, Customer shall be precluded from disputing payment of such invoice.
  - 6.4. Supplier reserves the right to charge Customer interest in respect of the late payment of any sum due under this Agreement at the rate of one and one-half percent (1.5%) per month (or, if less, the maximum allowed by applicable law) on the overdue balance. Such interest shall immediately be paid by Customer upon first demand. All amounts due under this Agreement shall be paid

in full without any deduction or withholding other than as required by law and Customer shall not be entitled to assert any credit set-off or counterclaim against Supplier in order to justify withholding payment of any such amount in whole or in part.

- 6.5. If after the due date for payment has passed, payment due under the terms of this Agreement is not made within 30 days of a written demand sent to Customer or within 30 days of the expiry of any agreed credit period (whichever is the longer), Supplier may at its discretion suspend the performance of the Services or any part thereof until payment in full is received from Customer. If upon resumption of the Services, Supplier is required to carry out any services or incur any costs which but for the suspension would not have been carried out or incurred, Customer shall reimburse the cost of any such service and costs, which shall be paid within 45 days of the date of the invoice.

**7. Communication**

- 7.1. Customer shall nominate a person with the necessary knowledge and experience relevant to the provision of the Services and with the requisite knowledge of Customer's business (including but not limited to Customer's organization, its operations and business practices) as its representative and as the prime point of contact with Supplier and through whom all communication with Supplier shall be made (the "Customer Project Manager"). The Customer Project Manager shall:
- 7.1.1. Serve as the interface between the Supplier and all departments of the Customer participating in the Project;
  - 7.1.2. In conjunction with the Supplier Project manager, handle each Project Change Control;
  - 7.1.3. Obtain and provide all information, data, decisions, and approvals, within one (1) working day of his receipt of a request from the Supplier, unless the Parties (acting reasonably and promptly) agree to extend the response time;
  - 7.1.4. Resolve deviations from the Project Plan that are attributable to the Customer; assist with the resolution of any issues with the Project issues, and escalate those issues internally, as necessary; and
  - 7.1.5. Monitor and report to the senior management of the Customer on the status of the Project
- 7.2. Supplier shall nominate a representative who shall be responsible for monitoring and reviewing the performance of the Agreement and through whom all communication with Customer shall be made (the "Supplier Project Manager").

- 7.3. Each party may at any time substitute another suitable person as its representative, and shall give notice to the other party of any such substitution.

- 7.4. The parties' representatives shall meet periodically as agreed between the parties to review the Services and to deal with any requests and problems as may have arisen in the period prior to the review.

- 7.5. Either party shall be entitled to call a meeting referred to in Clause 7.4 upon not less than three (3) days' notice if that party reasonably considers that there are issues which need to be discussed and/or resolved relating to the Services. Both parties shall use all reasonable endeavors to attend meetings called on shorter notice when urgently required. Any such meeting may if the parties agree be carried out by teleconference or videoconference.

**8. Employment of Personnel**

- 8.1. Supplier warrants that the personnel assigned by Supplier to the provision of the Services possess the degree of skill and experience appropriate to the tasks to which they are allotted. Supplier shall use reasonable endeavors to maintain the personnel so allotted but may substitute other suitably qualified personnel in connection with its own business requirements or if such personnel are for any reason absent from work. If any assigned personnel are promoted to a higher job category during the period of the Agreement and Customer has requested that any such personnel should continue to provide Services, Supplier may adjust the Pricing Schedule to take account of the increased cost to Supplier of employing such personnel.
- 8.2. During the period of the Agreement and for a period of six (6) months thereafter neither party shall without the prior written consent of the other party either directly or indirectly or in conjunction with any other person induce any employee or contractor of the other party or its Associated Companies who is or has, in the case of the Supplier's employees, been directly involved in the Supply or, in the case of the Customer's employees, been involved in the purchase of the Services to leave his employment and become an employee of such party or any Associated Company of such party.
- 8.3. As part of the written consent referred to in Clause 8.2, the party giving the consent (the "Original Employer") may require the other party to make a payment to the Original Employer to reflect the cost of recruiting a replacement for such employee and to cover any losses and costs incurred by the Original Employer as a result of such employee ceasing to be employed by the Original Employer.

**9. Intellectual Property Rights**

- 9.1. Unless otherwise agreed in writing, any Intellectual Property Rights arising solely out of and in the course of the work carried out by Supplier as part of the Services shall vest in Supplier.
- 9.2. Subject to the payment of all sums due to Supplier under the Agreement, Supplier agrees to grant or procure the grant to Customer of a non-exclusive, perpetual, royalty-free license (but with no right to sub-license the use to any third party) of the Intellectual Property Rights referred to in Clause 9.1 to use and reproduce the same in connection with the running of its own business.
- 9.3. To the extent that Supplier requires a license under any Intellectual Property Rights vested in or licensed to Customer to enable Supplier to carry out the Services, Customer hereby grants to Supplier, Supplier's Associated Companies, agents and sub-contractors engaged in providing the Services and warrants that it has the right so to grant a non-exclusive, royalty-free license for the duration of the Agreement.
- 9.4.
  - 9.4.1. Supplier shall forthwith notify Customer if any claim or demand is made or action brought against Supplier for infringement or alleged infringement of any Intellectual Property Rights which may affect the use by Customer of the Services.
  - 9.4.2. Customer shall forthwith notify Supplier if any claim or demand is made or action brought against Customer for infringement or alleged infringement of any Intellectual Property Rights in connection with the Services. Supplier shall have the right at its own expense to conduct any litigation arising therefrom and all negotiations in connection therewith and in such event Customer hereby agrees to grant to Supplier exclusive control of any such litigation and such negotiations.
  - 9.4.3. Customer shall at the request of Supplier afford to Supplier all reasonable assistance for the purpose of contesting any claim or demand made or action brought against Customer or Supplier for infringement or alleged infringement of any such Intellectual Property Rights and shall be repaid all costs and expenses (including but not limited to reasonable legal costs and disbursements) incurred in so doing.
  - 9.4.4. Customer shall not make any admissions which may be prejudicial to the defense or settlement of any claim, demand or action for infringement or alleged infringement of any such Intellectual Property Rights by Customer or Supplier.

9.4.5. If a claim, demand or action for infringement or alleged infringement of any such Intellectual Property Rights is made in connection with the provision of the Services or in the reasonable opinion of Supplier is likely to be made, Supplier may at its own expense either:

9.4.5.1. Modify the way the Services are provided, without reducing the performance and functionality of the same, so as to avoid the infringement or the alleged infringement and the terms herein shall apply mutatis mutandis to such modified Services; or

9.4.5.2. Procure a license on such terms as it shall think fit for Supplier to perform the Services and on terms which are reasonably acceptable to Customer.

9.5. The foregoing provisions of this Clause shall not apply insofar as any such claim or demand or action is in respect of:

9.5.1. Any use by or on behalf of Customer of anything supplied by Supplier under this Agreement in combination with any item not so supplied where such use of the item directly gives rise to the claim, demand or action; or

9.5.2. Any modification carried out by or on behalf of Customer to any item supplied by Supplier under this Agreement if such modification is not authorized by Supplier in writing; or

9.5.3. Customer's unreasonable refusal to use a modified form of the Services supplied pursuant to Clause 9.4.5.

9.6. If Supplier has availed itself of its rights to modify the way the Services are provided under Clause 9.4.5.1 or to procure a license in accordance with Clause 9.4.5.2 and such exercise of the said rights has avoided any claim, demand or action for infringement or alleged infringement, then Supplier shall have no further liability thereafter under this Clause 9 in respect of the said claim, demand or action.

9.7. Customer hereby warrants that any instructions given in relation to Supplier's use of any third party item supplied directly or indirectly by Customer shall not cause Supplier to infringe any third party's Intellectual Property Rights in such item.

**10. Warranty**

10.1. Supplier warrants to Customer that any Software will, at the time of delivery, or, if installed by Supplier, at the date of installation of the Software, and for sixty (60) days thereafter, be free from defects and will conform in all material respects to the agreed Software specification (if



any). Customer's remedy and Supplier's obligations shall be limited to debugging any defective Software provided the defect is reported to Supplier within the sixty (60) day period. This warranty shall not apply in circumstances in which Supplier reasonably believes that the Software has been subject to misuse, neglect, improper installation, repair, alteration or damage by Customer or by anyone authorised by Customer to use the Software, or where Customer has carried out its own acceptance tests and the defect has not been revealed. Any work carried out by Supplier to rectify any defects in such circumstances shall be chargeable at Supplier's current rates.

10.2. Supplier does not warrant that the operation of the Software will be uninterrupted or error-free or that defects in Software can be corrected. Unless otherwise agreed, Customer shall use Software at its own risk.

10.3. Supplier will, so far as it is able, pass to Customer the benefit of any warranties in respect of any software created by third parties where such software is provided by Supplier to Customer as part of the Services.

#### 11. Liability

11.1. The Supplier's liability in respect of (i) death or personal injury; and (ii) fraud or fraudulent misrepresentation, including statements made by us fraudulently prior to the date of this Agreement shall not be limited.

11.2. The Supplier's liability for direct physical damage to the Customer's tangible property under this Agreement shall be limited to one million dollars (\$1,000,000).

11.3. The Supplier shall have no liability to the Customer for:

11.3.1. Loss of profits, revenue, savings, data programs or electronic records, business, goodwill or contracts and

11.3.2. Any type of indirect or consequential loss or damage provided that the customer is present and aware of all activities.

11.4. The Supplier have no liability hereunder unless written notice has been received within six (6) months of the cause of action giving rise to the claim occurring, giving reasonable details of the subject matter of the claim. Notwithstanding the foregoing, no action, regardless of form, arising out of the subject matter of the Agreement may be brought by either party more than one year after completion of the Services except that action for non-payment may be brought by the Supplier within one year after the expiry or termination of the Agreement or one year after the date of last payment whichever is later.

11.5. Save as expressly stated in this Agreement, all conditions, terms and undertakings whether

implied, statutory or otherwise in respect of the Services or any part thereof are hereby excluded to the extent permitted at law.

11.6. The exclusions and limitations of liability set out in this Agreement shall exclude and limit all of the Supplier's liability to the Customer in respect of all matters arising out of or in connection with this Agreement whether in contract, tort (including but not limited to negligence), for breach of statutory duty or otherwise.

#### 12. Force Majeure

If either party's performance of its obligations is affected by Force Majeure it shall forthwith notify the other party of the nature and extent thereof. If by reason of Force Majeure, either party is unable to perform or there are delays by such party in the performance of any such obligation, then in the event that Force Majeure affects such party's obligations, such party's performance of any such obligation shall be suspended as long as the Force Majeure continues and the time for performance of that obligation shall be extended accordingly, and the party otherwise in default shall not in any event be liable to the other party for any loss or damage whatsoever ad howsoever arising (whether direct or indirect loss of damage) incurred or suffered or for any breach of any of the terms of the Agreement by reason of such Force Majeure.

#### 13. Confidentiality

13.1. Each party ("the receiving party") shall at all times during the continuance of this Agreement and after its termination:

13.1.1. Maintain confidential all information given to him by the other party ("the disclosing party") at any time in respect of the business and affairs of the other party, whether initially disclosed orally or in writing, or in the form of samples, models, computer data or software, or by demonstration or otherwise, which is by its nature confidential or is previously identified or indicated to the receiving party by the disclosing party as being confidential information ("the Information");

13.1.2. Not use the Information other than for the purposes of this Agreement;

13.2. The receiving party shall limit disclosure of the Information to persons within its organization and to those third party contractors performing tasks that would otherwise customarily or routinely be performed by the receiving party's employees, who have a need to know such Information in the course of the proper performance of their duties and who are contractually bound to protect the confidentiality of such Information on similar terms as contained in this Clause 14.

- 13.3. Information disclosed pursuant to this Agreement shall be stored securely. Upon expiry or termination of this Agreement pursuant to Clause 15 the receiving party shall return all information and all permitted copies of the same to the disclosing party, save where archive copies kept by the receiving party are required by law or a relevant regulatory authority.
- 13.4. Except where the disclosing party gives written instructions to the receiving party at any time that the obligations of confidentiality in respect of specified items of Information should be maintained for a different period, the receiving party's obligations pursuant to this Agreement shall notwithstanding subsequent termination continue for a period of five (5) years.
- 13.5. The receiving party shall be permitted to use or disclose any part of the Information to the extent only that:
- 13.5.1. The Information is in or comes into the public domain otherwise than by disclosure by the receiving party; or
  - 13.5.2. The Information was or is lawfully obtained or available from a third party who is lawfully in possession of the same and free to disclose it; or
  - 13.5.3. The receiving party already has knowledge of the Information prior to disclosure by the disclosing party as evidenced by written records; or
  - 13.5.4. Such disclosure is required by law or governmental regulation.
- 13.6. Nothing in this Clause shall be deemed to grant a license expressly or by implication under any Intellectual Property Rights.
- 13.7. This Clause shall supersede any existing agreement between the parties concerning the confidentiality of information as may have been entered into in anticipation of the conclusion of the Agreement.
- 14. Duration and Termination**
- 14.1. Subject to Clause 15.3, if Customer purports to terminate this Agreement during the term of the Agreement, the Total Charge shall nevertheless continue to be payable as if the Agreement had continued to the end of such term. Notwithstanding Clause 6.5, and subject to Clause 6.3, if Customer fails to make payment promptly on the due date for payment and payment is not received in full within thirty (30) days of a written reminder to Customer that payment is overdue Supplier may at its discretion terminate the Agreement.
- 14.2. Notwithstanding Clause 15.1, either party shall be entitled to terminate this Agreement if the other:
- 14.2.1. Commits any material breach of any term of this Agreement (other than a failure to make payment permitting termination by the Supplier under Clause 15.1) which (in the case of a breach capable of being remedied) shall not have been remedied within a reasonable period but not less than sixty (60) days of a written request to remedy the same
- 14.3. Any termination of this Agreement shall be without prejudice to any other rights or remedies a party may be entitled to hereunder or at law and shall not affect any accrued rights or liabilities of either party nor the coming into or continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.
- 15. Consequences of Termination or Expiration**
- Upon termination or expiration of the Agreement Supplier shall be entitled to enter upon the premises of Customer for the purposes of recovering any equipment or materials which are the property of Supplier, for which purpose Customer hereby grants Supplier an irrevocable license to enter any such premises with reasonable notice to the customer.
- 16. Risk of Loss**
- All work, including data, delivered to Customer by Supplier ("Deliverables") shall become the responsibility of Customer to protect from loss, damage or destruction on delivery and Customer assumes such responsibility and the related risk. Deliverables shall be considered delivered either when Customer takes physical possession of them directly from Supplier, when they are stored at Customer's location, when they are mailed to Customer by registered post, or when they are physically transferred to a common carrier for shipment to Customer whichever is earlier. Further, Customer agrees that: (i) Supplier shall not be liable for any such loss, damage or destruction relating to Deliverables, and (ii) replacement or other reworking of any Deliverables which are lost, damaged or destroyed after delivery to Customer shall be at the sole cost of the Customer.
- 17. Assignment of Agreement**
- Neither party may assign or subcontract (in whole or in part) any of the benefit of or their obligations under the Agreement without the written consent of the other party, except that: (i) the Supplier may assign the benefit subject to the burden of this Agreement (or any part thereof) to any Associated Company; (ii) Supplier shall be entitled to sub-contract any of its obligations under this Agreement to any other person with the consent of Customer, such consent not to be unreasonably withheld or delayed, except that such consent shall not be required in the case of Supplier subcontracting its obligations to an Associated Company; and (iii) the Supplier shall have the right to assign its right to receive due payment of any Total Charges to a third party and the Supplier shall inform the Customer of the identity of such third party if and when such assignment takes place. Subject to the other

provisions of this Clause 18, this Agreement is binding upon and shall ensure for the benefit of the parties' personal representatives, assigns and successors in title.

**18. Waiver**

The waiver by either party of a breach or default of any of the provisions of this Agreement by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions nor shall any delay or omission on the part of either party to exercise or avail itself of any right power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the other party.

**19. Notices**

Any notice or other communication required to be given pursuant to the Agreement shall be in writing and given in English, delivered by hand or sent by pre-paid first class post or by facsimile (such facsimile notice to be confirmed by letter posted within 12 hours) or by email to the address of the other party set out in the Agreement (or such other address as may have been notified) and any such notice or other communication shall be deemed to have been served, if delivered by hand, at the time of delivery or, if sent by post 48 hours after posting or, if sent by facsimile, at the time of transmission, provided the notice has not been corrupted during transmission or, if sent by email, at the time at which the communication is first stored in the other party's mailbox.

**20. Invalidity and Severability**

If any provision of the Agreement shall be found by any court to be invalid or unenforceable to the invalidity or unenforceability of such provision shall not affect the other provisions of the Agreement and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect. The parties hereby agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible to economic legal and commercial objectives of the invalid or unenforceable provision.

**21. Agency Partnership or Joint Venture**

The Agreement shall not operate so as to create or recognize an agency, partnership or joint venture of any kind between the parties hereto.

**22. Whole Agreement**

Unless otherwise agreed in writing the Agreement supersedes and invalidates all other commitments, representations and warranties relating to the subject matter hereof which may have been made by the parties either orally or in writing prior to the date hereof, save in respect of statements made fraudulently. These Standard Terms and Conditions and any other terms of the Agreement shall govern the Agreement to the exclusion of any other terms and conditions made or purported to be offered or made by Customer. Any use by Customer of a purchase order shall be acceptable as long as it is used for administrative purposes only and any purchase

conditions incorporated in the purchase order expressly or by reference shall have no effect. The Agreement may only be amended by written document signed by the parties' authorised representatives.

**23. Governing Law**

This Agreement shall be governed by and shall be construed in accordance with the laws of the State of Florida, without giving effect to choice of law or conflicts of law provisions. Any dispute arising out of this Agreement shall be adjudicated solely in the applicable federal or state courts within the State of Florida. The parties each agree that they are subject to the personal jurisdiction of those courts, and each waives the right to challenge the personal jurisdiction of those courts over it.

**24. Export Control**

In the event of the export by Customer of any items which are subject to export control legislation, Customer agrees to comply with all applicable legal requirements on export control and shall indemnify Supplier in respect of all claims made by any third party or regulatory body as a result of such non-compliance.

**25. Third Party Rights**

A person who is not a party to this Agreement has no right to enforce any term of this Agreement.

**26. Dispute Resolution**

26.1. For the purpose of this Agreement the parties agree to comply with the following dispute resolution procedure in relation to all disputes or claims arising in connection with the parties' obligations in the Agreement.

26.2. All disputes between the parties arising out of or relating to this Agreement shall be referred by Customer to a director of Customer and by Supplier to a director of Supplier. If the dispute cannot be resolved by such representatives within sixty (60) days of the dispute being referred to them the dispute may be referred:

26.2.1. If the dispute is of a technical nature or is expressed by this Agreement to be subject to expert determination to an expert (the "Expert") who shall be deemed to act as expert and not as arbitrator; and

26.2.2. In all other aspects it shall be determined pursuant to Clause 24.

26.3. The Expert shall be selected by mutual agreement or, failing agreement, within fourteen (14) days after a request by one party to the other, shall be chosen at the request of either party by the President who shall be requested to choose a suitably qualified and experienced Expert for the dispute in question.

26.4. Within seven (7) days of the Expert accepting the appointment the parties shall submit a written report on the dispute to the Expert and to each other and seven (7) days thereafter shall submit any written replies they wish to make to the Expert and to each other. Both parties will then

afford the Expert all necessary assistance which the Expert reasonably requires to consider the dispute including but not limited to access to any documentation or correspondence relating to the Services. The Expert shall be instructed to deliver his determination to the parties within fourteen (14) days after the submission of the written reports.

- 26.5. Decisions of the Expert shall be final and binding and not subject to appeal.
- 26.6. The Expert shall have the same powers to require any party to produce any documents or information to him and the other party as an arbitrator and each party shall in any event supply to him such information which it has and is material to the matter to be resolved and which it could be required to produce on disclosure.
- 26.7. The fees of the Expert shall be borne by the parties in the proportion as shall be determined by the Expert having regard (amongst other things) to the conduct of the parties.

## **SCHEDULE A**

### **SERVICES**

#### **1. Project Management**

**Task Descriptions:** The objective of this task is to provide direction and control of project personnel, and a framework for project communications, reporting, and procedural and contractual activities. The following sub-tasks will be performed:

- Maintaining project communication with the Customer's Project Manager;
  - "Green Light Document"
  - "Red Light Document"
- Reviewing and administering the Project Change Control Procedure; and
- Coordinating and managing the technical activities of project personnel

#### **Project Management Deliverables:**

The deliverables that will be provided per this required task include:

- Monthly status Reports, to be provided to the Customer's Project Manager, (as well as other interested management personnel of the Customer);
- Project Management Plan, which will be created and maintained by the Supplier Project Manager.
- Forms for Planning, which the Supplier will provide, in a well-organised fashion, for the purpose of assisting the Customer in setting the expectations of the Users and the Customer's Project Manager.

#### **Completion Criteria for Project Management:**

This task will be deemed to have been completed when the relevant planning, discussion, and assistance has been completed by the Supplier.

#### **Project Manager**

Prior to the commencement of services, the Supplier will designate a duly experienced, qualified and authorised employee, to be its Project manager (the "Supplier Project Manager"), to whom all of the Customer's communications will be addressed. The Customer will also designate a person, called the Customer Project Manager, to whom all of the Supplier's communications will be addressed and who has the authority to act for Customer in all aspects of the contract. This person needs to be completely committed to the success of the project.

They need to have the authority to make necessary decisions with regard to the different departmental implementations.

## 2. **BestBond Historical Records Archiving Starter Kit Installation**

### **BestBond Historical Records Archiving Starter Kit Installation**

Task Description: The objective of this task is to provide support for the installation of BestBond Historical Records Archiving Starter Kit. Sub-tasks consist of:

- ☐ Installing scanners
- ☐ Installing all imaging related software
- ☐ Implementing (with County Personnel) electronic forms/Bar Coding requirements
- ☐ Testing imaging system

### **Completion Criteria for BestBond Historical Records Archiving Starter Kit:**

This task will be considered complete when all of the sub-tasks have been fulfilled.

## Assumptions

- BlueGem will require the assistance of 6 current Brevard County staff members for a 90 day transition period, beginning at the contract start.
- Supplier and Customer are entering into a Strategic Partnership. In doing so, Customer agrees to:
  - Host Site Visits for Supplier
  - Customer will be a Referral site
  - Customer will allow for Supplier to reference Customer in Press Releases
- BlueGem will deliver to Customer a Referencability & Quality Assurance Book: The purpose of the Referencability & Quality Assurance (RQA) book ultimately is to create a client reference with all of our customers. In order to achieve client referencability, BlueGem has a 23 step process that we follow. Each of these 23 steps is an opportunity for us to generate a reference relationship with our customer throughout the process of implementation. As an important part of the 23 Steps process, BlueGem creates an RQA book for each customer (and a copy for us) that contains reference, operating and maintenance materials relevant to BlueGem and our products.
- 5 Year Contract
- Server Pricing is not included in this proposal
- The Supplier cannot be held responsible for the correct configuration and support of any hardware or software that is not sourced directly from the Supplier
- If the Customer requires the provision of support on items that are not sourced from the Supplier, then the Supplier shall be entitled to Additional Total Charges.
- The Supplier shall supply to the Customer scanning installation services and support during the term.
- The Services will be performed during normal business hours (being 8:00 am to 5:00 pm) on weekdays and not on weekends or public holidays unless the Parties agree otherwise (acting reasonably and promptly).
- The Customer shall be fully responsible for the transition and implementation of the Deliverables to all of its production and other systems
- If for any reason a software or hardware defect within the Deliverables, the Customer shall inform the Supplier promptly, and the Supplier shall, without delay, apply all of its available resources to the resolution of that defect, and shall suspend the performance

of all other Services until the defect has been satisfactorily resolved. The Customer shall not be liable for any such suspension.



## **Schedule B Pricing Schedule**

### **Pricing Schedule**

The payment schedule for these charges is as follows:

#### **Third Party Scanning Hardware**

The fixed price for the Third Party Scanning Hardware is \$300,000.00 with payment being due upon contract signing.

#### **BlueGEM Services**

BlueGEM Services are \$137,000.00 per month due with first payment being due upon contract signing. Subsequent months are due on the 1<sup>st</sup> of every thereafter.

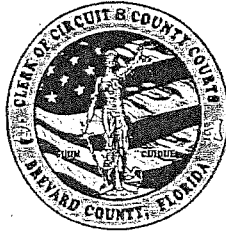
#### **3<sup>rd</sup> Party Maintenance**

Scanner Maintenance is \$4,000 per month for a fixed 60 month term, with payments being due on the 1<sup>st</sup> of every month.

#### **5 Year Fixed Term**

Travel and Living expenses are to be billed to customer as incurred.

D



**MITCH NEEDELMAN**  
CLERK OF THE CIRCUIT AND COUNTY COURTS  
BREVARD COUNTY, FLORIDA

## **Services Required by The Brevard County Clerk of Courts**

From vendors responding to this  
***Invitation to Negotiate***

***Statutory Digitization, Backlog, New  
Documents, Redaction, Emerging  
Technologies***

**May 3, 2012**

Post Office Box 999, Titusville, FL 32781-0999  
Telephone: (321) 637-2017 Fax: (321) 225-3052

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Taylor Sakuma

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## **1.0 INTRODUCTION**

### **1.1 Invitation to Negotiate (ITN) Objective and Project Goals**

The goal of this ITN is to enter into specific negotiations for digitization services to meet Florida statutory requirements of digitization of county court records and files, as well as to meet regulatory demands of redaction of specific statutory information with minimal errors, and to incorporate emerging technologies into creating and maintaining current and future files and documents created by the Brevard County Courts and other records maintained by the Brevard County Clerk of Courts.

The comprehensive objective for this ITN is to select a scanning (historical and current), electronic document capture, redaction and destruction solution of official documents of the Clerk of the Courts to meet the needs of the Clerk. The system must support current and future Florida statutory requirements, have a strategic commitment and plan from the vendor, be scalable, be easily configured and maintained by functional subject matter experts, be able to accommodate future Clerk functional and technical needs including e-documents, include malleable interfaces for economical and efficient data exchange with existing Clerk, State, and County systems, and provide a platform for data exchange and reporting with State and County 3<sup>rd</sup> party systems.

The selected solutions vendor will offer a software licensing, maintenance, scanning, redaction and implementation services cost reply for 5 years. The Clerk will give preference to replies that defer maintenance expenses until full and successful implementation of the software package. Clerk intends to negotiate the starting point of maintenance, as well as the effective date/purchase date of the contract for purchase of the solution.

This ITN includes the necessary consulting services necessary to install, enhance, and implement the entire solution. Expected services include, but are not limited to, project administration, software installation and certification, system configuration, code enhancements, interface and report development, system and parallel testing, disaster recovery planning, and training of Clerk personnel. The Clerk seeks to build an alliance with a solutions vendor that will facilitate the Clerk's goals and the related process and organizational changes

### **1.2 Statutory Requirements Overview**

Title X

PUBLIC RECORDS

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(1) COURT FILES.—Nothing in this chapter shall be construed to exempt from s. 119.07(1) a public record that was made a part of a court file and that is not specifically closed by order of court, except:

- (a) A public record that was prepared by an agency attorney or prepared at the attorney's express direction as provided in s. 119.071(1)(d).
- (b) Data processing software as provided in s. 119.071(1)(f).
- (c) Any information revealing surveillance techniques or procedures or personnel as provided in s. 119.071(2)(d).
- (d) Any comprehensive inventory of state and local law enforcement resources, and any comprehensive policies or plans compiled by a criminal justice agency, as provided in s. 119.071(2)(d).
- (e) Any information revealing the substance of a confession of a person arrested as provided in s. 119.071(2)(e).
- (f) Any information revealing the identity of a confidential informant or confidential source as provided in s. 119.071(2)(f).
- (g) Any information revealing undercover personnel of any criminal justice agency as provided in s. 119.071(4)(c).
- (h) Criminal intelligence information or criminal investigative information that is confidential and exempt as provided in s. 119.071(2)(h).
- (i) Social security numbers as provided in s. 119.071(5)(a).
- (j) Bank account numbers and debit, charge, and credit card numbers as provided in s. 119.071(5)(b).

(2) COURT RECORDS.—

- (a) Until January 1, 2012, if a social security number or a bank account, debit, charge, or credit card number is included in a court file, such number may be included as part of the court record available for public inspection and copying unless redaction is requested by the holder of such number or by the holder's attorney or legal guardian.
- (b) A request for redaction must be a signed, legibly written request specifying the case name, case number, document heading, and page number. The request must be delivered by mail, facsimile, electronic transmission, or in person to the clerk of the court. The clerk of the court does not have a duty to inquire beyond the written request to verify the identity of a person requesting redaction.
- (c) A fee may not be charged for the redaction of a social security number or a bank account, debit, charge, or credit card number pursuant to such request.

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(d) The clerk of the court has no liability for the inadvertent release of social security numbers, or bank account, debit, charge, or credit card numbers, unknown to the clerk of the court in court records filed on or before January 1, 2012.

(e)

1. On January 1, 2012, and thereafter, the clerk of the court must keep social security numbers confidential and exempt as provided for in s. 119.071(5)(a), and bank account, debit, charge, and credit card numbers exempt as provided for in s. 119.071(5)(b), without any person having to request redaction.

2. Section 119.071(5)(a)7. and 8. does not apply to the clerks of the court with respect to court records.

### (3) OFFICIAL RECORDS.—

(a) Any person who prepares or files a record for recording in the official records as provided in chapter 28 may not include in that record a social security number or a bank account, debit, charge, or credit card number unless otherwise expressly required by law.

(b)

1. If a social security number or a bank account, debit, charge, or credit card number is included in an official record, such number may be made available as part of the official records available for public inspection and copying unless redaction is requested by the holder of such number or by the holder's attorney or legal guardian.

2. If such record is in electronic format, on January 1, 2011, and thereafter, the county recorder must use his or her best effort, as provided in paragraph (h), to keep social security numbers confidential and exempt as provided for in s. 119.071(5)(a), and to keep complete bank account, debit, charge, and credit card numbers exempt as provided for in s. 119.071(5)(b), without any person having to request redaction.

3. Section 119.071(5)(a)7. and 8. does not apply to the county recorder with respect to official records.

(c) The holder of a social security number or a bank account, debit, charge, or credit card number, or the holder's attorney or legal guardian, may request that a county recorder redact from an image or copy of an official record placed on a county recorder's publicly available Internet website or on a publicly available Internet website used by a county recorder to display public records, or otherwise made electronically available to the public, his or her social security number or bank account, debit, charge, or credit card number contained in that official record.

(d) A request for redaction must be a signed, legibly written request and must be delivered by mail, facsimile, electronic transmission, or in person to the county recorder.

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The request must specify the identification page number of the record that contains the number to be redacted.

(e) The county recorder does not have a duty to inquire beyond the written request to verify the identity of a person requesting redaction.

(f) A fee may not be charged for redacting a social security number or a bank account, debit, charge, or credit card number.

(g) A county recorder shall immediately and conspicuously post signs throughout his or her offices for public viewing, and shall immediately and conspicuously post on any Internet website or remote electronic site made available by the county recorder and used for the ordering or display of official records or images or copies of official records, a notice stating, in substantially similar form, the following:

1. On or after October 1, 2002, any person preparing or filing a record for recordation in the official records may not include a social security number or a bank account, debit, charge, or credit card number in such document unless required by law.

2. Any person has a right to request a county recorder to remove from an image or copy of an official record placed on a county recorder's publicly available Internet website or on a publicly available Internet website used by a county recorder to display public records, or otherwise made electronically available to the general public, any social security number contained in an official record. Such request must be made in writing and delivered by mail, facsimile, or electronic transmission, or delivered in person, to the county recorder. The request must specify the identification page number that contains the social security number to be redacted. A fee may not be charged for the redaction of a social security number pursuant to such a request.

(h) If the county recorder accepts or stores official records in an electronic format, the county recorder must use his or her best efforts to redact all social security numbers and bank account, debit, charge, or credit card numbers from electronic copies of the official record. The use of an automated program for redaction shall be deemed to be the best effort in performing the redaction and shall be deemed in compliance with the requirements of this subsection.

(i) The county recorder is not liable for the inadvertent release of social security numbers, or bank account, debit, charge, or credit card numbers, filed with the county recorder.

## **2.0 PROPOSAL INSTRUCTIONS AND ADMINISTRATION**

Proposals must be submitted for review by the BREVARD COUNTY CLERK OF COURTS in accordance with this ITN and vendors/contractors must be able to complete negotiations and begin work immediately to meet the time deadlines laid out herein. Authorized negotiators of the agency/vendor/contractor must have significant authority

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Taylor Sakuma



to enter into a contract immediately, and in accordance with the requirements of this ITN upon the final review of proposals by the BREVARD COUNTY CLERK OF COURTS. A total of 3 (THREE) copies should be submitted (1 original and 2 copies).

## 2.1 Protocol

Submit all questions, responses to evaluation criteria to:

Clerk of Court  
Attention: Legal Department  
400 South Street, Second Floor  
Titusville, FL 32780

US Postal Service:  
Clerk of Court  
Attention: Legal Department  
P.O. Box 219  
Titusville, FL 32781-0219

## 2.2 Evaluation Criteria and Negotiation Process

- ✓ The vendor must be able to provide experienced consultants
- ✓ The vendor must agree to provide a performance bond of \$1,000,000.00.
- ✓ The vendor's cost reply shall be for a **milestone and deliverables-based fixed price solution**.
- ✓ Any vendor **not** meeting the minimum qualifications will not be considered for further evaluation.

The BREVARD CLERK OF COURTS is seeking an implementation partner that:

- ✓ Can provide innovative and effective solutions to adequately address the needs of the Clerk.
- ✓ Will provide continuity of Clerk-approved consultants throughout the duration of the project.
- ✓ Will provide for a thorough transfer of technical and functional knowledge of solution
- ✓ Can provide full systems integration and data exchange services for current Clerk and County 3rd party software.
- ✓ Can develop and deliver Clerk-specific end-user training and documentation.
- ✓ Understands the need to complete the implementation process within time and budget constraints.

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- ✓ Works well with other 3rd party providers (e.g., software vendors, hardware vendors, and consultants).
- ✓ Can provide both historical and current scanning at 300dpi, Multi-page TIFF format, at a minimum of 300 images a minute.
- ✓ Can provide digital pen technology to capture documents at document source
- ✓ Can provide redaction services with 95%+ accuracy pursuant to section 1.2 of this contract.
- ✓ Can provide certification of data destruction

### **2.3 Project Timing:**

- ✓ • Invitation to Negotiate (ITN) issued: May 3, 2012.
- ✓ • Questions due to Brevard County Clerk of Courts from vendors: May 7, 2012
- ✓ • ITN Responses due May 11, 2012
- ✓ • Vendor selection completed: May 16, 2012
- ✓ Initial project start date NLT Aug. 1, 2012

### **3.0 Proposal Format**

To ensure timely and fair consideration of your response, respondents are being asked to adhere to a specific response format, which is described in the following, Brevard County Clerk of Courts reserves the right to ask any clarification questions and request additional information.

#### **Proposal Section Content/Deliverables** **Scope of Work/Deliverables**

The following commodities and services are included in the scope of this ITN:

1. Support, Services and Maintenance Cost for a Period of Five Years
2. Provide on-going project management throughout the implementation to ensure implementation is on time, that all contracted functionality is fully functional, and that sufficient end user training has been completed on a timely basis.
3. Follow Clerk agreed-upon Change Management and Issue Management processes.
4. Implement system functionality that provides user access, including user ability to enter and process court-related transactions and to directly access all applicable data at that user's applicable security level.
5. Enhance services to comply with Florida Statutes and local ordinances

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6. Conduct all phases of testing to ensure delivery of a fully functioning system including, but not limited to, unit, system, integration, stress, and parallel testing.
7. Create and deliver end-user training documentation satisfactory to the Clerk and written specifically the way the processes will work in our environment and easily understood by the end users, no later than the beginning of the end user training phase of the project.
8. Deliver complete and robust procedural user manuals for use by Clerk functional staff.
9. Conduct disaster recovery planning, develop and deliver disaster recovery documentation, and successfully conduct testing of system failover to the disaster recovery site.

**Proposals must include:**

1. Authorization letter and signature  
Under the signature of an authorized company representative, provide the names of individuals authorized to represent and negotiate the company's products and services.
2. Table of Contents No explanation required.
3. Agency Profile Response
4. Agency Services Respond to Technical and Agency Evaluation Criteria
5. Pricing Response

**4.0 AGENCY PROFILE AND REFERENCES**

**4.1 General Overview**

- A. Describe the expertise of the personnel to be utilized for each aspect of this project. Include Bio/resume of account executive(s) responsible for this account.
- B. Indicate the number of years and nature of your experience on related projects.
- C. Indicate the number of years and nature of the company's experience and expertise in the scanning and digital records industry.
- D. Detail company location that will be used to support the BREVARD COUNTY CLERK OF COURTS (Brevard County locations will receive priority preference).
- E. Describe commitment and procedures in delivering service to your clients.
- F. Describe your procedures during any given emergency that will enable you to carry on the business contained in this ITN on behalf of BREVARD COUNTY CLERK OF COURTS.
- G. List current and past clients and the industries they represent.

**4.2 Current Customer References**

Please provide contact information for at least three existing clients that BREVARD COUNTY CLERK OF COURTS can contact for a reference. Wherever possible, include

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travel industry or destination marketing clients as references. For each reference, indicate the following:

- ✓ • Contact Name and Title
- ✓ • Contact Company Name
- ✓ • Contact Phone Number and email address
- ✓ • Industry of Client
- ✓ • Service Description
- ✓ • Length of Relationship

#### **4.3 Recent Past Customer References**

Please provide contact information for at least two former clients that BREVARD COUNTY CLERK OF COURTS can contact for a reference and provide a brief explanation regarding the end of the business relationship. For each reference, indicate the following:

- ✓ Contact Name and Title
- ✓ Contact Company Name
- ✓ Contact Phone Number and email address
- ✓ Industry of Client
- ✓ Service Description
- ✓ Length of Relationship

#### **5.0 AGENCY SERVICES**

The primary function of the Contractor is to provide compliance with Florida statute for digitization of records, implementation of digital record keeping standards, redaction of specific statutorily regulated data, digital indexing of public records and the advancement of new technologies for the digitization process to continuously meet growing statutory demands.. BREVARD COUNTY CLERK OF COURTS is seeking a turnkey solution and proposals should address capabilities in each of these disciplines, as well as proposed timelines for the completion of "back-logged" records to meet compliance standards.

#### **5.1 Administrative Services Required**

Vendors must include a detailed analysis of administrative support and specific access that will be provided by the BREVARD COUNTY CLERK OF COURTS, its staff and facilities.

#### **6.0 PRICING INFORMATION**

Project pricing must be submitted as a lump sum for project completion and include a detailed payment schedule that reflects the life of the 5 year project calendar, as well as any and all expectation of balloon payments, performance bonuses or expense reimbursements expected by the vendor under a the best standards and practices of the industry.

#### **7.0 CONTRACT**

The contract terms shall be defined by a five year written agreement with the option for renewal after five years, which shall be binding when fully executed by both

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parties. Responses to the ITN may be incorporated by reference in each written agreement and may become an integrated part of the final contract. Agreements will be customized through negotiations and BREVARD COUNTY CLERK OF COURTS's basic terms and conditions and business requirements will be embodied in this contract. The desired relationship is one marked with a commitment to consistent quality service and continual improvement for the contract processes and services. Therefore, any final agreement will include specific service level and performance standards requirements.

It shall be the responsibility of the vendor to provide insurance coverage in the amount of one million dollars.

Any material submitted in response to this Invitation to Negotiate will become a public document pursuant to section 119.07, F.S.

Liability: The vendor shall hold and save the Brevard County Clerk of Courts, its officers, agents, and employees harmless against claims by third parties, resulting from the vendors breach of this contract or the vendors negligence.

Vendors are required to comply with all federal, state, and local laws and codes, regulations that may in any way affect the implementation of services offered to include workers compensation and other work related regulations and laws for their employees.

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"Our mission is to provide superior customer service to all those we serve. As a Public Trustee, the Clerk will diligently perform the duties and functions of this office, always keeping a focus on the rights of the individual citizen."  
Taylor Sakuma

E

FTN



**MITCH NEEDELMAN**  
CLERK OF THE CIRCUIT AND COUNTY COURTS  
BREVARD COUNTY, FLORIDA

**Services Required By**  
**The Brevard County Clerk of Courts**  
**From**

**BLUEGEM**



**For**  
***Statutory Digitization, Backlog, New***  
***Documents, Redaction, Emerging***  
***Technologies***

**May 11, 2012**

May 11, 2012

Clerk of the Court  
Brevard County, Florida  
Attention: Legal Department  
400 South Street, Second Floor  
Titusville, FL 32780

**RE: Letter of Authorization for Statutory Digitization, Backlog, New Documents,  
Redaction, Emerging Technologies – Invitation to Negotiate**

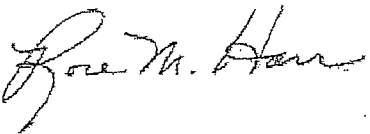
Dear Mr. Needleman:

In compliance with the requirements set forth in the *Invitation to Negotiate* dated May 3, 2012, the following person is authorized to negotiate and legally bind a contractual agreement between BlueGEM, LLC and the Brevard County Clerk of the Court for products and services:

Rose Harr, President and CEO  
BlueGEM, LLC  
1825 Riverview Drive  
Melbourne, FL 32901

We appreciate the opportunity to submit our credentials to work with the Brevard County Clerk of the Court on this very important project. Please do not hesitate to contact me if you have questions or would like additional information. Thank you.

Sincerely,



Rose Harr, President and CEO  
BlueGEM, LLC



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## 1.0 AGENCY PROFILE AND REFERENCES

### 1.1 General Overview

*A. Describe the expertise of the personnel to be utilized for each aspect of this project. Include Bio/resume of account executive(s) responsible for this account.*

Please see resumes of Rose Harr and Nick Geaney in Appendix A.

***B. Indicate the number of years and nature of your experience on related projects.***

Rose Harr has almost 30 years of experience in document digitization, management and destruction. Beginning at IBM where she was involved in healthcare imaging for 13 years, through her more than 17-year history with BlueWare, she has managed the implementation of document management processes at more than 200 client sites in the United States and United Kingdom.

Nick Geaney has been immersed in document management system development ever since beginning at BlueWare. His day-to-day, hands-on oversight of process planning and implementation has given him a level of knowledge normally obtained after decades of exposure. Nick is considered a Subject Matter Expert in the business end of the processes associated with the planning and execution of diverse and complex document management systems.

***C. Indicate the number of years and nature of the company's experience and expertise in the scanning and digital records industry.***

Cumulatively, BlueGEM's Executive and Project Management staff have more than two decades of experience with the digitization, redaction and destruction of sensitive documents and records. Our experience primarily includes the highly regulated patient records associated with hospitals and healthcare organizations, as well as corporate records such as human resources, purchasing and other business operations documentation.

***D. Detail company location that will be used to support the BREVARD COUNTY CLERK OF COURTS (Brevard County locations will receive priority preference).***

BlueWare is in the process of relocating corporate headquarters from Michigan to Melbourne, Florida. Our new operations center will be located at 1825 Riverview Drive, Melbourne, FL 32901.

Main telephone line: 321.953.5999  
Auxiliary telephone line: 321.953.5992  
Fax: 321.953.8003

***E. Describe commitment and procedures in delivering service to your clients.***

Throughout our years of service to diverse industries in corporate records management, BlueGEM has developed a document management system implementation process that is easily adapted to a variety of business environments from hospitals to corporations to government agencies. We take pride in our ability to interface with different systems in different industries without sacrificing quality or capacity.

First and foremost, BlueGEM adheres to ISO 9001, 14001 and 18001. We use standard business-as-usual operational procedures and will define during the Architectural Review process with County staff any additional regulatory compliance aspects. All requirements will be determined and documented before any work on this Contract begins.

Secondly, BlueGEM provides seamless, on-going project management from training through implementation and support. Thanks to our intensive on-site development experience, our staff knows that a system is only as productive as the people that oversee it and we pride ourselves on our high level of training and our timely delivery of all service level agreements.

Toward that end, BlueGEM will provide a totally functional system providing end-users access for entering and processing court-related transactions within the security level(s) assigned to them. This system will be the result of finely-tuned testing at several levels including unit, system, integration, stress, and parallel procedures. All process will be in compliance with applicable local, state and federal regulations.

In addition to regulatory implementation coordination are the aspects of change and issue management. As each of our clients undertook digitization in pursuit of a paperless or paper-lite organization, we learned that there is always a degree of apprehension that accompanies that change. For that reason, BlueGEM takes a very proactive, hands-on role in training and introducing staff to the digital records environment.

Moreover, we take care to create a "lessons learned" document with each new client so that we can continuously improve our services and simplify our processes to the betterment of all stakeholders and in compliance with agree-upon procedures.

Also of note is BlueGEM's technical efficiency including full system integration and data exchange service for the County's third-party software programs. In addition, our experience working with a very broad range of software and hardware providers and their consultants is second to none and we welcome the opportunity to include new vendors on our list of positive professional relationships.

Regarding deliverables, BlueGEM will work with the County to create a final project plan that delineates each step of the document management process, each deliverable and the specifications required to meet the goals of the County within the budget established by the County. Among these will be:

- Clerk-specific end-user training,
- A project timeline and budget
- Provision of digital pen technology for document capture
- Scanning capabilities (300 dpi minimum, multi-page, TIFF format)
- Redaction services with 95%+ accuracy
- Certification of data destruction
- Process-specific end-user training documentation (delivered prior to start of training)
- Complete and robust procedural documentation for Clerk functional staff
- Documentation detailing disaster recovery systems, plans and failover testing.

***F. Describe your procedures during any given emergency that will enable you to carry on the business contained in this ITN on behalf of BREVARD COUNTY CLERK OF COURTS.***

Within the BlueGem system, all documentation will be captured at the point of scanning at our Melbourne facility. Simultaneously, a copy of the scanned document is instantly transmitted to the CSI data center to be held for redaction. This creates a level of document redundancy that serves to preserve each scanned document while the original paper document remains held in secure storage.

In the event that either system goes offline, all scanned documents will remain stored within the systems which are geographically located 60 miles apart. At BlueGEM's Melbourne scanning facility we intend to also provide redundant scanning capability in the form of multiple scanners with 24x7, 365, same-day service and support. Backups for both scanning and redaction services will be performed automatically at close of business each day.

G. List current and past clients and the industries they represent.

Current Healthcare Industry Clients	
<p>Animal Medical Center – New York, NY  Alpena Regional Medical Center – Alpena, MI  Atlantic general Hospital – Berlin, MD  PHNS – Flint, MI  Beacham Memorial Hospital - Magnolia, MS  Cameron Memorial Community – Angola, IN  Capella Healthcare – Franklin, TN  Carson City Hospital – Carson City, MI  Charleviox Area Hospital - Charleviox, MI  Chelsea Hospital – Chelsea, MI  Children's Medical Center – Dayton, OH  Community Health Systems Professional Services Corporation – Franklin, TN  - 78 healthcare facilities in 20 states  Cheboygan Memorial Hospital – Cheboygan, MI  Evangelical Community Hospital – Lewisburg, PA  Fairfield Medical Center – Lancaster, OH  Genesys health Systems – Grand Blanc, MI  Gerber Memorial Hospital – Fremont, MI  Gratiot Medical Center – Midland, MI  Greene Memorial Hospital – Xenia, OH  Hills &amp; dales General – Cass City, MI  IBM UK, Ltd – North Harbor, Portsmouth, England  Joint Township Hospital – St. Marys, OH</p>	<p>La Rabida Children's Hospital – Chicago, IL  Lawrence General Hospital – Lawrence, MA  Marlette Community Hospital – Marlette, MI  McCullough-Hyde memorial Hospital – Oxford, OH  McKenzie Memorial Hospital – Sandusky, MI  Mercer County Joint Township Community Hospital – Coldwater, OH  Mid-Michigan Medical Center – Gladwin, MI  Mid-Michigan Medical Center – Clare, MI  Mid-Michigan Medical Center –Midland, MI  Mid-Michigan Physicians Group – Midland, MI  Mineral Area Regional Medical – Farmington, MO  Mountain States Health Alliance – Johnson City, TN  Northern Michigan Hospital – Petoskey, MI  Otsego Memorial Hospital – Gaylord, MI  Parkview Community Hospital – Riverside, CA  Parkway Medical Center – Decatur, AL  Portsmouth Hospitals Trust – Wakefield, United Kingdom  Russell County Medical Center – Lebanon, VA  Titus Regional Medical Center – Mountain Pleasant, TX  West Branch Regional Medical Center – West Branch, MI  Woodland Medical Center – Cullman, AL</p>

G. List current and past clients and the industries they represent. (cont.)

Past Healthcare Industry Clients

<p>Alzheimer's Association, Traverse City, MI            APS Medical Billing – Toledo, OH            Battle Creek Health System – Battle Creek, MI            Paul R. Bizzigotti, MD – Cadillac, MI            Borgess Medical Center – Kalamazoo, MI            Brit Systems, Dallas, TX            Superior Consultant Company – Dearborn, MI            Cadillac Physical Therapy – Cadillac, MI            Care Tech Solutions, Inc. – Southfield, MI            Community Health Center – Coldwater, MI            David S. Cook, OD – Cadillac, MI            Doctor's Hospital of Jackson – Jackson, MI            Drake Center, Inc., Cincinnati, OH            East Sussex Hospital Trust – Leonards-on-Sea, UK            Emmet Medical Care Facility – Petoskey, MI            Grand Traverse Medical – Traverse City, MI            Great Lakes Ortho Center – Traverse City, MI            Hackley Hospital – Muskegon, MI            Herrick Memorial Hospital – Tecumseh, MI            Healthcare Society – Chicago, IL            Helen Newberry Joy Hospital – Newberry, MI            The Hope Network, Grand Rapids, MI            IBM – UK, Canada, Singapore, US            Ingham Regional Medical Center – Lansing, MI            Kelsey Memorial Hospital – Lakeview, MI            Lakeland Medical Center – St. Joseph, MI            Lenawee Health Alliance – Adrian, MI            Little Colorado Medical Center – Winslow, AZ            Madison Community Hospital – Madison Heights, MI            Mary Black Health System – Spartanburg, SC            Medical Arts Group, PC – Cadillac, MI            Mercy Information Systems – Grand Rapids, MI            Mercy Hospital – Muskegon, MI            Mercy Hospital – Port Huron, MI            Mercy Hospital – Portland, MI</p>	<p>Marian Health Center – Sioux City, IA            Wexford-Mercy PHO – Cadillac, MI            Mercy Hospital – Cadillac, MI            Memorial Healthcare Center – Owosso, MI            Mid-Michigan Health Network – Midland, MI            Miami Valley Hospital – Dayton, OH            Middletown Regional Hospital – Middletown, OH            Michigan Physician Billing, Inc. – Alpena, MI            MI Home Health Care – Traverse City, MI            Munson Medical Center – Traverse City, MI            Muskegon General Hospital – Muskegon, MI            NetMed – Cadillac, MI            North Oakland Medical Center – Pontiac, MI            Oaklawn Hospital – Marshall, MI            PK and Company, Irons, MI            Pennock Hospital – Hastings, MI            PineRest Christian Hospital – Grand Rapids, MI            Regional Imaging Center, Auburn, MI            Saginaw General Hospital – Saginaw, MI            Sheridan Community Hospital – Sheridan, MI            St. Mary's Health Services – Grand Rapids, MI            St. Mary's Medical Center – Saginaw, MI            St. John's Medical Center – Detroit, MI            St. Luke's Hospital – Saginaw, MI            St. Rita's Medical Center – Lima, OH            Three Rivers Area Hospital – Three Rivers, MI            West Branch Regional Medical – West Branch, MI            Trinity Health-Michigan – Livonia, MI            Trinity Health Corp. – Farmington, MI            United Memorial Hospital – Greenville, MI            Visiting Nursing Association of Southeast MI – Detroit, MI            WA Foote Hospital – Jackson, MI            War Memorial Hospital – Sault Sainte Marie, MI            Westshore Hospital – Manistee, MI</p>
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G. List current and past clients and the industries they represent. (cont.)

Current Food Service Clients	
Van Eerden Food Service Company – Grand Rapids, MI	
Past Food Service Clients	
Country Fresh, Grand Rapids, MI Little Caesar Enterprises, Inc., Detroit, MI Northern Foods, Alpena, MI	

Past Government Clients	
City of Bay City, MI City of Alpena, MI City of Battle Creek, MI City of Cadillac, MI City of Roseville, MI City of Saginaw, MI County of Newaygo, MI County of Wexford, MI	County of Emmet, MI County of Grand Traverse, MI County of Otsego, MI Wexford County Probate Court, MI Wexford County Road Commission, MI Sault Ste. Marie Tribe of Chippewa Indians, Sault Ste. Marie, MI Victories Casino, Petoskey, MI

Past Education Clients	
Alpena Public Schools, MI Alpena - Montmorency – Alcona Intermediate School District, MI Belding Area Schools, MI Ferris State University, Big Rapids, MI	Kalkaska Public Schools, MI Lakewood Public Schools, Lake Odessa, MI Michigan State University, East Lansing, MI North Central Michigan College, Petoskey, MI

G. List current and past clients and the industries they represent. (cont.)

Past Industrial Clients	
<p>AIS Construction Equipment, Grand Rapids, MI  Allied Signal Aerospace, Boyne City, MI  The Bohning Company, Ltd., Lake City, MI  Cadillac Printing, Cadillac, MI  Durametallic Corp., Kalamazoo, MI  Finishmaster, Grand Rapids, MI  Fletcher Paper, Co., Alpena, MI  Grumman Olson, Sturgis, MI  Hart &amp; Cooley, Inc., Holland, MI  Industrial Magnetics, Boyne, City, MI  Interface AR, Grand Rapids, MI  Kysor, Cadillac, MI</p>	<p>McKinley Group, Carson City, MI  Metal Punch Company, Cadillac, MI  Michigan Limestone, Rogers City, MI  MTI, Maryland Heights, MO  NTB, Inc., Grand Rapids, MI  Rapid Design Service, Grandville, MI  Sunrise Electronics, Petoskey, MI  Superior Consultant Company, Southfield, MI  SYSDACOMP, Bath, MI  Tichenor Inc., Battle Creek, MI  Woolin Products, Stevensville, MI</p>

Past IT/Other Clients	
<p>ATOS Origin IT Services, Ltd., UK  Avnet Computer Marketing, Hall-Mark Division, Pittsburgh, PA  Cadillac Chamber of Commerce, Cadillac, MI  Cadillac Gym, Cadillac, MI  Cadillac Insurance Center, Cadillac, MI  CSC Computer Sciences, Ltd., UK  Dycomp, Inc., Clemmons, NC  Enterprise Data Systems, Largo, FL  Flagship Technologies, Hamel, MN  First Federal of Alpena, Alpena, MI  Fujitsu Computers, San Jose, CA  HMS, Inc., Nashville, TN  HRM Claim Management, Kalamazoo, MI</p>	<p>Ingram Micro, Santa Ana, CA  Innovative Information Solutions, Waterbury, CT  Kofax Imaging Products, Irvine, CA  Maywood Software Solutions, Surrey, UK  New Wave, Frederick, MD  Norton Lamb &amp; Co., Yarmouth, ME  Pace Butler Corp., Edmond, OK  PCE Systems, Southfield, MI  PentaSafe, Houston, TX  Phoenix, Hartford, CT  Quebecor Printing, Midland, MI  Silver Lake Resources, Grand Rapids, MI  Starr Commonwealth, Albion, MI</p>



## 1.2 Current Customer References

Customer Name and Address	Project Dates	Brief Overview of Contract Details
<p>Atlantic General Hospital 9733 Healthway Drive Berlin, MD 21811</p> <p>Barbara Riddell 410-641-9971 briddell@atlanticgeneral.org</p>	<p><b>Date Awarded:</b> 8 Oct, 2010</p> <p><b>Finish Date:</b> 9 May, 2011</p>	<p>BlueWare's role comprised of:</p> <ul style="list-style-type: none"> <li>▪ Business and Process Change</li> <li>▪ Project Management</li> <li>▪ Implementation</li> <li>▪ Integration</li> <li>▪ Training</li> <li>▪ Support</li> </ul> <p>Site and Project Specifications: 53 Beds</p> <p>Initial contract was a Proof of Concept for a task group of 100 users worth \$1,500,000 and consisted of the following modules:</p> <ul style="list-style-type: none"> <li>▪ Base with Electronic Capture</li> <li>▪ Document Imaging (scanning)</li> <li>▪ Integration Engine (CMM)</li> <li>▪ Chart Completion</li> <li>▪ eSignature</li> <li>▪ ROI</li> <li>▪ eChart</li> <li>▪ Document Import</li> <li>▪ Several interfaces</li> </ul> <p>Duration of the original contract was seven months, during which BlueWare trained more than 100 users. Through the past year, BlueWare has maintained those modules, rolled out to an additional 400 users and has implemented the following additional module:</p> <ul style="list-style-type: none"> <li>▪ EMPI – connecting six physician offices</li> </ul> <p>Atlantic General now has more than 500 users deployed.</p>

## 1.2 Current Customer References (cont.)

Customer Name and Address	Project Dates	Brief Overview of Contract Details
<p>Joint Township District Memorial Hospital 200 St. Clair St. Marys, OH 45885</p> <p>Lori Miller 419-394-3387 lmiller@jtdmh.org</p>	<p>Date Awarded: 28 Feb, 2005</p> <p>Finish Date: 1 July, 2005</p>	<p>BlueWare's role comprised of:</p> <ul style="list-style-type: none"> <li>▪ Business and Process Change</li> <li>▪ Project Management</li> <li>▪ Implementation</li> <li>▪ Integration</li> <li>▪ Training</li> <li>▪ Support</li> </ul> <p>Site and Project Specifications: 70 Beds</p> <p>Initial contract was \$3,000,000 and consisted of the following modules:</p> <ul style="list-style-type: none"> <li>▪ Base with Electronic Capture</li> <li>▪ Document Imaging (scanning)</li> <li>▪ Integration Engine (CMM)</li> </ul> <p>Duration of the original contract was five months, during which BlueWare trained more than 400 users. Since then BlueWare has maintained those modules and has implemented the following additional modules:</p> <ul style="list-style-type: none"> <li>▪ High Availability</li> <li>▪ eSignature</li> <li>▪ Convenience Scanning</li> <li>▪ Patient Accounting</li> <li>▪ Chart Completion</li> <li>▪ Additional interfaces</li> </ul>

## 1.2 Current Customer References (cont.)

Customer Name and Address	Project Dates	Brief Overview of Contract Details
<p>Genesys Health System One Genesys Parkway Health Park Grand Blanc, MI 48439</p> <p>Dan Stross 810-606-6607 Daniel.stross@genesys.org</p>	<p>Date Awarded: 30 Jun, 2000</p> <p>Finish Date: 25 Jan, 2001</p>	<p>BlueWare's role comprised of:</p> <ul style="list-style-type: none"> <li>▪ Business and Process Change</li> <li>▪ Project Management</li> <li>▪ Implementation</li> <li>▪ Integration</li> <li>▪ Training</li> <li>▪ Support</li> </ul> <p>Site and Project Specifications: 410 Beds</p> <p>Initial contract value was \$12,000,000 and consisted of the following modules:</p> <ul style="list-style-type: none"> <li>▪ Base with Electronic Capture</li> <li>▪ Document Imaging (scanning)</li> <li>▪ Several interfaces</li> </ul> <p>Duration of the original contract was seven months, during which BlueWare trained more than 3,000 users. Since then BlueWare has maintained those modules and has implemented the following additional modules:</p> <ul style="list-style-type: none"> <li>▪ Integration Engine (CMM)</li> <li>▪ Convenience Scanning</li> <li>▪ Fetal Monitor Scanning</li> <li>▪ eSignature (beta)</li> <li>▪ Chart Completion (beta)</li> <li>▪ Additional interfaces</li> </ul> <p>Genesys now has more than 5,000 users deployed.</p>

### 1.3 Recent Past Customer References

Customer Name and Address	Project Dates	Brief Overview of Contract Details
<p>East Sussex Healthcare NHS Trust Conquest Hospital The Ridge St. Leonards-on-Sea East Sussex, TN37 7RD</p> <p>Contact: James Gibbons Phone: +44 (0) 1323 414916 Email: james.gibbons@esht.nhs.uk</p>	<p>Start Date: 8 Feb, 2010</p> <p>Finish Date: 14 May, 2010</p> <p>Contract Value: \$250,000</p>	<p>BlueWare's role comprised of:</p> <ul style="list-style-type: none"> <li>▪ Business and Process Change</li> <li>▪ Project Management</li> <li>▪ Implementation</li> <li>▪ Integration with Oasis PAS, A&amp;E CAS cards, Pathology and Radiology</li> <li>▪ Training</li> <li>▪ Support</li> </ul> <p>Site and Project Specifications: 865 Beds</p> <p>Proof of concept consisted of the following modules:</p> <ul style="list-style-type: none"> <li>▪ Base with Electronic Capture</li> <li>▪ Document Imaging</li> <li>▪ Clinical Multimedia and Integration Engine</li> <li>▪ Barcoded Forms</li> <li>▪ Note Completion Workflow</li> <li>▪ eSignature Workflow</li> <li>▪ Convenience Scanning</li> </ul> <p>Duration of the proof of concept was three months, during which BlueWare trained 50 users. Through the proof of concept, BlueWare supported those modules and have introduced the following features:</p> <ul style="list-style-type: none"> <li>▪ Longitudinal Sliding Timeline</li> <li>▪ Growth Charts</li> </ul>

### 1.3 Recent Past Customer References (cont.)

Customer Name and Address	Project Dates	Brief Overview of Contract Details
<p>Portsmouth Hospitals NHS Trust  Queen Alexandra Hospital  Cosham  Portsmouth, PO6 3LY</p> <p>Contact: Bill Flatman  Phone: +44 (0) 23 9289 4373  Email:  <a href="mailto:bill.flatman@ports.nhs.uk">bill.flatman@ports.nhs.uk</a></p>	<p>Start Date:  7 Feb, 2007</p> <p>Finish Date: 10  Jan, 2008</p> <p>Contract Value:  \$9,000,000</p>	<p>BlueWare's role comprised of:</p> <ul style="list-style-type: none"> <li>▪ Business and Process Change</li> <li>▪ Project Management</li> <li>▪ Implementation</li> <li>▪ Training</li> <li>▪ Support</li> </ul> <p>Site and Project Specifications: 956 Beds</p> <p>Initial contract consisted of the following modules:</p> <ul style="list-style-type: none"> <li>▪ Base with Electronic Capture</li> <li>▪ Document Imaging</li> <li>▪ Clinical Multimedia and Integration Engine</li> <li>▪ Barcoded Forms</li> </ul> <p>Duration of the contract was 11 months, during which BlueWare trained 4000 users. Through the 4 years, BlueWare has maintained those modules and have implemented the following additional modules:</p> <ul style="list-style-type: none"> <li>▪ Digital Pen</li> <li>▪ Electronic Forms</li> <li>▪ eChart</li> </ul> <p>BlueWare has also implemented High Availability and has performed several upgrades, integrations and enhancements to our product, including:</p> <ul style="list-style-type: none"> <li>▪ Version to version upgrades</li> <li>▪ Single Sign On with Active Directory</li> <li>▪ Graphnet Patient Letters</li> <li>▪ Dot Indicators</li> </ul>

### 1.3 Recent Past Customer References (cont.)

Customer Name and Address	Project Dates	Brief Overview of Contract Details
<p>Cheboygan Memorial Hospital (CMH) 748 S Main Street Cheboygan, MI 48439</p> <p>Bobby Hilbert 214-869-8841 bobby.hilbert@antheliohealth.com</p>	<p>Date Awarded: 15 Sept, 1995</p> <p>Finish Date: 14 Jan, 1996</p>	<p>BlueWare's role comprised of:</p> <ul style="list-style-type: none"> <li>▪ Business and Process Change</li> <li>▪ Project Management</li> <li>▪ Implementation</li> <li>▪ Integration</li> <li>▪ Training</li> <li>▪ Support</li> </ul> <p>Site and Project Specifications: 96 Beds</p> <p>CMH was the first implementation of EDM Services and the alpha customer. Initial contract value was \$3,000,000.00 and consisted of the following modules:</p> <ul style="list-style-type: none"> <li>▪ Base with Electronic Capture</li> <li>▪ Document Imaging (scanning)</li> <li>▪ Barcoded Forms</li> <li>▪ Clinical Multimedia &amp; Integration Engine</li> <li>▪ Several interfaces</li> <li>▪ Several clinician offices integrated</li> </ul> <p>Duration of the original contract was four months, during which BlueWare trained more than 500 users. Since then BlueWare has maintained those modules and has implemented the following additional modules:</p> <ul style="list-style-type: none"> <li>▪ Sentry (DR Failover site)</li> <li>▪ Transcription</li> <li>▪ Additional interfaces</li> </ul>

## 2.0 AGENCY SERVICES

The primary function of the Contractor is to provide compliance with Florida statute for digitization of records, implementation of digital record keeping standards, redaction of specific statutorily regulated data, digital indexing of public records and the advancement of new technologies for the digitization process to continuously meet growing statutory demands. BREVARD COUNTY CLERK OF COURTS is seeking a turn-key solution and proposals should address capabilities in each of these disciplines, as well as proposed timelines for the completion of "back-logged" records to meet compliance standards.

### 2.1 Administrative Services Required

Vendors must include a detailed analysis of administrative support and specific access that will be provided by the BREVARD COUNTY CLERK OF COURTS, its staff and facilities.

BlueGEM intends to provide document scanning services at our facilities in Melbourne, FL. In so doing, we will be able to relieve a majority of the associated labor burden from Court staff while providing a product that will allow them to increase efficiency and minimize paper waste and costly long-term storage.

As detailed in the preliminary Project Plan in Appendix B, the primary support commitments we will require on the part of the Clerk of the Court are meetings to complete the Architectural Review process and access to records so that we can upload the redacted and original copies of all documents.

**Executive Sponsor:** The Brevard County Clerk of Courts Executive Sponsor will assist with project support, exposures and communications on the BlueGEM project.

**Project Manager:** Prior to the start of services under this Agreement, Brevard County Clerk of Courts will designate a person, called the Customer Project Manager, to whom all BlueGEM communications will be addressed and who will have the authority to act for Brevard County Clerk of Courts in all aspects of the contract.

The Customer Project Manager's responsibilities include:

- Serve as the interface between the BlueGEM project team and all Brevard County Clerk of Courts departments participating in this project.
- In conjunction with the BlueGEM project manager, administer the Project Change Control Procedure.
- Obtain and provide information, data, decisions, and approvals, within one working day of BlueGEM's request unless Brevard County Clerk of Courts and BlueGEM agree to extend the response time.
- Resolve deviations from the project plan that may be caused by Brevard County Clerk of Courts.
- Help resolve any project issues and escalate those issues within the Brevard County Clerk of Courts organization, as necessary.
- Monitor and report the project status, on a regular basis, to the Brevard County Clerk of Courts management, including the administration of the "Green Light Document" and "Red Light Document"

- "Green Light Document" management to achieve milestones of the Project Plan to be approved by Customer before proceeding with the next step of the Project Plan.
- "Red Light Document" management and amendments to the Project Plan for any issues that may arise (either Customer or Supplier related) that may slow the progression of the Project Plan;



### 3.0 PRICING INFORMATION

Project pricing must be submitted as a lump sum for project completion and include a detailed payment schedule that reflects the life of the 5 year project calendar, as well as any and all expectation of balloon payments, performance bonuses or expense reimbursements expected by the vendor under the best standards and practices of the industry.

#### Schedule B Pricing Schedule

##### Pricing Schedule

Customer will pay Eight Million Five Hundred Twenty Thousand Dollars (\$8,520,000.00) under this Contract. Payment in full is nonrefundable and fully earned upon execution of this Contract. For financing purposes, payments will be made as described below:

	Total Contract Amount	Payment Distribution
Total Contract Amount	\$ 8,520,000.00	
First Payment Upon Execution of this Contract		\$ 525,000.00
Six (6) Monthly Payments starting on May 9, 2012, going through October 9, 2012, of Seventy Three Thousand One Hundred Twenty Five Dollars (\$73,125.00) Each		\$ 438,750.00
Twelve (12) Monthly Payments starting on November 9, 2012, going through October 9, 2013, of Ninety Seven Thousand One Hundred Eighty Seven Dollars and Fifty Cents (\$97,187.50) Each		\$ 1,166,250.00
Eighteen (18) Monthly Payments starting on November 9, 2013 going through April 9, 2015, of One Hundred Forty Five Thousand Eight Hundred Seventy Five Dollars (\$145,875.00) Each		\$ 2,625,750.00
Twenty Four (24) Monthly Payments starting on May 9, 2015 and going through April 9, 2017, of One Hundred Fifty Six Thousand Eight Hundred Forty Three Dollars and Seventy Five Cents (\$156,843.75) Each		\$ 3,764,250.00
Total (both columns should be equal)	\$ 8,520,000.00	\$ 8,520,000.00

5-Year Fixed-Term. Customer has the option to sign a two (2) year extension at the same monthly rate as the final year of this Contract.

Travel and living expenses are to be billed to customer as incurred.

#### 4.0 CONTRACT

The contract terms shall be defined by a five year written agreement with the option for renewal after five years, which shall be binding when fully executed by both parties. Responses to the ITN may be incorporated by reference in each written agreement and may become an integrated part of the final contract. Agreements will be customized through negotiations and BREVARD COUNTY CLERK OF COURTS's basic terms and conditions and business requirements will be embodied in this contract.

The desired relationship is one marked with a commitment to consistent quality service and continual improvement for the contract processes and services. Therefore, any final agreement will include specific service level and performance standards requirements.



# ROSE HARR

## President & CEO

### Professional Recognition

2010 - Featured Panelist: *Leading Internet Based Enterprises* at the Global Summit of Women, Beijing, China

2009 - Finalist for the "Top Women Owned Businesses in West Michigan"

2008, 2007, 2006 - Awarded the IBM Beacon Award-Innovation Excellence in Healthcare

2007 - Listed in *Inc.* magazine's "Top 5,000 Companies"

2007 - Honored as an Enterprising Woman of the Year, by *Enterprising Women Magazine*

2007 - Featured speaker at the Global Summit of Women, Berlin, Germany

2006 - Named one of *Michigan's Top 50 Companies to Watch*

### Professional Background

Rose Harr is President and CEO of the BlueWare Companies, premier providers of electronic health information software, document and records management systems, and related services in the United States and United Kingdom.

With more than 200 sites and 100,000 users worldwide, BlueWare is a certified Women-Owned Enterprise and IBM Premier Business Partner, with offices in Melbourne, FL, Cadillac, MI and Andover, England.

Prior to launching BlueWare in 1993, Harr graduated from Michigan State University and was employed by IBM as an Advisory Systems Engineer, Health and Image Specialist, and an AS/400 Advanced Application Team Leader. During her 13-year tenure with IBM Harr implemented two Health-Based Outpatient Clinic (HBOC) systems, resulting in \$4.5 million in revenues.

As a member of the IBM Global Business Partner Advisory Board and the Health Information Management Systems Society, Harr continuously increases her knowledge and expands her network within the greater technology industry. She is committed to being a voice for women in business and holds memberships with several business organizations at the national and state levels.

In 2005 BlueWare opened its first international office in Andover, England and introduced the company's flagship Clinical Document Management System - Wellness Connection - in the United Kingdom. The system has been instrumental in saving hospitals time, money and patient lives in more than 200 facilities across the United States and Europe. The Company's next generation software system, BestBond, is an unobtrusive and quick installation allowing hospitals to immediately use intuitive digital technology for the storage and retrieval of patient health records.

Hospitals that have implemented the company's software have seen a return on investment in six months or less, while physicians using the system have three additional hours each day to dedicate to patient care, rather than patient chart searches.

In 2012, the BlueWare Companies again expanded operations opening an office in Melbourne, FL, a city impacted by the recent closing of the nearby NASA facilities. At the same time, the company expanded its service offerings to include general document digitization, redaction and destruction, utilizing its more than 17 years of expertise managing records in highly regulated business environments.

# NICK GEANEY

## Chief Operations Officer

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### *Professional Recognition*

2009 - Finalist for the "Top Women Owned Businesses in West Michigan"

2008, 2007, 2006 - Awarded the IBM Beacon Award-Innovation Excellence in Healthcare

2007 - Listed in *Inc.* magazine's "Top 5,000 Companies"

2006 - Named one of *Michigan's Top 50 Companies to Watch*

### *Professional Background*

Nick Geaney is the Chief Operations Officer (COO) of the BlueWare Companies, premier providers of electronic health information software, document and records management systems, and related services in the United States and the United Kingdom.

Geaney joined BlueWare in 2008 and oversees the company's corporate culture and strategic development by leading executive/senior management teams and directing financial and physical resources.

Specifically, Geaney's responsibilities include:

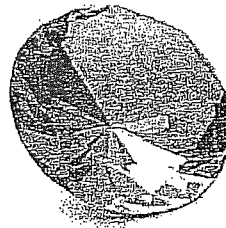
- Effective deployment of resources in line with Company strategies.
- Oversight of revenue and sales growth, expense, cost and margin control, and financial goal management.
- Directing short- and long-term planning and budget development to support strategic business goals.
- Support of business plans and objectives through corporate acquisition and growth.
- Capital market development including trade shows, client meetings, analyst conferences, etc.
- Execution of operating policies to support overall corporate goals.

Geaney attended England's Stratford-upon-Avon College, a United Kingdom center of Vocational Excellence for Hospitality and Catering and a premier trainer within the industry.

Prior to joining BlueWare, Geaney worked in the hospitality industry for more than 17 years. As an entrepreneur and restaurant owner, he was awarded the coveted designation *Gastro Pub of the Year*.

At BlueWare, Geaney maximizes his customer service expertise at many levels to create and nurture client relationships, develop strong and open communications and maintain a culture of commitment to excellence.

# BLUEGEM



BlueGEM  
1825 Riverview Drive  
Melbourne, FL 32901

("Supplier")

Brevard County Clerk of the Court  
700 South Park Avenue  
Titusville, FL 32780

("Customer")

## Scanning Contract for Brevard County Clerk of the Court

IT IS AGREED as follows:

1. This Contract is made between Supplier and Customer for the provision of the Services described in Schedule A ("Statement of Work") in consideration of the Total Charge set out in Schedule B ("Pricing Schedule").
2. This Contract shall comprise:
  - 2.1. Supplier's Standard Terms and Conditions for IT Services;
  - 2.2. The Statement of Work; and
  - 2.3. The Total Charge
  - 2.4. Clause 3 set out below.
3. This Services performed under this Contract shall commence immediately upon execution of this Contract and, subject to the provisions of the Supplier's Standard Terms and Conditions for IT Services, shall continue for 60 Months (the "Term").

For and on behalf of:

BlueGEM

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

Signed by: \_\_\_\_\_

\_\_\_\_\_(print name)

For and on behalf of:

Brevard County Clerk

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

Signed by: \_\_\_\_\_

\_\_\_\_\_(print name)

## STANDARD TERMS AND CONDITIONS FOR I.T. SERVICES

### 1. Definitions

1.1. In this Contract the following expressions shall have the following meaning:

*"Associated Company"* means any subsidiary parent or other affiliated entity with common ownership, principles, or managing members of a party to this Contract or holding company of such party or any subsidiary of any such holding company;

*"Contract"* means this contract entered into between Supplier and Customer;

*"Parties"* means Supplier and Customer and any successors or assigns thereto;

*"Contract Term"* means Five (5) Years from the Date this Contract is signed by both Parties;

*"Force Majeure"* means any of the following: (i) Act of God, (ii) outbreak of hostilities, riot civil disturbance, acts of terrorism, (iii) the act of any government or authority (including refusal or revocation of any license or consent), (iv) fire, explosion, flood, fog or bad weather, (v) power failure, failure of telecommunication lines, failure or breakdown of plant, machinery or vehicles, (vi) default of suppliers or sub-contractors, (vii) theft, malicious damage, strike, lock-out or industrial action of any kind and (viii) any cause or circumstance whatsoever beyond either Party's reasonable control;

*"Project Plan"* means the plan submitted by the Supplier to govern specifics on timing and how the Project will be implemented, including milestones and estimated timeframes for completion of tasks;

*"Green Light Document"* means the Customer's acceptance of a milestone or completion of the Project as indicated in the Project Management Plan, and authorizes Supplier to proceed with the next steps identified in the Project Plan;

*"Red Light Document"* means issues that may arise (either Customer or Supplier related) that may slow the progression of the Project, not contemplated in the Project Plan, to which the Customer has been made aware, which are prohibiting the progress of the Project's next steps, and will require corrective measures and potentially may require a revised Project Plan;

*"Intellectual Property Rights"* means all patents, utility models, petty patents, design patents, design rights (whether registered or unregistered), semiconductor topography rights, trademarks, trade secrets, services marks, and copyright, and applications in any country of the World for any of the foregoing;

*"Normal Working Hours"* means Monday through Friday, 8:00am until 5:00pm, excluding Saturdays, Sundays, and National and State holidays;

*"Services"* means the services to be provided by Supplier to Customer, more particularly described

in this Contract and where the context admits shall include any part thereof;

*"Software"* means the computer software (if any) which Supplier has agreed to create for Customer as part of the Services;

*"Project Change Control"* means any change to the Services including but not limited to: (i) the addition or reduction of features or services, (ii) the addition or reduction of equipment and/or software, (iii) the use of existing equipment and/or software in a different configuration or for a different purpose;

#### **Interpretation**

1.1.1. Except where the context otherwise requires, words denoting the singular include the plural and vice versa; words denoting any gender include all genders; words denoting persons include firms and corporations and vice versa;

1.1.2. Unless otherwise stated, a reference to a paragraph, Clause, or Section is a reference to the same in this Contract;

1.1.3. Headings are for ease of reference only and do not affect the construction of this Contract; and

1.1.4. Any reference to a party to the Contract includes reference to its successors in title and assigns.

### 2. Performance of Services

2.1. Supplier shall diligently perform the Services with reasonable skill and care and in accordance with the terms of the Contract. The Services shall be performed by Supplier during Normal Working Hours and any hours worked outside Normal Working Hours shall be charged separately as agreed upon by the Supplier and Customer in writing in advance of working outside of Normal Working Hours;

2.2. To the extent that they are reasonably required by Supplier to enable Supplier to perform the Services, Customer shall throughout the period of the Contract, whether or not requested by Supplier, promptly provide Supplier with all information requested by Supplier and answer any questions from Supplier (including, without limitation, complete and accurate information concerning its requirements, organization, operations and activities and any decisions made by Customer in relation to the Services). Supplier reserves the right to charge Customer for extra costs incurred by Supplier as a result of any failure to comply with the provisions of this Contract; and

2.3. Customer shall provide Supplier free of charge with such office space and facilities as may reasonably be necessary to enable Supplier to fulfill its obligations under the terms of this Contract;

### 3. Extension of Time

3.1. Supplier shall incur no liability whatsoever to Customer by reason of any delay in the performance of the Services:

3.1.1. If the delay is due wholly or partly to any act, omission or default on the part of the Customer, including but not limited to failure to provide information, or to approve any documents, reports, specifications or results of the Services for which approval is required by Customer within any periods agreed in writing between Supplier and Customer or if there is no such period within a reasonable time; or

3.1.2. If the delay is due to Force Majeure.

In the event of any such delay as aforesaid, Supplier shall have the right to an extension of time to perform the Services by such reasonable period having regard to the nature of such delay, and the right to be paid all reasonable costs, charges and losses sustained or incurred by Supplier as a result thereof.

#### 4. Project Change Control Procedure

4.1. Either party may at any time propose a Project Change Control. Such party shall give notice of such proposed Project Change Control together with full particulars to the other party. Subject to the agreement of Customer, Supplier shall within a reasonable time of the service of the Project Change Control prepare at its discretion and at Customer's cost at Supplier's current rate, either a feasibility study or proposal or, if it is satisfied that the proposed Project Change can be implemented without such a study or proposal, an implementation plan incorporating (without limitation) Supplier's recommendation for the scope and period of performance.

4.2. As part of the preparation by Supplier of the feasibility study, proposal and/or plan Customer shall promptly furnish such information as Supplier may reasonably require, to enable Supplier to prepare a quotation for the proposed Project Change, which quotation shall include (without limitation):

4.2.1. Any cost of implementing the Project Change and/or any price for carrying out any new service;

4.2.2. Any proposal for amending the Contract;

4.2.3. The scope of work to implement the Project Change including any effect on existing Services;

4.2.4. The timetable for such implementation; and

4.2.5. Any change to the duration of the Contract.

4.3. In proposing a Project Change, both parties shall take due account of any current plans or developments of which it is aware and which the other may be considering in connection with the Services, provided always that this shall not

restrict either party's right to request a Project Change if it considers it appropriate.

4.4. If Customer accepts Supplier's quotation under Clause 4.2, Supplier shall prepare a Project Change schedule to the Contract incorporating the agreed Project Change, which schedule shall be binding upon signature by both parties. If Customer does not accept Supplier's quotation under Clause 4.2, Customer shall forthwith notify Supplier in writing and, if applicable, shall pay to Supplier such reasonable costs as may have been incurred by Supplier in connection with the preparation of the quotation.

#### 5. Price and Payment

5.1. Charges for cost of travel, accommodation and subsistence, and expenses incurred by Supplier are to be paid in addition to other fees owed under this Contract, so long as upon written request Supplier will provide Customer with such evidence of such costs and expenses as Customer may reasonably require;

5.2. Supplier shall invoice Customer in accordance with the Pricing Schedule. Unless specified otherwise, payment of all amounts due under the Contract shall be made within thirty (30) days of the date of invoice.

5.3. If Customer disputes the contents of any invoice, it shall provide Supplier in writing with reasons for non-payment and supporting evidence. In such event, Customer shall be entitled to suspend payment of the disputed part of the invoice. The parties shall discuss the disputed amount of the invoice as soon as possible. If it is established that the reasons are justified, the invoice shall be adjusted and Customer shall pay the remaining balance within thirty (30) days after receipt of the adjusted invoice. If it is established that the reasons are unjustified, Customer shall pay the disputed balance immediately, together with interest. Any part of an invoice properly disputed by Customer shall not affect payment of the undisputed portion. If no notification of dispute is received by Supplier within thirty (30) days of Customer's receipt of the invoice for such costs or expenses, Customer shall be precluded from disputing payment of such invoice; and

5.4. Supplier reserves the right to charge Customer interest in respect of the late payment of any sum due under this Contract at the rate of one and one-half percent (1.5%) per month (or, if less, the maximum allowed by applicable law) on the overdue balance. Such interest shall immediately be paid by Customer upon first demand. All amounts due under this Contract shall be paid in full without any deduction or withholding other than as required by law and Customer shall not be entitled to assert any credit set-off or counterclaim against Supplier in order to justify



withholding payment of any such amount in whole or in part.

**6. Suspension of Services**

If after the due date for payment has passed, payment due under the terms of this Contract is not made within thirty (30) days of a written demand sent to Customer, Supplier may at its discretion suspend the performance of the Services or any part thereof until payment in full is received from Customer. If upon resumption of the Services, Supplier is required to carry out any services or incur any costs which but for the suspension would not have been carried out or incurred, Customer shall reimburse the cost of any such service and costs, which shall be paid within thirty (30) days of the date of the invoice. Any period of suspension shall be treated as a delay caused by Customer.

**7. Communication**

7.1. Customer shall nominate a person with the necessary knowledge and experience relevant to the provision of the Services and with the requisite knowledge of Customer's business (including but not limited to Customer's organization, its operations and business practices) as its representative and as the prime point of contact with Supplier and through whom all communication with Supplier shall be made (the "Customer Project Manager"). The Customer Project Manager shall:

7.1.1. Serve as the interface between the Supplier and all departments of the Customer participating in the Project;

7.1.2. In conjunction with the Supplier Project Manager, handle each Project Change Control;

7.1.3. Obtain and provide all information, data, decisions, and approvals, within two (2) working days of his receipt of a request from the Supplier, unless the Parties (acting reasonably and promptly) agree to extend the response time;

7.1.4. Resolve deviations from the Project Plan that are attributable to the Customer; assist with the resolution of any issues with the Project, and escalate those issues internally, as necessary; and

7.1.5. Monitor and report to the senior management of the Customer on the status of the Project.

7.2. Supplier shall nominate a representative who shall be responsible for monitoring and reviewing the performance of the Contract and through whom all communication with Customer shall be made (the "Supplier Project Manager"). Customer should direct all communications to the Supplier Project Manager. All significant concerns should

be addressed to Supplier Project Manager in writing and delivered by certified mail.

7.3. Each Party may at any time substitute another suitable person as its representative, and shall give notice to the other party of any such substitution.

7.4. The Parties' representatives shall meet periodically as agreed between the Parties to review the Services and to deal with any requests and problems as may have arisen in the period prior to the review.

7.5. Either Party shall be entitled to call a meeting upon not less than three (3) days' notice if that party reasonably considers that there are issues which need to be discussed and/or resolved relating to the Services. Both Parties shall use all reasonable endeavors to attend meetings called on shorter notice when urgently required. Any such meeting may if the Parties agree be carried out by teleconference or videoconference.

**8. Employment of Personnel**

8.1. Supplier warrants that the personnel assigned by Supplier to the provision of the Services possess the degree of skill and experience appropriate to the tasks to which they are allotted. Supplier shall use reasonable endeavors to maintain the personnel so allotted but may substitute other suitably qualified personnel in connection with its own business requirements or if such personnel are for any reason absent from work. If any assigned personnel are promoted to a higher job category during the period of the Contract and Customer has requested that any such personnel should continue to provide Services, Supplier may adjust the Pricing Schedule to take account of the increased cost to Supplier of employing such personnel.

8.2. During the period of the Contract and for a period of six (6) months thereafter neither party shall without the prior written consent of the other party either directly or indirectly or in conjunction with any other person induce any employee or contractor of the other party or its Associated Companies who is or has, in the case of the Supplier's employees, been directly involved in the Supply or, in the case of the Customer's employees, been involved in the purchase of the Services to leave his employment and become an employee of such Party or any Associated Company of such Party;

8.3. As part of the written consent referred to in Clause 8.2, the Party giving the consent (the "Original Employer") may require the other Party to make a payment to the Original Employer to reflect the cost of recruiting a replacement for such employee and to cover any losses and costs incurred by the Original Employer as a result of

such employee ceasing to be employed by the Original Employer.

**9. Intellectual Property Rights**

- 9.1. Unless otherwise agreed in writing, any Intellectual Property Rights arising solely out of and in the course of the work carried out by Supplier as part of the Services shall vest in Supplier.
- 9.2. Subject to the payment of all sums due to Supplier under the Contract, Supplier agrees to grant or procure the grant to Customer of a non-exclusive, perpetual, royalty-free license (but with no right to sub-license the use to any third party) of the Intellectual Property Rights referred to in Clause 9.1 to use and reproduce the same in connection with the running of its own business.
- 9.3. To the extent that Supplier requires a license under any Intellectual Property Rights vested in or licensed to Customer to enable Supplier to carry out the Services, Customer hereby grants to Supplier, Supplier's Associated Companies, agents and sub-contractors engaged in providing the Services and warrants that it has the right so to grant a non-exclusive, royalty-free license for the duration of the Contract;
- 9.4. Infringement Notification:
  - 9.4.1. Supplier shall forthwith notify Customer if any claim or demand is made or action brought against Supplier for infringement or alleged infringement of any Intellectual Property Rights which may affect the use by Customer of the Services;
  - 9.4.2. Customer shall forthwith notify Supplier if any claim or demand is made or action brought against Customer for infringement or alleged infringement of any Intellectual Property Rights in connection with the Services. Supplier shall have the right at its own expense to conduct any litigation arising therefrom and in such event Customer hereby agrees to grant to Supplier exclusive control of any such litigation and such negotiations;
  - 9.4.3. Customer shall at the request of Supplier afford to Supplier all reasonable assistance for the purpose of contesting any claim or demand made or action brought against Customer or Supplier for infringement or alleged infringement of any such Intellectual Property Rights and shall be repaid all costs and expenses (including but not limited to reasonable attorneys' fees, costs, post judgment interests, and appellate attorneys' fees, costs, post judgment interests) incurred in so doing;
  - 9.4.4. Customer shall not make any admissions which may be prejudicial to the defense or

settlement of any claim, demand or action for infringement or alleged infringement of any such Intellectual Property Rights by Customer or Supplier;

- 9.4.5. If a claim, demand or action for infringement or alleged infringement of any such Intellectual Property Rights is made in connection with the provision of the Services or in the reasonable opinion of Supplier is likely to be made, Supplier may at its own expense either:
    - 9.4.5.1. Modify the way the Services are provided, without reducing the performance and functionality of the same, so as to avoid the infringement or the alleged infringement and the terms herein shall apply mutatis mutandis to such modified Services; or
    - 9.4.5.2. Procure a license on such terms as it shall think fit for Supplier to perform the Services and on terms which are reasonably acceptable to Customer.
  - 9.5. The foregoing provisions of this Clause shall not apply insofar as any such claim or demand or action is in respect of:
    - 9.5.1. Any use by or on behalf of Customer of anything supplied by Supplier under this Contract in combination with any item not so supplied where such use of the item directly gives rise to the claim, demand or action; or
    - 9.5.2. Any modification carried out by or on behalf of Customer to any item supplied by Supplier under this Contract if such modification is not authorized by Supplier in writing; or
    - 9.5.3. Customer's unreasonable refusal to use a modified form of the Services supplied pursuant to Clause 9.4.5.
  - 9.6. If Supplier has availed itself of its rights to modify the way the Services are provided under Clause 9.4.5.1 or to procure a license in accordance with Clause 9.4.5.2 and such exercise of the said rights has avoided any claim, demand or action for infringement or alleged infringement, then Supplier shall have no further liability thereafter in respect of the said claim, demand or action.
  - 9.7. Customer hereby warrants that any instructions given in relation to Supplier's use of any third party item supplied directly or indirectly by Customer shall not cause Supplier to infringe any third party's Intellectual Property Rights in such item.
- 10. Warranty**
- 10.1. Supplier warrants to Customer that any Software will, at the time of delivery, or, if installed by Supplier, at the date of installation of the

Software, and for sixty (60) days thereafter, be free from defects and will conform in all material respects to the agreed Software specification (if any). Customer's remedy and Supplier's obligations shall be limited to debugging any defective Software provided the defect is reported to Supplier within the sixty (60) day period. This warranty shall not apply in circumstances in which Supplier reasonably believes that the Software has been subject to misuse, neglect, improper installation, repair, alteration or damage by Customer or by anyone authorised by Customer to use the Software, or where Customer has carried out its own acceptance tests and the defect has not been revealed. Any work carried out by Supplier to rectify any defects in such circumstances shall be chargeable at Supplier's current rates;

10.2. Supplier does not warrant that the operation of the Software will be uninterrupted or error-free or that defects in Software can be corrected. Unless otherwise agreed, Customer shall use Software at its own risk; and

10.3. Supplier will, so far as it is able, pass to Customer the benefit of any warranties in respect of any Software created by third parties where such Software is provided by Supplier to Customer as part of the Services.

#### 11. Liability

11.1. The Supplier's liability in respect of (i) death or personal injury; and (ii) fraud or fraudulent misrepresentation, including statements made by Supplier fraudulently prior to the date of this Contract shall not be limited;

11.2. The Supplier's liability for direct physical damage to the Customer's tangible property under this Contract shall be limited to one million dollars (\$1,000,000).

11.3. The Supplier shall have no liability to the Customer for:

11.3.1. Loss of profits, revenue, savings, data, programs or electronic records, business, goodwill, loss of productivity, loss of use, or loss of contracts; and

11.3.2. Any type of indirect or consequential loss or damage;

11.4. The Supplier has no liability hereunder unless written notice has been received within six (6) months of the cause of action giving rise to the claim occurring, giving reasonable details of the subject matter of the claim. Notwithstanding the foregoing, no action, regardless of form, arising out of the subject matter of the Contract may be brought by either Party more than one year after completion of the Services except that action for non-payment may be brought by the Supplier within one year after the expiration or

termination of the Contract or one year after the date of last payment whichever is later.

11.5. Save as expressly stated in this Contract, all conditions, terms and undertakings whether implied, statutory or otherwise in respect of the Services or any part thereof are hereby excluded to the extent permitted at law.

11.6. The exclusions and limitations of liability set out in this Contract shall exclude and limit all of the Supplier's liability to the Customer in respect of all matters arising out of or in connection with this Contract whether in contract, tort (including but not limited to negligence), for breach of statutory duty or otherwise.

#### 12. Force Majeure

If either Party's performance of its obligations is affected by Force Majeure it shall forthwith notify the other Party of the nature and extent thereof. If by reason of Force Majeure, either Party is unable to perform or there are delays by such Party in the performance of any such obligation, then in the event that Force Majeure affects such Party's obligations, such party's performance of any such obligation shall be suspended as long as the Force Majeure continues and the time for performance of that obligation shall be extended accordingly, and the party otherwise in default shall not in any event be liable to the other Party for any loss or damage whatsoever and howsoever arising (whether direct or indirect loss of damage) incurred or suffered or for any breach of any of the terms of the Contract by reason of such Force Majeure.

#### 13. Confidentiality

13.1. Each Party ("the receiving Party") shall at all times during the continuance of this Contract and after its termination:

13.1.1. Maintain confidential all information given to him by the other Party ("the disclosing Party") at any time in respect of the business and affairs of the other Party, whether initially disclosed orally or in writing, or in the form of samples, models, computer data or Software, or by demonstration or otherwise, which is by its nature confidential or is previously identified or indicated to the receiving party by the disclosing party as being confidential information ("the Information"); and

13.1.2. Not use the Information other than for the purposes of this Contract;

13.2. Information disclosed pursuant to this Contract shall be stored securely. Upon completion or termination of this Contract the receiving Party shall return all Information and all permitted copies of the same to the disclosing Party, save where archive copies kept by the receiving Party are required by law or a relevant regulatory authority.

13.3. Except where the disclosing Party gives written instructions to the receiving Party at any time that the obligations of confidentiality in respect of specified items of Information should be maintained for a different period, the receiving Party's obligations pursuant to this Contract shall notwithstanding subsequent termination continue for a period of five (5) years.

13.4. The receiving Party shall be permitted to use or disclose any part of the Information to the extent only that:

13.4.1. The information is in or comes into the public domain otherwise than by disclosure by the receiving Party; or

13.4.2. The information was or is lawfully obtained or available from a third party who is lawfully in possession of the same and free to disclose it; or

13.4.3. The receiving Party already has knowledge of the Information prior to disclosure by the disclosing party as evidenced by written records; or

13.4.4. Such disclosure is required by law or governmental regulation.

13.5. Nothing in this Clause shall be deemed to grant a license expressly or by implication under any Intellectual Property Rights.

13.6. This Clause shall supersede any existing Contract between the Parties concerning the confidentiality of information as may have been entered into in anticipation of the conclusion of the Contract.

**14. Duration and Termination**

14.1. The duration of this Contract shall be for a minimum initial term of five (5) years;

14.2. It is acknowledged that Supplier will need to invest substantial resources into the initial phases of this Contract that would not make the Project feasible on any shorter term than five (5) years; and

14.3. In the event Customer seeks early termination of the Contract, the term of performance of the Contract will be accelerated to end upon termination and the full amount owed under the Contract will be owed without any set off for any work that has not yet been completed. Any unpaid portions of the total Contract value will become immediately due. By terminating this Contract early, Customer accepts all work is completed and satisfactory and shall have no claims against Supplier; and

14.4. In the event Supplier seeks early termination of the Contract, Supplier waives all rights to unpaid fees under this Contract.

**15. Consequences of Termination or Expiration**

Upon termination or expiration of the Contract, Supplier shall be entitled to enter upon the premises of Customer for the purposes of recovering any equipment or materials which are the property of Supplier, for

which purpose Customer hereby grants Supplier an irrevocable license to enter any such premises with reasonable notice to the customer.

**16. Risk of Loss**

All work, including data, delivered to Customer by Supplier ("Deliverables") shall become the responsibility of Customer to protect from loss, damage or destruction on delivery and Customer assumes such responsibility and the related risk. Deliverables shall be considered delivered either when Customer takes physical possession of them directly from Supplier, when they are stored at Customer's location, when they are mailed to Customer by registered post, or when they are physically transferred to a common carrier for shipment to Customer whichever is earlier. Further, Customer agrees that: (i) Supplier shall not be liable for any such loss, damage or destruction relating to Deliverables, and (ii) replacement or other reworking of any Deliverables which are lost, damaged or destroyed after delivery to Customer shall be at the sole cost of the Customer.

**17. Assignment of Agreement**

Neither Party may assign or subcontract (in whole or in part) any of the benefit of or their obligations under the Contract without the written consent of the other Party, except that: (i) the Supplier may assign the benefit subject to the burden of this Contract (or any part thereof) to any Associated Company; (ii) Supplier shall be entitled to sub-contract any of its obligations under this Contract to any other person with the consent of Customer, such consent not to be unreasonably withheld or delayed, except that such consent shall not be required in the case of Supplier subcontracting its obligations to an Associated Company; and (iii) the Supplier shall have the right to assign its right to receive due payment of any Total Charges to a third party and the Supplier shall inform the Customer of the identity of such third party if and when such assignment takes place. Subject to the other provisions of this Clause 17, this Contract is binding upon and shall ensure for the benefit of the parties' personal representatives, assigns and successors in title.

**18. Waiver**

The waiver by either Party of a breach or default of any of the provisions of this Contract by the other Party shall not be construed as a waiver of any succeeding breach of the same or other provisions nor shall any delay or omission on the part of either party to exercise or avail itself of any right power or privilege that it has or may have hereunder operate a waiver of any breach or default by the other party.

**19. Notices**

Any notice or other communication required to be given pursuant to the Contract shall be in writing and given in English, delivered certified mail.

**20. Invalidity and Severability**

If any provision of the Contract shall be found by any court to be invalid or unenforceable to the invalidity or

unenforceability of such provision shall not affect the other provisions of the Contract and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect. The Parties hereby agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible to economic legal and commercial objectives of the invalid or unenforceable provision.

**21. Agency Partnership or Joint Venture**

The Contract shall not operate so as to create or recognize an agency, partnership or joint venture of any kind between the parties hereto.

**22. Whole Agreement**

Unless otherwise agreed in writing the Contract supersedes and invalidates all other commitments, representations and warranties relating to the subject matter hereof which may have been made by the Parties either orally or in writing prior to the date hereof, save in respect of statements made fraudulently. The Contract may only be amended by written document signed by the Parties' authorized representatives.

**23. Governing Law**

This Contract shall be governed by and shall be construed in accordance with the laws of the State of Florida, without giving effect to choice of law or conflicts of law provisions. Any dispute arising out of this Contract shall be adjudicated solely in the applicable federal or state courts within the State of Florida. The Parties each agree that they are subject to the personal jurisdiction of those courts, and each waives the right to challenge the personal jurisdiction of those courts over it.

**24. Third Party Rights**

A person who is not a party to this Contract has no right to enforce any term of this Contract.

**25. Attorneys' Fees**

25.1. If litigation is required to enforce any provision of this Contract, the prevailing Party shall be entitled to recover expenses, costs and attorneys' fees, including post judgment interest and appellate expenses, costs, and attorneys' fees including post judgment interest.

## SCHEDULE A

### SERVICES

#### **Supplier's Duties**

1. **Project Manager:** Prior to the commencement of services, the Supplier will designate a duly experienced, qualified and authorized employee, to be its Project manager (the "Supplier Project Manager"), to whom all of the Customer's communications will be addressed.
2. **Project Management:** Supplier will provide direction and control of Project Personnel, and a framework for Project communications, reporting, and procedural and contractual activities, including the following:
  - 2.1. Maintaining Project communication with the Customer's Project Manager;
  - 2.2. "Green Light Document" management to achieve milestones of the Project Plan to be approved by Customer before proceeding with the next step of the Project Plan.
  - 2.3. "Red Light Document" management and amendments to the Project Plan for any issues that may arise (either Customer or Supplier related) that may slow the progression of the Project Plan;
  - 2.4. Reviewing and administering the Project Change Control Procedure; and
  - 2.5. Coordinating and managing the technical activities of Project Personnel.
3. **Project Management Deliverables:**
  - 3.1. Supplier will create and maintain a Project Plan and provide monthly status reports to Customer in an organized fashion, for the purpose of assisting the Customer in setting the expectations of the Users and the Customer's Project Manager
4. **Records Archiving Solution:**

This online service, which can be accessed through a standard web browser, provides thousands of users with fast and secure access to their documents. Built on advanced technology this service will automatically categorizes and indexes documents.

BlueGEM has the capacity to scan very large volumes of archived documents, microfiche and microfilm at our state-of-the-art scanning facilities. Our service includes the collection and secure transportation of your documents and records to one of our centers for scanning, and the delivery of the resulting images via our hosted document management system, BlueGEM Online, or other secure methods or media. Digitizing your archived information in this way makes it less vulnerable to loss and deterioration and more accessible should you need to locate a document. It also helps with the management of document retention policies, by readily identifying documents that can be securely destroyed.

Your document archive is a vital business resource. Our huge capacity for scanning means that we can digitize it quickly for you, making all the benefits of image-based working available at the earliest possible time. While we are processing your documents they are securely stored and we provide on-demand scanning for any urgently required documents, so you are never unable to access the documents you need.

Supplier will provide and install the Records Archiving Solution, including the following:

- 4.1. Implementing (with Customer personnel) electronic forms/Bar Coding requirements; and
  - 4.2. Testing imaging system.
  - 4.3. Supplier will supply to the Customer scanning installation services and support during the term of this Contract for all Historical documents and for all documents generated during the term of this Contract produced to Supplier for scanning.
5. **Digital Pen Solution Pilot Implementation:** This will be a ninety (90) day Pilot in which BlueGEM will provide the server and printer on loan. The Digital Pen Solution allows instantaneous capture of written data. This technology revolutionizes the process of capturing data, without interrupting workflow. To implement the Digital Pen Solution, the following steps need to be performed:
- 5.1. Train users on Digital Pen Solution
  - 5.2. Change Control Procedure will be implemented if Digital Pen goes to full production and other entities.

### **Customer's Duties**

1. **Project Manager:** Prior to the commencement of services, Customer will designate a duly experienced, qualified and authorized employee, to be its Project manager (the "Customer Project Manager"), to whom all of the Supplier's communications will be addressed;

2. Customer will provide six (6) current employees of Customer for a ninety (90) day transition period; during this period Customer will continue to assume all responsibilities for these employees' salaries and benefits;
3. Customer shall diligently make documents available to Supplier in a manner that makes the timely accomplishment of the Project Plan feasible.
4. Supplier and Customer are entering into a Strategic Partnership. In doing so, Customer agrees to:
  - 4.1. Host Site Visits for Supplier
  - 4.2. Customer will be a Referral site
  - 4.3. Customer will allow for Supplier to reference Customer in Press Releases

### Assumptions

1. BlueGEM will deliver to Customer a Referencability & Quality Assurance Book: The purpose of the Referencability & Quality Assurance (RQA) book ultimately is to create a client reference with all of our customers. In order to achieve client referencability, BlueGEM has a 23 step process that we follow. Each of these 23 steps is an opportunity for us to generate a reference relationship with our customer throughout the process of implementation. As an important part of the 23 Steps process, BlueGEM creates an RQA book for each customer (and a copy for us) that contains reference, operating and maintenance materials relevant to BlueGEM and our products.
2. 5 Year Contract. Customer has the option to sign a two (2) year extension at the same Monthly rate as the final year of this Contract.
3. Secure Shredding/Destruction will be a separate BlueGEM contract. Contract to follow: When your confidential paper documents can be safely destroyed – either because digital copies have been made or because they have been kept for the requisite period – we are able to provide a secure waste paper collection and shredding service. We can provide on-site consoles into which your staff can place documents for secure shredding, which EDM will empty and process at agreed intervals. EDM also provides secure bulk shredding at our premises for the secure disposal of documents that we have already scanned for our customers;
4. Server Pricing is not included in this proposal;



5. The Supplier cannot be held responsible for the correct configuration and support of any hardware or software that is not sourced directly from the Supplier
6. If the Customer requires the provision of support on items that are not sourced from the Supplier, then the Supplier shall be entitled to Additional Total Charges.
7. The Services will be performed during normal business hours (being 8:00 am to 5:00 pm) on weekdays and not on weekends or public holidays unless the Parties agree otherwise (acting reasonably and promptly).
8. The Customer shall be fully responsible for the transition and implementation of the Deliverables to all of its production and other systems
9. If for any reason a software or hardware defect within the Deliverables, the Customer shall inform the Supplier promptly, and the Supplier shall, without delay, apply all of its available resources to the resolution of that defect, and shall suspend the performance of all other Services until the defect has been satisfactorily resolved. The Customer shall not be liable for any such suspension.