

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.

ROSEWARE, LLC, a Florida limited liability  
company,

Defendant.

Case # 05-2013-CA-033453-XXXX-XX  
Document Page # 2



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**COMPLAINT FOR DAMAGES**

COMES NOW, Plaintiff, SCOTT ELLIS, in his official capacity as Brevard County Clerk of the Circuit Court (the "Clerk Ellis"), and hereby sues Defendant, ROSEWARE, LLC ("RoseWare"), 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 officer created and governed by Article V, Section 16 and Article VIII, Section 1(d) of the Florida Constitution, Chapter 28, Florida Statutes, and Section 4.2.1 of the Charter of Brevard County, Florida.

2. On January 8, 2013, Clerk Ellis became the Clerk of Court upon the expiration of the term of Mitch Needelman ("Former Clerk Needelman") on January 7, 2013.

3. RoseWare 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.

4. The contracts that form the basis for this action were executed by Former Clerk Needelman on behalf of the Clerk of Court and RoseWare in Brevard County, Florida and were

to be performed therein.

5. 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.

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

**COUNT I – BREACH OF CONTRACT  
(I.T. Consultancy Contract and the Addendum)**

7. This is an action for damages in excess of Fifteen Thousand Dollars (\$15,000.00) exclusive of costs, interest and attorneys' fees.

8. The Clerk of Court re-alleges and incorporates the allegations in paragraphs 1 through 6 above as if fully set forth herein.

9. On April 6, 2012, the Former Clerk Needelman and RoseWare entered into an express, written contract for the provision of certain information technology ("I.T.") consulting services for which the Clerk of Court would provide compensation to RoseWare (the "I.T. Consultancy Contract"). A true and correct copy of the I.T. Consultancy Contract is attached as Exhibit "A."

10. RoseWare had various obligations under the I.T. Consultancy Contract, including, without limitation, creating an "I.T. Strategic Plan" with the Clerk of Court to include seven (7) key technology "initiative/accomplishments," providing training and education to core members of the Clerk of Court's staff and executive team, conducting two to three (2 – 3) days of interviews with the Clerk of Court's staff to ascertain needs and, after gathering the necessary information, providing the Clerk of Court with I.T. strategy documents and action plans with timelines for implementation of the recommended I.T. changes and adaptations.

11. In exchange for full performance of RoseWare's obligations under the I.T.

Consultancy Contract, the Clerk of Court was to pay RoseWare the contract price of One Hundred Thousand and 00/100 Dollars (\$100,000.00).

12. On April 6, 2012, the Clerk of Court tendered payment to RoseWare in the amount of \$100,000.00 prior to any services being performed. A true and correct copy of the payment for IT Consultancy Contract dated April 5, 2012 is attached hereto as Exhibit "B."

13. On May 1, 2012, less than one (1) month later, the Clerk of Court and RoseWare executed an "Addendum to the IT Consulting Contract for Abnormal Incident" (the "Addendum"), a true and correct copy of which is attached hereto as Exhibit "C." The only description for the scope of work and RoseWare's obligations under the Addendum can be found in Schedule "A" to the Addendum, which reads "[d]ue to unusual findings[,] further consulting services [are] required surrounding abnormal incidents." The Addendum neither describes nor defines the "abnormal incidents" and does not identify what "further consulting services" are required because of the "incidents."

14. Pursuant to the Addendum, the Clerk of Court was to pay RoseWare an additional One Hundred Fifty Thousand Three Hundred Fifty and 00/100 Dollars (\$150,350.00) for RoseWare's completion of its obligations under the Addendum.

15. On May 3, 2012, the Clerk of Court tendered payment to RoseWare in the amount of \$150,350.00 prior to any services being performed. A true and correct copy of the payment for Addendum to the IT Consulting Contract dated May 3, 2012 is attached hereto as Exhibit "D."

16. However, after the Clerk of Court tendered payment, RoseWare produced a three (3) page document delineating what it classified as four (4) separate, abnormal instances that RoseWare defined as "unauthorized attempts to access the Clerk of the Courts [sic] network or [to] deny access to the [Clerk of Court's] network" (the "Addendum Report"). A true and

correct copy of the Addendum Report is attached as Exhibit "E."

17. The Addendum Report failed to furnish critical log information standard in I.T. practices or any other identifying characteristics for the supposed intrusions so that the Clerk of Court could review the supposed breaches in the Clerk of Court's network.

18. The Addendum Report failed to deliver or outline any solutions to the Clerk of Court with regard to RoseWare's review of the 4 incidents on how best to protect the Clerk of Court's network from future intrusions.

19. The Clerk of Court fully performed its obligations under both the I.T. Consultancy Contract and the Addendum including, without limitation, paying RoseWare the full contract sum of Two Hundred Fifty Thousand Three Hundred Fifty and 00/100 Dollars (\$250,350.00).

20. Despite the Clerk of Court's full performance and payment, RoseWare breached the I.T. Consultancy Contract and the Addendum by failing to perform some or all of its obligations thereunder including, without limitation:

- (a) failing to create an "IT Strategic Plan" with the Clerk of Court to include seven (7) key technology "initiative/accomplishments;"
- (b) failing to provide training and education to core members of the Clerk of Court's staff and executive team;
- (c) failing to conduct sufficient I.T. interviews with the Clerk of Court's staff to ascertain I.T. needs and areas for improvement or modification;
- (d) failing to provide the Clerk of Court with I.T. strategy documents;
- (e) failing to provide the Clerk of Court with action plans;
- (f) failing to provide the Clerk of Court with timelines for implementation of the recommended I.T. changes and adaptations;
- (g) failing to provide all of the required services, if any, under the Addendum; and
- (h) otherwise failing to fully and properly perform all of its obligations under the I.T. Consultancy Contract and the Addendum.

21. Additionally, 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 I.T. Consultancy Contract and the Addendum and failing to identify, recommend or implement reasonably sufficient I.T. modifications or improvements thereunder.

22. As a result of RoseWare's breaches of the I.T. Consultancy Contract and the Addendum, as well as its duty of good faith and fair dealing, the Clerk of Court suffered damages including, without limitation, economic damages for sums paid to RoseWare under the I.T. Consultancy Contract and the Addendum.

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

**COUNT II – BREACH OF CONTRACT**  
**(Cost Containment Contract)**

23. This is an action for damages in excess of Fifteen Thousand Dollars (\$15,000.00) exclusive of costs, interest and attorneys' fees.

24. The Clerk of Court re-alleges and incorporates the allegations in paragraphs 1 through 6 above as if fully set forth herein.

25. On April 6, 2012, the Former Clerk Needelman and RoseWare entered into an express, written contract for the provision of certain cost containment services for which the Clerk of Court would provide compensation to RoseWare (the "Cost Containment Contract"). A true and correct copy of the Cost Containment Contract is attached hereto as Exhibit "F."

26. Under the Cost Containment Contract, RoseWare was required to attempt to renegotiate servicer and supplier contracts into which the Clerk of Court had already entered into

in an effort to reduce the cost for such services or supplies, thereby saving the Clerk of Court money.

27. Pursuant to the Cost Containment Contract, RoseWare was to receive thirty-five percent (35%) of the "gross agreed upon savings or cost reduction as documented by the Clerk [of Court]'s finance department." (Ex. "F" at 10).

28. In exchange for payment of 35% of the gross savings the Clerk of Court would accrue from RoseWare's contracted services, RoseWare had a number of obligations under the Cost Containment Contract, including submitting "formal acknowledgements of gross savings or cost reduction" to the Clerk of Court upon negotiating a reduced contract price for services or supplies; submitting identified cost savings and reductions to the Clerk of Court's "Finance agent" for verification; providing invoices to the Clerk of Court for an amount equal to 35% of the gross agreed upon savings or cost reduction as documented by the Clerk of Court's finance department; and delivering to the Clerk of Court an analytical report containing each contract, the current terms and pricing, the renegotiated terms and pricing, the net savings and the net payable to RoseWare pursuant to the aforementioned procedures.

29. The Clerk of Court fully performed its obligations under the Cost Containment Contract including, without limitation;

- (a) making available all current contracts and contact information to RoseWare so that it could perform its duties under the Cost Containment Contract; and
- (b) making the Clerk of Court's staff available for any and all questions from RoseWare with regard to the Clerk of Court's contracts, its servicers and its suppliers.

30. Despite the Clerk of Court's full performance, RoseWare breached the Cost Containment Contract by failing to perform some or all of its obligations thereunder including, without limitation:

- (a) failing to submit "formal acknowledgements of gross savings or cost reduction" to the Clerk of Court upon negotiating a reduced contract price for services or supplies;
- (b) failing to submit identified cost savings and reductions to the Clerk of Court's "Finance agent" for verification;
- (c) failing to provide invoices to the Clerk of Court for an amount equal to 35% of the gross agreed upon savings or cost reduction as documented by the Clerk of Court's finance department;
- (d) failing to deliver to the Clerk of Court an analytical report containing each contract, the current terms and pricing, the renegotiated terms and pricing, the net savings and the net payable to RoseWare pursuant to the aforementioned procedures; and
- (e) otherwise failing to fully and properly perform all of its obligations under the Cost Containment Contract.

31. Additionally, because RoseWare had broad discretion over its actions under the Cost Containment Contract and because the Clerk of Court relied upon RoseWare's expertise to determine how best to fully perform under this agreement, RoseWare 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 Cost Containment Contract, permitting months to pass with little to no action on the part of RoseWare to contact servicers, and suppliers and failing to timely and diligently discuss current contract prices and costs and to negotiate reduced-price contracts.

32. As a result of RoseWare's breaches of the Cost Containment Contract as well as its breach in duty of good faith and fair dealing, the Clerk of Court suffered damages..

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

**COUNT III – RESCISSION**  
**(Addendum to the I.T. Consultancy Contract)**

33. 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 that portion of Count I, above, that concerns the "Addendum to the I.T. Consulting Contract for Abnormal Incidents" dated May 1, 2012.

34. The Clerk of Court re-alleges and incorporates the allegations in paragraphs 1 through 6 and 9 through 19 above as if fully set forth herein.

35. The only description of services and attendant obligations of RoseWare under the Addendum are contained within Schedule "A," which says nothing more than "[d]ue to unusual findings further consulting services required surrounding abnormal incidents."

36. RoseWare's obligations under the Addendum are so ill-defined, vague and illusory that the Addendum lacks essential terms necessary for the formation of an enforceable contract.

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

**COUNT IV – DECLARATORY JUDGMENT**  
**(I.T. Consultancy Contract, the Addendum and Cost Containment Contract)**

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

38. The Clerk of Court re-alleges and incorporates paragraphs 1 through 6, 9 through 19 and 25 through 29 above as if fully set forth herein.

39. The I.T. Consultancy Contract, the Addendum and the Cost Containment Contract



(collectively, the "Contracts") all contain or incorporate RoseWare's Standard Terms and Conditions, which is comprised in part of terms that are either void *ab initio* or unenforceable as set forth below.

40. The Contracts contain the following language purporting to limit RoseWare's liability to the Clerk of Court:

**Paragraph 11- Liability:**

**Paragraph 11.1** – 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 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).

**Paragraph 11.3** – The Supplier shall have no liability to the Customer for:

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

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

**Paragraph 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.

**Paragraph 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.

**Paragraph 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 [sic] 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.

41. The limitation on liability provisions, set out in paragraph 40 above, 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, 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:
  - (1) greatly shorten the statute of limitation on breaches of contracts from five (5) years to six (6) months;
  - (2) limit RoseWare's liability for physical damage to tangible property to \$1,000,000.00; and
  - (3) exclude any liability on the part of RoseWare 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 and do not clearly state the conditions for limitation of RoseWare's liability.
- (c) The subject provisions are against public policy because they prevent newly-elected officials from enforcing contracts that could, in part, be based upon fraud, collusion and a scheme to sabotage public offices, newly-elected officials and ultimately harm the taxpayers;
- (d) The subject provisions are unconscionable as they serve no purpose other than to insulate RoseWare from liability, including liability for its own negligence, at the expense of the Clerk of Court, and they serve no legitimate purpose.

42. Paragraph 14 of the I.T. Consultancy Contract and the Addendum, and paragraph 15 of the Cost Containment Contract, in pertinent parts, , state:

**Duration and Termination -**

**Paragraph 14.1 or 15.1** – 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 the end of such term.

**Paragraph 14.2 or 15.2** – Notwithstanding Clause 15.1, either party shall be entitled to terminate this Agreement if the other:

**Paragraph 14.2.1 or 15.2.1** – Commits any material breach of any term of this Agreement ... 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....

**Paragraph 15.3** – Any termination of this Agreement shall be without prejudice to any other rights or remedies a party may be entitled to ... or continuance in force of any provision hereof ... on or after such termination.

*(The I.T. Consultancy Contract does not contain Paragraphs 15.1 or 15.2).*

43. The provisions set out in paragraph 42 above are void and unenforceable for one or more of the following reasons:

- (a.) Pursuant to the operation of the provisions of Article V, Section 14 of the Florida Constitution and Sections 28.35 and 28.36, Fla. Stat., the Clerk of Court does not have the power to enter into contracts which 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 for one or more reasons, and violate Article VII, Section 10 of the Florida Constitution;
- (c.) They are unconscionable as they serve no purpose other than to insulate and protect RoseWare at the expense of the Clerk or Court, and they serve no legitimate purpose.

44. Paragraph 15 of the I.T. Consultancy Contract and the Addendum and paragraph 16 of the Cost Containment Contract, respectively, state:

**Consequences of Termination or Expiration -**

**Paragraph 15 or 16 -** Upon termination or expiration of the Agreement[,] Supplier shall be entitled to enter upon the premises of Customer for the purpose of recovering ... property of Supplier ... Customer hereby grants Supplier an irrevocable license to enter any such properties.

45. The provision set out in paragraph 44 above are void and unenforceable as it is confusing, vague and exceeds the authority of the Clerk of Court to grant an irrevocable license to a vendor to enter in any premises without limitation.

46. Paragraph 3.3 of the Contracts states:

**Performance of Services -**

**Paragraph 3.3 -** 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.

47. The provision set out in paragraph 46 above is void and unenforceable as being in violation of Article VII, Section 10 of the Florida Constitution. Said provision is also in violation Sec. 125.35 (3), Fla. Stat. and Sec. 2-244, Code of Ordinances of Brevard County, Florida regarding leasing of County-owned property and regulations taxation related to the same.

48. Paragraph 6 of the Contracts states:

**Price and Payment -**

**Paragraph 6.1 -** 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.

49. The provision set out in paragraph 48 above is void and unenforceable in that there is no quantifiable limit as to such expenses in violation of Article VII, Section 10 of the Florida Constitution.

50. Schedule "B" of the I.T. Consultancy Contract and the Cost Containment Contract states:

**Pricing Schedule –**

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

51. The provision set out in paragraph 50 above is void and unenforceable in that there is no quantifiable limit as to such expenses in violation of Article VII, Section 10 of the Florida Constitution.

52. Upon information and belief, RoseWare contends or will contend that the above provisions in the Contracts are valid and enforceable.

53. Accordingly, the Clerk of Court and RoseWare 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 above-identified provisions of the Contracts.

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

55. The relief sought herein is not merely the giving of legal advice or answers to questions propounded for mere curiosity. Rather, the Clerk of Court seeks a declaration that the exculpatory clauses and additional provisions set forth herein are void and unenforceable, or that the Contracts themselves are void in their entireties.

56. The Clerk of Court is in doubt about the effect of the exculpatory clauses and additional provisions set forth herein, and more broadly, the validity of the Contracts in their entireties.

WHEREFORE, Plaintiff, SCOTT ELLIS, in his official capacity as Brevard County Clerk of the Circuit Court, demands a declaratory judgment, declaring that the above specified

provisions within the Contracts are void and unenforceable, and/or that the Contracts in their entireties are void, and ordering RoseWare to return to the Clerk of Court all sums paid by the Clerk of Court to RoseWare pursuant to the I.T. Consultancy Contract, the Addendum and the Cost Containment Contract, and awarding the Clerk of Court damages, its costs of suit and any additional relief deemed appropriate under the circumstances.

DATED this 28<sup>th</sup> day of March, 2013.

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



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# RoseWare

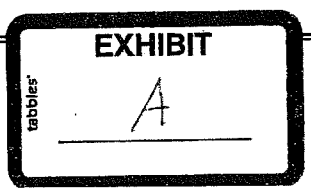
<b>RoseWare LLC</b>	<b>Brevard County Clerk</b>
601 N. Miramar Ave.	700 South Park Avenue
Suite 305	Titusville, FL 32780
Indialantic, FL 32903	
<b>("Supplier")</b>	<b>("Customer")</b>

## IT Consultancy for Brevard County Clerk of the Courts

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 06 April / 2012 and, subject to the provisions of the Supplier's Standard Terms and Conditions for IT Services, shall continue for twelve (the "Term").

For and on behalf of:	For and on behalf of:
<b>RoseWare LLC</b>	<b>Brevard County Clerk</b>
Date: <u>06 April 2012</u>	Date: <u>06 April 2012</u>
Signed by: <u>Rose M. Harr</u>	Signed by: <u>Michelle Delmonico</u>
<u>Rose M. Harr</u> (print name)	<u>Michelle Delmonico</u> (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 (2) 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 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 authorized 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 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

#### **Executive Summary**

RoseWare LLC will create an 'IT Strategic Plan' with the Brevard County Clerk of the Courts to include seven key technology initiative/accomplishments attributed to Mitch Needelman's leadership.

1. Reducing IT Infrastructure Cost
2. Streamlining the Supply Chain
3. Reducing Energy Costs
4. Shared Services for Mission Support Activities
5. Analytics to stop payments in error
6. Reduce field operations and where possible apply electronic self service
7. Monetize the government assets on the balance sheet

#### **Statement of Work – Work shall be completed within six weeks of contract signing**

##### **Visionary Session**

1. Kick off the project
2. Analysis of 'Like' Thinking and Alignment regarding State of the Business (optional)
3. Educate core members of the staff and executive team
4. Current Trends in Courts and computing
5. Future Developments in Information Technology
6. Trends and Directions in IT in Public Sector

##### **Information Technology Interviews**

1. RoseWare Staff and 1 key member of the Clerk of the Court Staff – most department heads
2. Requirements Definition
3. 2 to 3 days of interviews (some may be online questions)
4. RoseWare Staff will review website sitemap and technology

##### **Information Systems Technology**

1. Information Systems Inventory of current software, middleware and hardware
2. Review historical funding for Information Systems
3. Review historical Information Systems resources and department structure

##### **Deliverable**

1. Clerk of the Court IT Strategy Document
2. Action Plans with timeline



## Assumptions

- Supplier and Customer are entering into a Strategic Partnership. In doing so, Customer agrees to:
  - Customer will be a Referral site
  - Customer will allow for Supplier to reference Customer in Press Releases
- 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).

**Schedule B  
Pricing Schedule**

**Pricing Schedule**

The payment schedule for these charges is as follows:

**RoseWare Services**

The fixed price for the RoseWare Services is \$100,000.00 with payment being due upon contract signing.

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

**RoseWare**

An International Corporation

RoseWare  
601 N Miramar Ave  
Suite 305  
Indianapolis, FL

Tel: 231-779-0224  
Fax: 231-779-1002

INVOICE  
040412-1

SAP VENDOR #: 447737

SAP P. O. #: 45000

SAP LINE ITEM #: \_\_\_\_\_

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

Division	Invoice Date	Invoice Type	Contract
Brevard County	4/5/2012	Due Upon Contract Signing	Mitch Needleman

Description	Amount
IT Consultancy for Brevard County Clerk of the Courts	\$ 100,000.00
Invoice subtotal	\$ 100,000.00
Invoice total	\$ <u>100,000.00</u>

Beneficiary: RoseWare  
 Currency: US Dollar  
 Correspondent Bank: Citizens Bank  
 Location: 103 N Mitchell Street  
 Cadillac, MI 49601

Routing  
Acct

*Mitch Needleman*  
06 APRIL 2012

EXHIBIT  
tabbler  
B



[Information Reporting](#) | [Payments](#) | [Account Transfers](#) | [Services](#)  
[Wire Transfer](#) | [Preferred Recipients](#) | [Import/Export](#) | [Payment Reports](#)

### View Payment: Domestic Wire

Use this screen to view a Domestic Wire.

#### Payment Information

Payment Type: Domestic Wire

[View Payment History](#)

Status: Confirmed

Confirmation Number: [REDACTED]

Sequence Number: [REDACTED]

Debit Account: CPR - [REDACTED] - USD

Debit Amount: \$100,000.00

Value Date: 04/06/2012

Send Date: 04/06/2012

Frequency: One Time Only

Sender's Reference: Invoice # 040412

Reference for Beneficiary: Invoice # 040412

#### Details of Payment

#### Beneficiary Information

Beneficiary ID Type: Account Number

Beneficiary ID: [REDACTED]

Beneficiary Name: RoseWare

Address: 103 N Mitchell St  
Cadillac, MI 49601

Beneficiary Bank ID Type: ABA

Beneficiary Bank ID: [REDACTED]

Beneficiary Bank Name: CITIZENS BANK

Address: FLINT  
FLINT MI UNITED STATES

#### Bank to Esank Information

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Page Created: Mon, 9 Jul 2012 11:24:06 EDT

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449737

# RoseWare

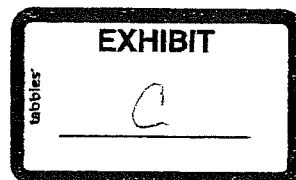
<b>RoseWare</b> 1825 Riverview Drive Melbourne, FL 32901	<b>Brevard County Clerk of Courts</b> 700 South Park Avenue Titusville, FL 32780
("Supplier")	("Customer")

## Addendum to the IT Consulting Contract for Abnormal Incidents

IT IS AGREED as follows:

1. This Addendum 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 Addendum shall comprise:
  - 2.1. The Statement of Work;
  - 2.2. The Total Pricing Schedule; and
  - 2.3. Clause 3 set out below.
3. This Services performed under this Addendum shall commence May 1, 2012 and is subject to the provisions of the Supplier's Standard Terms and Conditions for IT Services in the IT Consulting Contract.

For and on behalf of:	For and on behalf of:
RoseWare	Brevard County Clerk of Courts
Date: <u>May 1, 2012</u>	Date: <u>01/14/2012</u>
Signed by: <u>[Signature]</u>	Signed by: <u>[Signature]</u>
<u>Rose M. Harr</u> (print name)	<u>ITCH MEED</u> (print name)



**SCHEDULE A**  
**STATEMENT OF WORK**

Due to unusual findings further consulting services required surrounding abnormal incidents.

**SCHEDULE B**  
**PRICING SCHEDULE**

**Pricing Schedule**

Customer will pay One Hundred Fifty Thousand Three Hundred Fifty Dollars (\$150,350.00) under this Contract. Payment in full is nonrefundable and fully earned upon execution of this Contract.

	<b>Total Contract Amount</b>	<b>Payment Distribution</b>
Total Contract Amount	\$ 150,350.00	
Initial payment due upon contract signing	\$ 150,350.00	\$ 150,350.00
Total (both columns should be equal)	\$ 150,350.00	\$ 150,350.00

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

# RoseWare

Remit to: RoseWare  
3060 West 13th Street  
Cadillac, MI 49601  
Tel: +1 (231) 779-0224  
Fax: +1 (231) 779-1062

SAP VENDOR #: 447737

SAP P. O. #: 45000

INVOICE SAP LINE ITEM #: \_\_\_\_\_  
999111

TO: Brevard County Clerk  
Attn: Accounts Payable  
700 South Park Avenue  
Tausville, FL 32780

Customer	Date	Terms	Contract
BREVARD	5/3/2012	Due Upon Contract Signing	Accounts Payable

Addendum to the IT Consultancy Contract  
for Abnormal Incident Reports

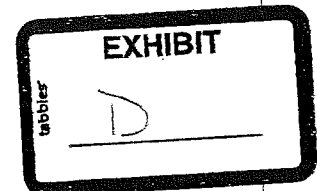
\$ 150,350.00

*Mark J. [Signature]*  
03/17/12 2012

Invoice total \$ 150,350.00

Beneficiary: Roseware LLC  
Currency: USD  
Correspondent Bank: Citizens Bank  
Location: 103 N Mitchell ST  
Cadillac, MI 49601  
(231) 779-4252

Routing Number: [Redacted]  
Account Number: [Redacted]





[Information Reporting](#) | [Payments](#) | [Account Transfers](#) | [Services](#)  
[Wire Transfer](#) | [Preferred Recipients](#) | [Import/Export](#) | [Payment Reports](#)

### View Payment: Domestic Wire

Use this screen to view a Domestic Wire.

#### Payment Information

Payment Type: Domestic Wire

[View Payment History](#)

Status: Confirmed

Confirmation Number: [REDACTED]

Sequence Number: [REDACTED]

Debit Account: [REDACTED]

Debit Amount: \$150,350.00

Value Date: 05/03/2012

Send Date: 05/03/2012

Frequency: One Time Only

Sender's Reference: Savings Contract

Reference for Beneficiary: Savings Contract

#### Details of Payment:

#### Beneficiary Information

Beneficiary ID Type: Account Number

Beneficiary ID: [REDACTED]

Beneficiary Name: Blue GEM LLC

Address: 3060 Cadillac St

Cadillac MI

49601

Beneficiary Bank ID Type: ABA

Beneficiary Bank ID: [REDACTED]

Beneficiary Bank Name: FIRSTBANK (MT. PLEASANT)

Address: ALMA

ALMA MI UNITED STATES

#### Bank to Bank Information

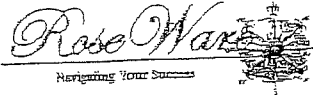
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Page Created: Tue, 3 Jul 2012 11:02:21 EDT

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RoseWare LLC has been contracted by the Clerk of the Court of Brevard County to complete an IT audit and to help develop an IT Strategic Plan for the Clerk's Office.

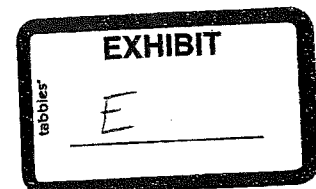
During the audit phase, which started April 16<sup>th</sup>, 2012, RoseWare LLC employees identified 4 separate incidents that appear to be unauthorized attempts to access the Clerk of the Courts network or deny access to the network.

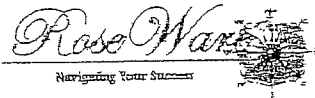
Two RoseWare employees, Eric Love and Matt Raab were given access to the Brevard County Clerk of the Court network after completing finger printing and background checks.

Incident 1: On Friday April 20<sup>th</sup>, 2012 Eric Love installed a PC onto the Clerk of the Courts network running Spiceworks network monitoring software. The software is used to passively monitor network activity and identify the types of devices installed on the network. The output of the monitor was to provide an inventory to be used in the audit. Eric Love was monitoring the Spiceworks network monitor to ensure it was collecting the required data. Three PC devices were observed on the network that had unusual names. The IT Department uses a structured naming convention and the 3 devices seen that did not follow the naming convention. We asked the desktop support group what these devices were and they were uncertain. As it was late in the day we were going to follow up on Monday, April 23<sup>rd</sup> 2012 to determine what these devices might be and we would let Spiceworks network monitor run all weekend. On Monday, April 23<sup>rd</sup> 2012, Eric found the Spiceworks monitor had been blocked not allowing the capture of the network information. Eric restarted the monitor on Monday April 23<sup>rd</sup> 2012 and it ran for the next week without fail; however the three PC's previously observed were no longer in the inventory list.

Incident 2: Unauthorized attempt to connect directly to the data base server. On April 25<sup>th</sup> 2012 there were several attempts to connect directly to the data base servers rather than connecting through an application. The Brevard Clerk of the Court IT department investigated the attempt and could not identify who or where the attempt was being initiated from. The IT Team called Cindy Rabe and she thought that a PC might have lost network connection and was trying to establish a connection and showed the invalid connection. There have been no further unauthorized attempts identified. While looking at the servers, RoseWare identified that not all of the servers had antivirus software and recommended to the Clerk that this be added as soon as possible. The Clerk agreed with the recommendation and approved antivirus software being loaded on the servers.

Incident 3: While running the Spiceworks network monitoring tool a wireless device which was an iPhone named Mitzie was on the network on Saturday April 28<sup>th</sup> 2012 at 2:58pm. At 3:00pm when the Clerk entered the building the device disconnected from





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the network. Wireless devices require a pass phrase to make connection and do not auto attach to the network. The device has not showed on the network since. There is usually no one in the buildings over the weekend.

Incident 4: A user accessed the public portal to view public court records on May 7<sup>th</sup> 2012 with a search for J Smith selecting dates from Jan 1900 through May 2012. This search was run several times in a row. This search action made access to the public portal unusable. The IT department has identified the source of the inquiry to a local ISP. (Metro PCS after looking at the firewall data) The IT department has changed the search to limit the results from a search as to prevent this type of search from making the public portal unusable. There have been no further attempts of such a broad search. The IT department also remarked that the portal has been available for a few years and this was the first knowledge of such an incident.

#### Summary Observation:

The interesting parts about each of the incidents are that they have happened over a short time period and no other incidents of this type had been previously identified. After each incident was investigated there have been no reoccurrences of the specific incident.

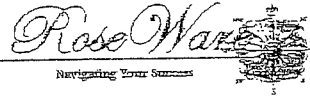
There is no indication that these incidents are related but the close proximity of time, the incidents did not reoccur after investigation and most were attempts to gain access to the network makes these suspicious in nature. Each of the incidents also gives the indication of specific knowledge about the nature of the network or application. (Less of a brute force attack but very specific attempts to access the network)

Incident 1 – Requires the knowledge to know where devices could be attached to gain network for access.

Incident 2 – Requires the knowledge of the structure of user ids and which servers are the data base servers in the network.

Incident 3 – Requires the knowledge of the pass phrase to connect to the wireless network.

Incident 4 – Requires the knowledge of creating a massive search and request it multiple times to create a denial of service action.



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Respectfully submitted by:

Matt Raab CISSP

VP of Professional Services at RoseWare LLC

447737

# RoseWare

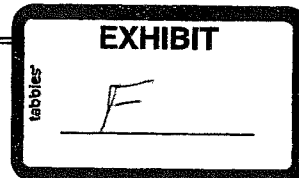
<p>RoseWare LLC 3060 West 13<sup>th</sup> Street Cadillac, MI 49601</p>	<p>Brevard County Clerk 700 South Park Avenue Titusville, FL 32780</p>
<p>("Supplier")</p>	<p>("Customer")</p>

## Cost Containment for Brevard County Clerk of the Court

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 06 April 2012 and, subject to the provisions of the Supplier's Standard Terms and Conditions for IT Services, shall continue for 24 Months (the "Term").

For and on behalf of:	For and on behalf of:
RoseWare LLC	Brevard County Clerk
Date: <u>6 April 2012</u>	Date: <u>06 April 2012</u>
Signed by: <u>Rose M. Harr</u> <u>Rose M. Harr</u> (print name)	Signed by: <u>MARIE SELMAN</u> <u>MARIE SELMAN</u> (print name)



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

### 1. Definitions

1.1.1. 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. 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):
- 5.1.1. Any cost of implementing the Project Change and/or any price for carrying out any new service;
- 5.1.2. Any proposal for amending the Agreement;
- 5.1.3. The scope of work to implement the Project Change including any effect on existing Services;
- 5.1.4. The timetable for such implementation; and
- 5.1.5. Any change to the duration of the Agreement.
- 5.2. 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.
- 5.3. 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 undisputed 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 30 days of the date of the invoice. Any period of suspension shall be treated as a delay pursuant to Clause 4.1.

**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~~ (2) 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 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 authorized 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.
- 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. Publicity**
- 12.1. Customer acknowledges that Supplier may wish to publicize the existence of the Agreement, its relationship with Customer and the general nature of the Services in connection with Supplier's advertising and publicity program. Supplier shall prior to publication submit any publicity material containing any of the above references to Customer for approval, such approval not to be unreasonably withheld or delayed.
- 13. 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.
- 14. Confidentiality**
- 14.1. Each party ("the receiving party") shall at all times during the continuance of this Agreement and after its termination:
- 14.1.1. 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");
- 14.1.2. Not use the Information other than for the purposes of this Agreement;
- 14.2. 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.
- 14.3. 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.
- 14.4. 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.
- 14.5. The receiving party shall be permitted to use or disclose any part of the Information to the extent only that:
- 14.5.1. The Information is in or comes into the public domain otherwise than by disclosure by the receiving party; or
- 14.5.2. 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
- 14.5.3. The receiving party already has knowledge of the Information prior to disclosure by the disclosing party as evidenced by written records; or
- 14.5.4. Such disclosure is required by law or governmental regulation.
- 14.6. Nothing in this Clause shall be deemed to grant a license expressly or by implication under any Intellectual Property Rights.
- 14.7. 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.
15. **Duration and Termination**
- 15.1. 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.
- 15.2. Notwithstanding Clause 15.1, either party shall be entitled to terminate this Agreement if the other:
- 15.2.1. 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
- 15.3. 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.
16. **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.
17. **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.
18. **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.
19. **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.

**20. 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.

**21. 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.

**22. 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.

**23. 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.

**24. 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.

**25. 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.

**26. Third Party Rights**

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

**27. Dispute Resolution**

27.1. 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.

27.2. 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:

27.2.1. 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

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

27.3. 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 who shall be requested to choose a suitably qualified and experienced Expert for the dispute in question.

27.4. 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.

- 27.5. Decisions of the Expert shall be final and binding and not subject to appeal.
- 27.6. 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.
- 27.7. 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**

#### **RoseWare LLC will:**

1. Review all outside vendor contracts on behalf of the Brevard County Clerk's Office;
2. Identify contract savings and cost reduction methods;
3. Enter negotiations on the Brevard Clerk's Office behalf to implement immediate contract changes, cancellations or amendments to guarantee immediate cost reductions;
4. Once a new contract or service agreement is negotiated on behalf of the Brevard Clerk's Office, and a vendor contract is received for review by RoseWare and the Brevard Clerk's Office, a formal acknowledgement of gross savings or cost reduction will be submitted to the Clerk for review;
5. Upon the signing of renegotiated contracts that have been pre-identified and negotiated by RoseWare LLC, the identified cost savings and reductions will be submitted to and verified by the Clerk's Finance agent;
6. RoseWare LLC will invoice the Brevard Clerk's Office for an amount equal to 35 percent of the gross agreed upon savings or cost reduction as documented by the Clerk's finance department, the invoice to be due following Florida's prompt payment act.

#### **Brevard County Responsibilities**

- Brevard County will provide to RoseWare a list of all maintenance and support contracts
- Brevard County will provide a representative of the clerk of the courts that will have the ability to approve or deny and sign re-negotiated contracts.

#### **Deliverables**

RoseWare will deliver to Brevard County an analytical report that contains:

- Each contract;
- The current terms and pricing
- The re-negotiated terms and pricing
- Net Savings
- Net payable to RoseWare pursuant to the green light document procedure

## **Assumptions**

- Supplier and Customer are entering into a Strategic Partnership. In doing so, Customer agrees to:
  - Customer will be a Referral site
  - Customer will allow for Supplier to reference Customer in Press Releases
- 2 Year Contract
- 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).