COLUMBIA COUNTY BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM REQUEST FORM

The Board of County Commissioners meets the 1st and 3rd Thursday of each month in the Columbia County School Board Administrative Complex Auditorium, 372 West Duval Street, Lake City, Florida 32055.
The first meeting of every month is at 9:30AM while the second meeting of every month takes place at 5:30PM.
All agenda items are due in the Board's office one week prior to the meeting date.

Today's Date: 11/15/2022   Meeting Date: 12/1/2022

Name: Todd Manning   Department: Information Technology

Approved By:

1. Nature and purpose of agenda item:

The County plans to upgrade the Utility billing system as part of the SRWMD grant to replace meters and software for Ellisville and Fort White. These upgrades will allow the new meters to work directly with the utility billing system. The SRWMD will fund the grant up to 205,000 and the Town of Fort White has committed ARPA funds for the 30% grant match. The cost of the meters and the software/hardware upgrades would total $188,601.

2. Recommended Motion/Action:

Purchase RosTech UMBS Utility Billing Software, server upgrades, and annual maintenance agreement.

3. Fiscal impact on current budget.

This item has no effect on the current budget.

UMBS SERVER SPECIFICATIONS for Columbia County

1. CC UMBS Production Server. UMBS will be installed. Server performance, user training and user acceptance testing will be conducted pre Go-live on this first server. This server will be provisioned as the PRODUCTION server at Go-live.

Server component	Web Servers	SQL Server
Processor	8 cores, minimum 2.4GHz	4 cores, minimum 3.1 GHz
Hard Drive	2 times 250Gb	1TB
Memory	32Gb RAM	32Gb RAM
Network	1G LAN	1G LAN
Windows	2012 R2 64bit	2012 R2 Server 64bit
Other	IIS v8 (minimum)	SQL Server 2012 64-bit Version 11.0 or greater

2. CC UMBS Test Environment Server (Sandbox). - CLONE of PRODUCTION Server

Server component	Web Servers	SQL Server
Processor		
Hard Drive		
Memory		
Network		
Windows		
Other		

3. CC UMBS Customer Self-service Portal Server (CSSP).

RosTech

>> straightforward software solution

RosTech, Inc. 10213 Gary Rd
301 980 3323 Potomac, Maryland
20854
United States

Prepared For	Estimate Date	Estimate Number
Patrick Weaver	10/11/2022	0000060
Columbia County, Florida		

Description	Rate	Qty	Line Total
UMBS Licenses for up to 1000 accounts	$8,000.00	1	$8,000.00
Requirements Validation	$168.50	12	$2,022.00
Install & Configure UMBS	$168.50	12	$2,022.00
Data Migration	$168.50	40	$6,740.00
Interfaces Development	$168.50	0	$0.00
UMBS Training	$125.00	16	$2,000.00
Cut-over & Post Go Live	$125.00	24	$3,000.00
Project Management	$125.00	8	$1,000.00

Subtotal		24,784.00
Tax		0.00
Estimate Total (USD)		$24,784.00

Notes

Data migration will be via UMBS templates. Columbia County will be responsible for populating the templates with data to be migrated into UMBS.

Quotation

Number: **15594**

Date: **11/02/2022**

Quote prepared for: **Todd Manning**

Bill To:
Columbia County FL (1648)
Todd Manning
P.O. Box 1529
Lake City, FL 32056-1529
Phone: (386)758-1005
Email: emcleod@strictlytech.com

Ship To:
Columbia County FL (1648)
Todd Manning
135 NE Hernando Ave.
Lake City, FL 32056-4004

Item #	Mfr. Part	Product Image	Description	Price	Qty.	Extended
*1	VMW8-STD-C-2	No Image	VMWARE vSphere 8 Standard for 1 Processor **Mfr:**	$ 1,054.62	2	**$ 2,109.24**
*2	VMW8-STD-P-SSS-C-2	No Image	VMWARE - Producttion Support/Subscription for VMWare vSphere 8 standard 1 Processor 1 Year **Mfr:**	$ 354.16	2	**$ 708.32**

2 item(s)	**Sub-Total**	**$ 2,817.56**
	Tax @ 0%	**$ 0.00**
	Freight	**$ 0.00**
	Total	**$ 2,817.56**

(*) Tax exempted Part(s)

Quote Valid Until: 12/02/2022

Payment Details

Pay by: Company PO
Payment Term: Net 30

Shipping and Delivery Details

Shipping via: FEDEX Ground
(DropShip)

Terms and Conditions
Prices exclude applicable taxes, insurance, shipping and special handling charges unless stated. All prices are subject to change without notice. Supply subject to availability. Due to pricing fluctuations from OEM manufacturers as well as supply chain constraints, pricing is valid for a period of 7 days from the submission of this quote. Please check pricing, availability and/or delivery estimates with your Client Executive prior to placing orders.

Prepared by: **Ethan Mcleod**	Email: **emcleod@strictlytech.com**	Phone: **954-541-8559**

Computers At Work!, Inc.
DBA

EIN: 31-1758837

2338 Immokalee Rd. #151
Naples, FL 34110
Phone: (239) 514-2888
Fax: (239) 236-2232

www.vTECHio.com

PROPOSAL
CAWQ25688

Quoted: Oct 25, 2022
Expires: Nov 24, 2022

Prepared For:	Ship To:	Presented By:
Columbia County Board of Commissioners	**Columbia County Board of Commissioners**	**Alex Charwin**
Todd Manning	Todd Manning	alex.charwin@vtechio.com
135 N.E. Hernando Ave.	135 N.E. Hernando Ave.	850-982-1665
Lake City, FL 32055	Lake City, FL 32055	
United States	United States	

Phone (386) 867-1896
Email todd_manning@columbiacountyfla.co

To accept this proposal, sign here and return:

_____

Date: _____

Customer Purchase Order Number: _____

Please review quote for shipping address and accuracy of each item BEFORE placing order.

Terms: Net 30 Days

Line #	Description	Product #	Unit Price	Qty	Ext. Price
1	**PowerEdge R740XD Server** Estimated delivery if purchased today: Jan. 30, 2023	210-AKZR	$8,686.39	1	$8,686.39
	PowerEdge R740/R740XD Motherboard	329-BEIK			
	Trusted Platform Module 2.0 V3	461-AAIM			
	Chassis with Up to 24 x 2.5 Hard Drives for 2CPU,PERC11	321-BGZX			
	PowerEdge R740XD Shipping	340-BLBE			
	PowerEdge R740 Shipping Material	340-CORZ			
	PowerEdge R740 CE, CCC, BIS Marking	389-DSWP			
	Intel Xeon Silver 4214 2.2G, 12C/24T, 9.6GT/s, 16.5M Cache, Turbo, HT (85W) DDR4-2400	338-BSDL			
	Intel Xeon Silver 4214 2.2G, 12C/24T, 9.6GT/s, 16.5M Cache, Turbo, HT (85W) DDR4-2400	338-BSDL			
	Additional Processor Selected	379-BDCO			
	Standard 1U Heatsink	412-AAIQ			
	Standard 1U Heatsink	412-AAIQ			
	3200MT/s RDIMMs	370-AEVR			
	Performance Optimized	370-AAIP			
	Unconfigured RAID	780-BCDS			
	PERC H750 Adapter, Low Profile	405-ABCC			
	No Operating System	619-ABVR			
	No Media Required	421-5736			
	iDRAC9 Datacenter 14G	528-CIBI			
	OpenManage Enterprise Advanced Plus	528-CTZH			
	iDRAC Group Manager, Disabled	379-BCQY			
	iDRAC,Factory Generated Password	379-BCSF			
	Riser Config 5, 6 x8, 2 x16 slots	330-BBHC			
	Broadcom 5720 Quad Port 1GbE BASE-T, rNDC	540-BBBW			
	OpenManage Integration for VMware vCenter - 1 host increment, 5 year license - Digitally Fulfilled	634-BJBC			

Line #	Description	Product #	Unit Price	Qty	Ext. Price
	6 Performance Fans forR740/740XD	384-BBPZ			
	Dual, Hot-plug, Redundant Power Supply (1+1), 750W	450-AJSC			
	PowerEdge 2U LCD Bezel	325-BCHV			
	PE R740XD Luggage Tag	389-BTTO			
	Quick Sync 2 (At-the-box mgmt)	350-BBJU			
	Power Saving Dell Active Power Controller	750-AABF			
	UEFI BIOS Boot Mode with GPT Partition	800-BBDM			
	ReadyRails Sliding Rails	770-BBBQ			
	No Systems Documentation, No OpenManage DVD Kit	631-AACK			
	Dell Hardware Limited Warranty Plus On-Site Service	813-6068			
	ProSupport: Next Business Day On-Site Service After Problem Diagnosis, 3 Years	813-6075			
	ProSupport: 7x24 HW/SW Technical Support and Assistance, 3 Years	813-6087			
	Thank you choosing Dell ProSupport. For tech support, visit //www.dell.com/support or call 1-800- 945-3355	989-3439			
	On-Site Installation Declined	900-9997			
	16GB RDIMM, 3200MT/s, Dual Rank	370-AEVQ		*8*	
	480GB SSD SATA Read Intensive 6Gbps 512 2.5in Hot-plug AG Drive, 1 DWPD	400-AXTV		*2*	
	Broadcom 5719 Quad Port 1GbE BASE-T Adapter, PCIe Full Height	540-BBCW		*2*	
	Broadcom 57416 Dual Port 10GbE BASE-T Adapter, PCIe Full Height	540-BBUI			
	Power Cord - C13, 3M, 125V, 15A (North America, Guam, North Marianas, Philippines, Samoa, Vietnam)	450-AALV		*2*	
	State Contract: 43211500-WSCA-15-ACS and Contract Code WN08AGW/ C000000010853	43211500-WSCA-15-A			

Recurring :

Your investment in addition to the Grand Total:

$0.00	*Billed Monthly*
$0.00	*Billed Quarterly*
$0.00	*Billed Annually*

vTECH io

www.vTECHio.com

Totals :

Subtotal	$8,686.39
Tax	$0.00
Shipping	$0.00
Grand Total	**$8,686.39**

Pricing, Taxes, and Additional Information

All product, pricing, and other information is valid for U.S. customers and U.S. addresses only, and is based on the latest information available and may be subject to change. vTechio reserves the right to cancel quotes and orders arising from pricing or other errors. Sales tax on products shipped is based on your "Ship To" address. Please indicate any tax-exempt status on your PO, and email your exemption certificate to DJ.peterson@vtechio.com . Note: All tax quoted above is an estimate; final taxes will be listed on the invoice. If you have any questions regarding tax please send an e-mail to DJ.peterson@vtechio.com

For certain products shipped to end-users in California, a State Environmental Fee will be applied to your invoice.***A 3.5% convenience fee will be charged for credit card purchases*** By signing this quote you acknowledge having read and agree to be bound by such terms.

Terms

This is a fixed price quote to install and deliver a working Utility Management Billing System on the County Premise Servers.

License Fee due upon signing.

Implementation Services will be billed upon completion of the following milestones.

1. UMBS installed and configured with migrated data on County servers $5600
2. User Training and Testing completed - System accepted and Go-Live date scheduled $5600
3. 30 days after Go-Live $5600

LICENSE AGREEMENT

between

ROSTECH, INC.

and

COLUMBIA COUNTY, FL. BOARD OF COMMISSIONERS

Dated December 1, 2022

THIS LICENSE AGREEMENT (this "<u>Agreement</u>"), dated 12/1/2022 (the "<u>Effective Date</u>"), is by and between **Columbia County, FL. Board of Commissioners** ("Licensee"), and **RosTech, Inc.**, a Maryland corporation, with offices at 10213 Gary Road, Potomac, Maryland 20854 ("Licensor" or "RosTech)(singly, a "Party" and collectively, the "Parties").

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

<div align="center">

ARTICLE I

DEFINITIONS AND CONSTRUCTION

</div>

Section 1.01   <u>Definitions</u>.

The following defined terms used in this Agreement will have the meanings specified below:

"<u>Account</u>" means a single billing relationship corresponding to a Customer that is maintained by the Software and has not been flagged as inactive. For purposes of clarity, a single Customer may have more than one account. An Account is considered inactive if it is closed and the balance on the account is zero dollars (0.00).

"<u>Additional License Fees</u>" has the meaning set forth in Section 5.01(b).

"<u>Affiliate</u>" means any Person that, directly or indirectly, through one or more intermediaries, Controls, is Controlled by or is under common Control with, a Party.

"<u>Agents</u>" means the contractors, subcontractors, suppliers, licensors, outsourcers, consultants, disaster recovery service providers, hosting service providers and other third parties of a Party.

"<u>Base Account Level</u>" means (a) as of the last day of the first calendar quarter during the term of this Agreement, Number of Accounts that are not at an INACTIVE Status, and (b) as of the last day of each subsequent calendar quarter during the term of this Agreement, the sum of (i) Number of Accounts that are not at an inactive Status plus (ii) the total cumulative number of Accounts for which Licensee has paid Additional License Fees during the term of this Agreement.

"<u>Claim</u>" means any threatened or actual lawsuit or proceeding.

"<u>Confidential Information</u>" means any non-public information, whether in tangible, machine readable, or electronic form, disclosed by either of the parties to the other, which the disclosing Party ("Discloser") identifies at the time of disclosure as confidential and/or proprietary by means of a legend, marking, stamp or other notice conspicuously designating the information to be confidential and/or proprietary, or information disclosed orally or visually by either of the parties to the other, where the Discloser identifies such information as confidential and/or proprietary at the time of disclosure and, within thirty (30) days after such oral or visual

<div align="center">-1-</div>

disclosure, reduces the subject matter of the disclosure to a tangible or electronic form properly identified in the manner described above and submits it to the receiving Party ("Recipient"). Confidential Information includes, without limitation, any specification, layout, design, drawing, formula, technique, algorithm, know-how, demo product, prototypes, test data, information related to engineering, manufacturing, sales, marketing, management or quality control, financial information or other information related to the business operations of the Discloser. Any non-public demonstration versions or prototypes provided to the Recipient shall constitute the Discloser's Confidential Information, whether or not so marked.

"Control" means: (a) the legal, beneficial, or equitable ownership, directly or indirectly, of (i) at least fifty percent (50%) of the aggregate of all voting equity interests in a Person, or (ii) equity interests having the right to at least fifty percent (50%) of the profits of a Person or, in the event of dissolution, to at least fifty percent (50%) of the assets of a Person; (b) the power to appoint, directly or indirectly, a majority of the board of directors; (c) the power to control, directly or indirectly, the management or direction of the Person, whether through the ownership of voting securities (or other ownership interest), by contract or otherwise; (d) in the case of a partnership, the holding by a Person (or one of its affiliates) of the position of sole general partner; or (e) the consolidation, pursuant to GAAP, of a Person into the books and records of another Person (or one of its affiliates).

"Current Account Level" has the meaning set forth in Section 5.01(b).

"Documentation" means all manuals and documentation in electronic-copy format relating to all or part of the Software.

"Fees" means the Initial License Fees and the Additional License Fees payable by Licensor to Licensee under this Agreement.

"Governmental Authority" means any federal, state, municipal, local, territorial, provincial or other governmental department, regulatory authority, judicial or administrative body, whether domestic or foreign.

"Improvement" means any and all version updates and corrections to Software Errors of the Software.

"Initial License Fees" has the meaning set forth in Section 5.01(a).

"Law" means any declaration, decree, directive, legislative enactment, statute, order, ordinance, regulation, rule or other binding action of or by any Governmental Authority.

"Losses" means any damages, fines, penalties, deficiencies, losses, liabilities (including settlements and judgments), fees and expenses, including interest, court costs, reasonable fees and expenses of attorneys, accountants, experts and other professionals, and other reasonable fees and expenses of litigation, mediation, arbitration or other actions or proceedings or of any Claim, default or assessment.

"Person" means any natural person or business in whatever form, such as a corporation, company, partnership, sole proprietorship, joint venture, non-profit entity, trust, association or institute.

"Proprietary Rights" means all past, present, and future rights of the following types, everywhere in the world, which may exist or be created in the future under the Laws of any jurisdiction in the world: (a) rights associated with works of authorship, including copyrights, exclusive exploitation rights whether or not copyrightable, and moral rights; (b) trademark and trade name rights and similar rights; (c) trade secret rights; (d) patent and industrial property rights; (e) other proprietary rights in intellectual property of every kind and nature; and (f) rights in or relating to registrations, renewals, extensions, combinations, divisions, continuations, continuations-in-part and reissues and applications for any of the rights referred to in clauses (a) through (e) of this definition, whether abandoned or not.

"Residuals"" means information that is retained in the unaided memories of Recipient's employees or Agents who have had access to Discloser's Confidential Information pursuant to the terms of this Agreement. A person's memory is unaided if such person has not intentionally memorized the Confidential Information for the purpose of retaining and subsequently using or disclosing it.

"Service Recipient" means a Person to whom the Licensee or a Licensee Affiliate provides or has provided access to the Software in accordance with the terms of this Agreement.

"Software" means the generally available release of the software programs designated on Schedule 1, in source and executable object code form, all Documentation for the same, and any and all Custom Software, Improvements and New Products provided to Licensee.

"Software Error" means a failure of any Software to conform to its Specifications, excluding only Trivial failures.

"Specifications" means the description of the Software in Exhibit A to this Agreement, "Specifications."

"Trivial" means that the subject impact, risk or non-conformity, as applicable, is of little or no importance or significance.

"Warranty Period" means (a) with respect to the Software originally licensed under this Agreement, the period starting on the Effective Date and continuing until one sixty (60) days after the Acceptance Date for such Software, and (b) with respect to any other Software, the sixty (60) day period commencing upon the applicable Acceptance Date for such Software.

The defined terms include the plural as well as the singular and the derivatives of such terms, and a reference to one gender includes all genders.

Section 1.02   References.

The Schedules to this Agreement are hereby incorporated into and deemed part of this Agreement for all purposes. All references to this Agreement include the Schedules to this

Agreement, unless the context in which used will otherwise require. Unless otherwise expressly stated, all references to Articles, Sections, subsections, other subdivisions and Schedules refer to Articles, Sections, subsections and other subdivisions of, and Schedules to, this Agreement. The word "or" is not exclusive and the word "include" and its derivatives will not be construed as terms of limitation. Examples will not be construed as to limit, whether expressly or by implication, the matter they illustrate. The words "will" and "shall" are expressions of command, not merely expressions of future intent or expectation. Unless otherwise expressly stated, the words "hereof," "herein" and "hereunder" and words of similar import refer to this Agreement as a whole and not to any particular provision of this Agreement. Unless otherwise expressly stated, the words "day," "month" and "year" mean, respectively, calendar day, calendar month and calendar year. The words "expense" and "expenses" mean any charges, fees and costs. Headings are included for ease of reference only and will not affect the interpretation or construction of this Agreement.

Section 1.03   **Order of Precedence**.

In the event of any conflict, ambiguity or inconsistency between or among the terms in Article I through Article IX, any Schedule or the Specifications, then except as otherwise expressly set forth in this Agreement or in a subsequent amendment to this Agreement, the order of precedence will be as follows: (a) the terms of Article I through Article IX; (b) the terms of the Schedule; and (c) the Specifications.

ARTICLE II

LICENSE

Section 2.01   **License Grant**.

Licensor hereby grants to Licensee and its Affiliates a non-exclusive, perpetual, irrevocable, non-transferable, worldwide right and license to (a) install, use, archive, copy, distribute and display the Software and Improvements, provided Licensee does not alter (add to, delete or modify) any of Licensor's copyright notices deployed by Licensor in connection with the Software; (b) use and copy the Documentation; and (c) permit Licensee's Service Recipients to: (i) access and use the Software; and (ii) use and copy Documentation relating to Service Recipient's use of the Software.

ARTICLE III

ACCEPTANCE

Section 3.01   **Acceptance**.

(a)   Licensor acknowledges that Licensee and Licensee Agents may test all or any part of any Software to determine whether the Software meets the Specifications.

(b)   If Licensee determines that all or any part of any Software has not successfully completed any acceptance test, Licensee will notify Licensor of the same and Licensor will, within no more than forty-five (45) days (or such other time period agreed upon by the Parties in writing) after receipt of such notice, provide all services necessary to resolve all identified problems so that the Software meets the Specifications. When it believes that it has made the necessary corrections, Licensor will notify Licensee and the provisions of clauses (a) and (b) of this Section will be reapplied until such Software is accepted by Licensee.

(c)   If and when Licensee's and any Licensee Agent's acceptance tests establish that the Software is performing satisfactorily, Licensee will provide Licensor notice that, based on such tests, such Software meets the Specifications, and the date of such notice will be referred to herein as the "Acceptance Date."

ARTICLE IV

IMPROVEMENTS

Section 4.01   Improvements.

During the Warranty Period, Licensor will provide to Licensee all Improvements in accordance with the pricing and terms of an Improvements Statement of Work. After the expiration of the Warranty Period, Licensee shall enter into a maintenance agreement with Licensor on mutually agreeable terms under which Licensor will continue to provide Licensee all Improvements and in which Licensor shall warrant as follows:

(a)   that each new Improvement will be compatible with the immediately preceding version of the Software and will be furnished to Licensee in a form suitable for incorporation into the installed Software;

(b)   that for at least a period of three hundred sixty-five (365) days after the date Licensor delivers to Licensee a new Improvement, Licensor will continue to maintain and support the immediately preceding version of the Software.

ARTICLE V

FEES

Section 5.01   Pricing.

(a)   In consideration of the rights and licenses granted in this Agreement, including the right for Licensee, the Licensee Affiliates and the Service Recipients to use the Software to perform services for up to a total of One Thousand (1,000) Accounts, Licensee will pay to Licensor a sum of Eight Thousand Dollars (US$8,000) within ten (10) days after the Effective Date, the "Initial License Fees").

(b)   The Initial License Fees is based on Licensee, the Licensee Affiliates and the Service Recipients using the Software to perform services for up to a total of one thousand

-5-

(1,000) Accounts. Following the end of each calendar quarter during the term of this Agreement, Licensor will determine the total number of Accounts for which Licensor, the Licensor Affiliates and the Service Recipients are using the Software for performing services as of the last day of such calendar quarter (the "Current Account Level"). If and to the extent that the Current Account Level exceeds the then current Base Account Level, within thirty (30) days after the end of such calendar quarter Licensee will so notify Licensor and Licensor will invoice Licensee for an additional, one-time, incremental Fee equal to Eight Dollars and Zero cents (US$8.00) for each Account in excess of the then current Base Account Level (the "Additional License Fees"). The per Account rate specified in the immediately preceding sentence for the Additional License Fee will increase each year by an amount equal to three percent (7%) over the prior year's per Account rate. For the avoidance of doubt, the Software may be used to perform services for any Customers, and not just for specific or named Accounts, so long as the total number of Accounts does not exceed the number for which Licensee has paid the requisite Fees hereunder.

Section 5.02   Invoicing.

Licensor will invoice the Fees in United States' Dollars and in accordance with Licensee's then-current invoicing guidelines.

Section 5.03   Payment.

Any sum due Licensor under this Agreement will be due and payable thirty (30) days after receipt by Licensee of a complete and accurate invoice from Licensor that complies with the terms of this Agreement.

Section 5.04   Taxes.

Licensee will, in addition to any other undisputed amounts payable under this Agreement, pay all sales, use, and other taxes imposed by any Governmental Authority by reason of the transactions contemplated by this Agreement.

Section 5.05   Audits.

Licensor will have the right, at its own expense, to have an independent public accountant audit copies of Licensee's relevant records during normal business hours to verify the total number of Customers. Licensor will have the right to conduct such audits no more than one (1) time every ninety (90) days after the first Acceptance Date for the Software. Licensor will provide notice to Licensee at least five (5) days before conducting an audit. Licensor shall reimburse the Licensee for reasonable expenses for the time required to be spent by Licensee to assist with the audit. If as a result of any audit conducted pursuant to this Section it is finally determined that the total number of Customers for which the Software is then actually being used by Licensee, the Licensee Affiliates and the Service Recipients exceeds the total number of Customers for which Licensee has paid the requisite Fees hereunder, then Licensee will pay to Licensor the requisite Fees for the total number of Customers for which the Software is then actually being used by Licensee, the Licensee Affiliates and the Service Recipients.

-6-

ARTICLE VI

TERM AND TERMINATION

Section 6.01   Term.

The term of this Agreement will commence on the Effective Date and continue perpetually thereafter until terminated pursuant to this Agreement.

Section 6.02   Termination for Cause.

Either Party may terminate this Agreement by giving notice of the termination to the other Party if the other Party materially breaches either the confidentiality provisions of this Agreement or the restrictions on use of the Software and does not discontinue or otherwise cure such breach within thirty (30) days after receipt of notice of such breach from the non-defaulting Party.

Section 6.03   Termination for Convenience.

Either Party may terminate this Agreement by giving the other Party notice of the termination at least sixty (60) days prior to the termination date, which shall be specified in the notice. If a Party terminates the Agreement in whole under this Section, all undisputed amounts due to Licensor for services performed up to the notice of the termination under this Agreement as of the effective date of such termination shall become immediately due and payable by Licensee to Licensor within thirty (30) days after the date of such termination.

ARTICLE VII

PROPRIETARY RIGHTS AND CONFIDENTIALITY

Section 7.01   Ownership.

(a)   As between the Parties, and except for the rights and licenses granted herein, Licensor will perpetually have and retain exclusive ownership of all Proprietary Rights in and to all versions of the Software, including any and all modifications, enhancements, corrections, additions, updates, releases, versions and any other changes to the Software.

Section 7.02   Confidentiality.

(a)   Confidential Information may be exchanged between the Parties in connection with this Agreement. Recipient acknowledges that the Discloser's Confidential Information is a special, valuable and unique asset, and agrees that for a period of three (3) years following the receipt of the Confidential Information it shall: (a) not disclose the Confidential Information to any third party without written consent of Discloser, (b) restrict dissemination of Confidential Information to only its employees, contractors, or agents who are directly participating in the Authorized Purpose, who have a need to know the Confidential Information, and who are bound by a duty of confidentiality under terms no less restrictive than contained herein concerning the

use of Confidential Information, and (c) use the same degree of care as for its own information of like importance, but at least reasonable care, in preventing disclosure of Confidential Information. Recipient further agrees not to reverse engineer, decompile, disassemble any prototypes, software, hardware or other tangible objects or products provided hereunder which embody the Confidential Information of the Discloser.

(b)   This Agreement imposes no obligation upon Recipient with respect to information which is: (i) or becomes generally known or publicly available through no act or failure on part of Recipient; or (ii) approved in writing by the Discloser for public release or disclosure by the Recipient only to the extent of such approval; or (iii) disclosed to a third party by Discloser without a duty of confidentiality or lawfully obtained by Recipient from a third party without a duty of confidentiality or restriction on disclosure; or (iv) independently known by or independently developed by the Recipient without the use of Confidential Information disclosed by the Discloser; or (v) required to be disclosed pursuant to the order of a court of competent jurisdiction; or otherwise required to be disclosed by law through no act of the Recipient, provided, however, that the Recipient has notified the Discloser upon learning of the possibility that disclosure could be required pursuant to any such law or legal order and has given the Discloser a reasonable opportunity to contest or limit the scope of such required disclosure and has cooperated with the Discloser in this regard.

(c)   The Parties will be free to use Residuals for any purpose, including use in development, manufacture, marketing and maintenance of their own products and services. This right to Residuals conveys no license to any Proprietary Right of Licensor.

ARTICLE VIII

REPRESENTATIONS AND WARRANTIES

Section 8.01   Software.

Licensor represents and warrants that during the Warranty Period the Software will be free from Software Errors and will meet the Specifications. If Licensor becomes aware of any Software Error, Licensor will, at no additional charge, render all services necessary to modify the Software to correct each Software Error and make the Software conform to the Specifications as soon as possible.

Section 8.02   Disabling Code.

Licensor represents and warrants that no Disabling Code has been coded or introduced into any Software as delivered by Licensor hereunder. If any Disabling Code is found to have been coded or introduced into any Software as delivered by Licensor hereunder, or is invoked, Licensor will eliminate the Disabling Code.

Section 8.03   Ownership and Authority.

Each of the Parties represent and warrant that it has full power and authority to enter into this Agreement and to perform fully and completely its obligations under this Agreement;

Section 8.04 **Disclaimer**.

APART FROM THE REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS ARTICLE, NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES, AND LICENSOR DISCLAIMS ANY AND ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE SOFTWARE, INCLUDING MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

Section 8.05 **Limitation on Liability**.

(a) NEITHER PARTY SHALL BE LIABLE FOR ANY CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, INDIRECT OR SPECIAL DAMAGES OR COSTS, INCLUDING LOST PROFITS OR LOSS OF GOODWILL, RESULTING FROM ANY CLAIM OR CAUSE OF ACTION BASED UPON BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY, PRODUCT LIABILITY, OR ANY OTHER LEGAL THEORY, EVEN IF EITHER OR BOTH OF THEM HAS BEEN ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY THEREOF.

ARTICLE IX

MISCELLANEOUS PROVISIONS

Section 9.01 **Escrow**

(a) The Parties shall appoint and enter into an agreement with an escrow agent ("Escrow Agreement") to hold a version of the software specified in Schedule 1 in source code and executable object code forms, such version to include all Custom Software, Improvements and New Products provided to Licensee ("Escrow Materials").

(b) The Escrow Agreement must include at least the following terms:

The occurrence of any of the following events ("Release Events") provide to the Licensee the right to request, and the Escrow Agent the authority to release and deliver to Licensee, the Escrow Materials.

(i) Licensor ceases to carry on business;

(ii) Licensor becomes bankrupt, insolvent or the subject of receivership; or

(iii) Licensor commits a material breach of the License.

(iv) Licensor is acquired by another company, unless as a condition of such acquisition, the acquiring company agrees to continue to support UMBS for LICENSEE.

Should Licensee wish the escrow agent to release and deliver to the Licensee the Escrow Materials upon the occurrence of any of the Release Events, the Licensee shall give thirty (30) days written notice to the escrow agent and Licensor specifying the Release Event in question. If Licensor wishes to refute the occurrence of the Release Event, it shall give written notice to the escrow agent and Licensee prior to the expiry of the thirty (30) day period, the escrow agent shall not release and deliver the Escrow Materials. If Licensor does not give written notice of its refutation to Escrow Agent and Licensee prior to the expiry of the thirty (30) day period, escrow agent shall release and deliver the Escrow Materials to Licensee. The Parties shall resolve any dispute arising out of the Escrow Agreement in accordance with the governing law and venue provisions of this Agreement.

Licensee shall pay all fees and costs in connection with the Escrow Agreement. If Licensee materially breaches the Escrow Agreement, including for failing to pay any fee or cost in connection with the Escrow Agreement, and does not cure such material breach within a reasonable period of time, then the Escrow Agreement terminates and the escrow agent may destroy the Escrow Materials or return the Escrow Materials to Licensor. Licensee shall indemnify Licensor against any losses and any liabilities arising out of the Escrow Agreement.

Section 9.02   Assignment.

This Agreement and the rights, obligations and remedies hereunder will not be assignable, transferable, subcontracted or delegated by either Party, in whole or in part, without the prior approval of the other Party, except that a Party may assign and transfer this Agreement, in whole or in part, to any Person that, directly or indirectly, through one or more intermediaries, Controls, is Controlled by or is under common Control with such Party or in connection with any merger, acquisition, liquidation or sale of all or a substantial portion of the assets of such Party without such approval. The consent of a Party to any assignment of this Agreement will not constitute such Party's consent to further assignment. The Agreement will be binding on the Parties and their respective successors and permitted assigns. Any assignment in contravention of this Section is null and void.

Section 9.03   Notices.

Whenever one Party is required to give notice to the other under this Agreement, such notice will be deemed given when delivered to the address specified below.

In the case of Licensor:

ROSTECH, INC.
10213 Gary Road
Potomac, Maryland 20854

Attention:

In the case of Licensee:

Licensee

County Manager David Kraus

_____

Either Party may change its address or contact for notification purposes by giving the other Party at least ten (10) days advance notice of the new address or contact and the date upon which it will become effective.

Section 9.04   **Governing Law.**

This Agreement and the rights and obligations of the Parties under this Agreement will be governed by and construed in accordance with the Laws of the State of **Florida** without giving effect to the principles thereof or of any other jurisdiction relating to the conflicts of Laws.

Section 9.05   **Counterparts**.

This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which taken together will constitute one single agreement between the Parties. The delivery of an executed counterpart of this Agreement by facsimile or electronic transmission in portable document format (.pdf) will be valid delivery thereof.

Section 9.06   **Consents and Approvals**.

Except as specifically set forth in this Agreement, (a) all consents and approvals to be given by either Party under this Agreement will not be unreasonably withheld or delayed, and (b) all notices, consents, approvals, agreements, authorizations, acknowledgments, waivers and other communications required or permitted under this Agreement must be made in writing and must be provided by an authorized representative of the applicable Party in order to be binding.

Section 9.07   **Severability**.

If any term of this Agreement conflicts with the Law under which this Agreement is to be construed or if any such term is held invalid or unenforceable by a court with jurisdiction over the Parties, such term will be deemed to be modified or restated to reflect as nearly as possible the original intentions of the Parties in accordance with applicable Law, or if and to the extent such modification or restatement is not permitted under applicable Law, such term will be

-11-

severed from this Agreement. The remaining terms of this Agreement and the application of the challenged term to Persons or circumstances other than those as to which it is invalid or unenforceable will not be affected thereby, and each such term will be valid and enforceable to the greatest extent permitted by applicable Law.

Section 9.08   Delays; Waivers.

No delay or omission by either Party to exercise any right, remedy or power it has under this Agreement will be construed as a waiver of such right, remedy or power. A waiver by any Party of any breach or covenant will not be construed to be a waiver of any other or succeeding breach or covenant. All waivers must be in writing and manually signed by an authorized representative of the Party waiving its rights.

Section 9.09   Remedies Cumulative.

No right or remedy under operation of Law or herein conferred upon or reserved to either Party is intended to limit or be exclusive of any other right or remedy, and each and every right and remedy will be cumulative and in addition to any other right or remedy under this Agreement, or under Law, whether now or hereafter existing.

Section 9.10   Entire Agreement.

This Agreement and the Specifications constitute the entire agreement and understanding between the Parties with respect to the subject matter hereof and supersede all prior agreements and understandings relating to such subject matter, and there are no other representations, warranties, promises, covenants, commitments, understandings or agreements between the Parties relative to such subject matter.

Section 9.11   Amendments.

No amendment, modification, change or supplement to this Agreement will be valid unless in writing and manually signed by authorized representatives of both Parties. Neither the course of dealings between the Parties nor any trade practices will act to modify, vary, supplement, explain or amend this Agreement.

Section 9.12   Third-Party Beneficiaries.

This Agreement is for the sole benefit of the Parties and their successors and permitted assigns, and each Party intends that this Agreement will not benefit, or create any right or cause of action in or on behalf of, any Person other than the Parties and their successors and permitted assigns.

Section 9.13   Independent Relationship.

The Parties intend to create an independent contractor relationship and nothing contained in this Agreement will be construed to make either Party a partner, joint venturer, principal, agent or employee of the other. Neither Party has any right, power or authority, whether express or implied, to bind the other.

Section 9.14   <u>Covenant of Further Assurances</u>.

The Parties covenant and agree that, subsequent to the execution and delivery of this Agreement, and without any additional consideration, each of the Parties will execute and deliver any further legal instruments and perform any acts that are or may become necessary to effectuate the purposes of this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed and delivered by its duly authorized representative.

ROSTECH, INC.

By:

Name: Regina E. Zakotnik

Title: President

_____

By: _____

Name: _____

Title: _____

[SIGNATURE PAGE TO LICENSE AGREEMENT]

SCHEDULES

TABLE OF CONTENTS
(continued)

SCHEDULE 1
SOFTWARE

RosTech Utility Management Billing System (UMBS)

Sch. 2 - 1

MAINTENANCE SERVICES AGREEMENT

between

COLUMBIA COUNTY, FL. BOARD OF COMMISSIONERS

and

ROSTECH, INC.

Dated 12/1/2022

THIS MAINTENANCE SERVICES AGREEMENT (this "<u>Agreement</u>"), dated December 1, 2022 (the "<u>Effective Date</u>"), is by and between **Columbia County, FL. Board of County Commissioners** with offices at 135 NE Hernando St. Suite 203 Lake City, FL. 32055 ("Client"), **and RosTech, Inc**., a Maryland corporation, with offices at 10213 Gary Road, Potomac, Maryland 20854 ("RosTech") (singly, a "Party" and collectively, the "Parties").

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE I

DEFINITIONS AND CONSTRUCTION

Section 1.01   <u>Definitions</u>.

The following defined terms used in this Agreement will have the meanings specified below:

"<u>Affiliate</u>" means any Person that, directly or indirectly, through one or more intermediaries, Controls, is Controlled by or is under common Control with, a Party.

"<u>Agents</u>" means the contractors, subcontractors, suppliers, outsourcers, RosTechs, disaster recovery service providers, hosting service providers and other third parties of a Party.

"<u>Business Days</u>" means a day, other than Saturday, Sunday or a United States federal holiday.

"<u>Claim</u>" means any threatened or actual lawsuit or proceeding.

"<u>Confidential Information</u>" means any non-public information, whether in tangible, machine readable, or electronic form, disclosed by either of the parties to the other, which the disclosing Party ("Discloser") identifies at the time of disclosure as confidential and/or proprietary by means of a legend, marking, stamp or other notice conspicuously designating the information to be confidential and/or proprietary, or information disclosed orally or visually by either of the parties to the other, where the Discloser identifies such information as confidential and/or proprietary at the time of disclosure and, within thirty (30) days after such oral or visual disclosure, reduces the subject matter of the disclosure to a tangible or electronic form properly identified in the manner described above and submits it to the receiving Party ("Recipient"). Confidential Information includes, without limitation, any specification, layout, design, drawing, formula, technique, algorithm, know-how, demo product, prototypes, test data, information related to engineering, manufacturing, sales, marketing, management or quality control, financial information or other information related to the business operations of the Discloser. Any non-public demonstration versions or prototypes provided to the Recipient shall constitute the Discloser's Confidential Information, whether or not so marked.

"<u>Contract Period</u>" means each three hundred sixty-five (365)-day period commencing on the Effective Date and thereafter upon the completion of the immediately preceding Contract Period.

"<u>Control</u>" means: (a) the legal, beneficial, or equitable ownership, directly or indirectly, of (i) at least fifty percent (50%) of the aggregate of all voting equity interests in a Person, or (ii) equity interests having the right to at least fifty percent (50%) of the profits of a Person or, in

the event of dissolution, to at least fifty percent (50%) of the assets of a Person; (b) the power to appoint, directly or indirectly, a majority of the board of directors; (c) the power to control, directly or indirectly, the management or direction of the Person, whether through the ownership of voting securities (or other ownership interest), by contract or otherwise; (d) in the case of a partnership, the holding by a Person (or one of its affiliates) of the position of sole general partner; or (e) the consolidation, pursuant to GAAP, of a Person into the books and records of another Person (or one of its affiliates).

"Fees" means the amounts expressly payable by Client to RosTech pursuant to Schedule 2.

"Governmental Authority" means any federal, state, municipal, local, territorial, provincial or other governmental department, regulatory authority, judicial or administrative body, whether domestic or foreign.

"Improvements" means any and all corrections to Software Errors of the Software.

"Law" means any declaration, decree, directive, legislative enactment, statute, order, ordinance, regulation, rule or other binding action of or by any Governmental Authority.

"Maintenance Agreement" means that certain Maintenance Agreement between the Parties dated 12/1/2022 as amended, supplemented or otherwise modified.

"Losses" means any damages, fines, penalties, deficiencies, losses, liabilities (including settlements and judgments), fees and expenses (including interest, court costs, reasonable fees and expenses of attorneys, accountants, experts and other professionals, and other reasonable fees and expenses of litigation, mediation, arbitration or other actions or proceedings or of any Claim, default or assessment).

"Person" means any natural person or business in whatever form, such as a corporation, company, partnership, sole proprietorship, joint venture, non-profit entity, trust, association or institute.

"Residuals" means information that is retained in the unaided memories of Recipient's employees or Agents who have had access to Discloser's Confidential Information pursuant to the terms of this Agreement. A person's memory is unaided if such person has not intentionally memorized the Confidential Information for the purpose of retaining and subsequently using or disclosing it.

"Resolve," "Resolved," "Resolution" and correlative capitalized terms mean, with respect to any particular Support Request, that RosTech has corrected the Software Error that prompted a given Support Request.

"Service Levels" means the defined Software Error severity levels and corresponding required service level responses, response times, Resolutions and Resolution times referred to in the table headed "Service Level Table" in Schedule 1.

"Services" means the services, functions and responsibilities described in Schedule 1.

"Software" means the generally available release of the software programs designated on Schedule 1, in executable object code form and any and all Custom Software and Improvements provided to Client.

"Software Error" means a failure of any Software to conform as designed, excluding only Trivial failures.

"Support" means the identification, diagnosis and correction of Software Errors by the following Services provided by help desk technicians: (a) telephone and email assistance; (b) remote services; and (c) providing or making available information regarding proper use of the Software.

"Support Request" means a request for a Software Error correction submitted to RosTech by Client's designated representative that classifies the Software Error in accordance with the severity level numbers and definitions in the table headed "Service Level Table" in Schedule 1. Client's designated representative will notify RosTech of each Support Request by email, telephone or such other means as the Parties may agree in writing. Client will include in each Support Request a description of the reported Software Error and the time Client first observed the Software Error.

"Trivial" means that the subject impact, risk or non-conformity, as applicable, is of little or no importance or significance.

The defined terms include the plural as well as the singular and the derivatives of such terms, and a reference to one gender includes all genders.

Section 1.02   References.

The Schedules to this Agreement are hereby incorporated into and deemed part of this Agreement for all purposes. All references to this Agreement include the Schedules to this Agreement, unless the context in which used will otherwise require. Unless otherwise expressly stated, all references to Articles, Sections, subsections, other subdivisions and Schedules refer to Articles, Sections, subsections and other subdivisions of, and Schedules to, this Agreement. The word "or" is not exclusive and the word "include" and its derivatives will not be construed as terms of limitation. Examples will not be construed as to limit, whether expressly or by implication, the matter they illustrate. The words "will" and "shall" are expressions of command, not merely expressions of future intent or expectation. Unless otherwise expressly stated, the words "hereof," "herein" and "hereunder" and words of similar import refer to this Agreement as a whole and not to any particular provision of this Agreement. Unless otherwise expressly stated, the words "day," "month" and "year" mean, respectively, calendar day, calendar month and calendar year. The words "expense" and "expenses" mean any charges, fees, costs, expenses or other amounts. Headings are included for ease of reference only and will not affect the interpretation or construction of this Agreement.

Section 1.03   Order of Precedence.

In the event of any conflict, ambiguity or inconsistency between or among the terms in Article I through Article VII or any Schedule, then except as otherwise expressly set forth in this Agreement or in a subsequent amendment to this Agreement, the order of precedence will be as follows: (a) the terms of Article I through Article VII; and (b) the terms of the Schedule.

ARTICLE II

SERVICES

Section 2.01   Services.

      Commencing on the Effective Date, RosTech will provide to Client the Services as described in this Agreement and in the Services Catalog. Subject to each Party's rights to terminate this Agreement pursuant to Article IV, the Services will renew automatically upon the expiration of each annual maintenance period unless Client notifies RosTech otherwise at least thirty (30) days before the expiration of the then current annual maintenance period.

Section 2.02   Service Levels.

      The Services will be performed in accordance with the Service Levels.

Section 2.03   Improvements.

      All Improvements are licensed to Client under the License Agreement as part of the Software, and are subject to the acceptance and warranty provisions of the License Agreement and not any acceptance or warranty provisions of this Agreement.

Section 2.04   Subcontractors.

      RosTech may subcontract any portion of the Services to third parties.

ARTICLE III

FEES

Section 3.01   Fees Generally.

      In consideration of RosTech providing the Services, and in accordance with this Article, Client will pay to RosTech the Fees.

Section 3.02   Invoicing.

      RosTech will invoice Client for the Fees at least thirty (30) days prior to the beginning of the Contract Period for Services for that next Contract Period.

Section 3.03   Payment.

      Payment of each invoice that is provided by RosTech in accordance with Section 3.02 for each Contract Period shall be made by Client no later than the start date of the applicable Contract Period.

Section 3.04   Taxes.

      Client will, in addition to any other undisputed amounts payable under this Agreement, pay all sales, use, and other taxes imposed by any Governmental Authority by reason of the transactions contemplated by this Agreement.

ARTICLE IV

TERM AND TERMINATION

Section 4.01   Term.

The term of this Agreement will commence on the Agreement Date and continue for three hundred sixty-five (365) days thereafter unless terminated earlier pursuant to this Agreement. After the initial three hundred sixty-five (365) day period, the Agreement will automatically renew for successive three hundred sixty-five (365) day periods unless Client notifies RosTech at least thirty (30) days prior to a renewal date that the Agreement shall not be renewed.

Section 4.02   Termination for Nonpayment.

If Client fails to make a payment due to RosTech under this Agreement and does not cure such default within thirty (30) days after receipt by Client of a notice of default from RosTech, then RosTech may terminate this Agreement effective as of any date by giving Client notice of the termination upon or prior to the termination date specified in the notice. RosTech shall have no obligation to provide any Services for a Contract Period unless and until RosTech receives payment from Client for that Contract Period.

Section 4.03   Survival.

The provisions of this Section, Article I and Article V through and including Article VII will survive any termination of this Agreement.

ARTICLE V

PROPRIETARY RIGHTS AND CONFIDENTIALITY

Section 5.01   Ownership.

Ownership of the Software and all Improvements is subject to the terms of the License Agreement. Nothing in this Agreement is intended to affect or limit either Party's ownership of any Proprietary Rights, as defined in the License Agreement.

Section 5.02   Confidentiality.

The provisions of Section 7.02 of the License Agreement, each of which are hereby incorporated into and deemed part of this Agreement for all purposes, mutatis mutandis, will govern the Parties' confidentiality obligations in connection with this Agreement.

ARTICLE VI

REPRESENTATIONS AND WARRANTIES

Section 6.01   Services.

The provisions of Article VIII of the License Agreement, each of which are hereby incorporated into and deemed part of this Agreement for all purposes, mutatis mutandis, will govern the Parties' representations and warranties in connection with this Agreement.

-5-

ARTICLE VII

MISCELLANEOUS PROVISIONS

Section 7.01   Assignment.

This Agreement and the rights, obligations and remedies hereunder will not be assignable, transferable, subcontracted or delegated by either Party, in whole or in part, without the prior approval of the other Party, except that a Party may assign and transfer this Agreement, in whole or in part, to any Person that, directly or indirectly, through one or more intermediaries, Controls, is Controlled by or is under common Control with such Party or in connection with any merger, acquisition, liquidation or sale of all or a substantial portion of the assets of such Party without such approval. The consent of a Party to any assignment of this Agreement will not constitute such Party's consent to further assignment. The Agreement will be binding on the Parties and their respective successors and permitted assigns. Any assignment in contravention of this Section is null and void.

Section 7.02   Notices.

Whenever one Party is required to give notice to the other under this Agreement, such notice will be deemed given when delivered to the address specified below.

In the case of RosTech:

ROSTECH, INC.
10213 Gary Road
Potomac, Maryland 20854
Attention: Jean Zakotnik

In the case of Client:

_____
_____
_____
_____

Either Party may change its address or contact for notification purposes by giving the other Party at least ten (10) days advance notice of the new address or contact and the date upon which it will become effective.

Section 7.03   Governing Law.

This Agreement and the rights and obligations of the Parties under this Agreement will be governed by and construed in accordance with the Laws of the State of Florida without giving effect to the principles thereof or of any other jurisdiction relating to the conflicts of Laws. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act, each as adopted in any form in any jurisdiction, do not apply to this Agreement.

Section 7.04   <u>Sole and Exclusive Venue.</u>

Each Party knowingly, voluntarily, unconditionally and irrevocably (a) agrees that any Claim brought by it in any way arising under or in connection with this Agreement must be brought solely and exclusively in the Columbia County, and (b) accepts and submits to the sole and exclusive jurisdiction of such courts *in personam* with respect to any Claim brought by it or against it by the other Party.

Section 7.05   <u>Counterparts.</u>

This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which taken together will constitute one single agreement between the Parties. The delivery of an executed counterpart of this Agreement by facsimile or electronic transmission in portable document format (.pdf) will be valid delivery thereof.

Section 7.06   <u>Consents and Approvals.</u>

Except as specifically set forth in this Agreement, (a) all consents and approvals to be given by either Party under this Agreement will not be unreasonably withheld or delayed, and (b) all notices, consents, approvals, agreements, authorizations, acknowledgments, waivers and other communications required or permitted under this Agreement must be made in writing and must be provided by an authorized representative of the applicable Party in order to be binding.

Section 7.07   <u>Severability.</u>

If any term of this Agreement conflicts with the Law under which this Agreement is to be construed or if any such term is held invalid or unenforceable by a court with jurisdiction over the Parties, such term will be deemed to be modified or restated to reflect as nearly as possible the original intentions of the Parties in accordance with applicable Law, or if and to the extent such modification or restatement is not permitted under applicable Law, such term will be severed from this Agreement. The remaining terms of this Agreement and the application of the challenged term to Persons or circumstances other than those as to which it is invalid or unenforceable will not be affected thereby, and each such term will be valid and enforceable to the greatest extent permitted by applicable Law.

Section 7.08   <u>Delays; Waivers.</u>

No delay or omission by either Party to exercise any right, remedy or power it has under this Agreement will be construed as a waiver of such right, remedy or power. A waiver by any Party of any breach or covenant will not be construed to be a waiver of any other or succeeding breach or covenant. All waivers must be in writing and manually signed by an authorized representative of the Party waiving its rights.

Section 7.09   <u>Remedies Cumulative.</u>

No right or remedy under operation of Law or herein conferred upon or reserved to either Party is intended to limit or be exclusive of any other right or remedy, and each and every right and remedy will be cumulative and in addition to any other right or remedy under this Agreement, or under Law, whether now or hereafter existing.

Section 7.10   **Entire Agreement.**

This Agreement and the Specifications constitute the entire agreement and understanding between the Parties with respect to the subject matter hereof and supersede all prior agreements and understandings relating to such subject matter, and there are no other representations, warranties, promises, covenants, commitments, understandings, or agreements between the Parties relative to such subject matter.

Section 7.11   **Amendments.**

No amendment, modification, change or supplement to this Agreement will be valid unless in writing and manually signed by authorized representatives of both Parties. Neither the course of dealings between the Parties nor any trade practices will act to modify, vary, supplement, explain or amend this Agreement.

Section 7.12   **Third-Party Beneficiaries.**

This Agreement is for the sole benefit of the Parties and their successors and permitted assigns, and each Party intends that this Agreement will not benefit or create any right or cause of action in or on behalf of, any Person other than the Parties and their successors and permitted assigns.

Section 7.13   **Independent Relationship.**

The Parties intend to create an independent contractor relationship, and nothing contained in this Agreement will be construed to make either Party a partner, joint venturer, principal, agent or employee of the other. Neither Party has any right, power or authority, whether express or implied, to bind the other.

Section 7.14   **Covenant of Further Assurances.**

The Parties covenant and agree that, subsequent to the execution and delivery of this Agreement, and without any additional consideration, each of the Parties will execute and deliver any further legal instruments and perform any acts that are or may become necessary to effectuate the purposes of this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, each of RosTech and Client has caused this Agreement to be signed and delivered by its duly authorized representatives.

ROSTECH, INC.

By:

Name: Regina E. Zakotnik

Title: President

For: Client

By: _____

Name: _____

Title: _____

SCHEDULES

SCHEDULE 1
SERVICES

1.   Business Continuity.

        RosTech will perform all Support and the other services, functions and responsibilities described in this Section from 9 am through 5:30 pm Eastern time on Business Days in accordance with the terms of this Section and this Agreement. As part of the Services, RosTech will:

- Respond to and Resolve all Support Requests in accordance with the Service Levels;
- Provide Support to Client by means of a telephone number and email address provided by RosTech to Client;

        Support Requests may be submitted by any personnel of Client. Client will designate primary and secondary persons who will liaise with RosTech and coordinate Client's receipt of the Services. The identity of these two representatives will first be provided to RosTech by Client no later than the date on which the initial Contract Period commences. Should the identity of any such representative change to a new person, RosTech shall have no obligation to coordinate with such person unless and until the identity of such new person is provided by Client to RosTech.

        Response and Resolution times will be measured from the time RosTech receives a Support Request until the respective times RosTech has (a) responded to that Support Request, in the case of response time, and (b) Resolved that Support Request, in the case of Resolution time. RosTech will respond to and Resolve all Support Requests in accordance with the Service Levels set forth in the following table based on Client's designation of the severity of the associated Software Error, subject to the Parties' written agreement to revise such designation after RosTech's investigation of the reported Software Error and consultation with Client. Client shall not unreasonably withhold its agreement to any recommendation by RosTech to revise any such designation.

SERVICE LEVEL TABLE

Severity Level of Software Error	Definition	Required Service Level Response and Response Time	Required Service Level Resolution Time
1	Critical Failures: A Software Error that (a) materially affects Client's operations, (b) prevents necessary work from being done, or (c) disables or materially impairs any major function of the Software or the use of any major function of the Software.	RosTech will acknowledge receipt of a Support Request within 2 hours. Thereafter, RosTech will work on the problem continuously and: (a) restore the Software to a state that allows Client to continue to use all functions of the Software in all non-Trivial respects within 3 Business Days after the Level 1	RosTech will Resolve the Support Request as soon as practicable and no later than 2 Business Days after RosTech's receipt of the Support Request. If RosTech Resolves the Support Request by way of a workaround accepted in writing or via email by Client, the severity

Sch. 1 - 1

Severity Level of Software Error	Definition	Required Service Level Response and Response Time	Required Service Level Resolution Time
		Response time has elapsed; and (b) exercise best efforts to Resolve the Software Error until full restoration of function is provided.	level assessment will be reduced to a Severity Level 2.
2	Defect with Workaround: A Severity Level 1 Software Error for which Client received, within the Resolution time for Severity Level 1 Software Errors, a workaround that Client has accepted in writing, or a Software Error, other than a Severity Level 1 Software Error, that affects Client's operations.	RosTech will acknowledge receipt of a Support Request or, where applicable, Client's written or email acceptance of a Severity Level 1 Software Error workaround, within 4 hours. Thereafter, RosTech will provide (a) an emergency Software fix or workaround or (b) a temporary release or update release, that in each case allows continued use of all functions of the Software in all non-Trivial respects.	RosTech will Resolve the Support Request as soon as practicable and no later than 5 Business Days after RosTech's receipt of the Support Request or, where applicable, Client's written or email acceptance of a Severity Level 1 Software Error workaround.
3	Minor Software Error: An isolated or minor Software Error that meets each of the following requirements: (a) does not significantly affect Software functionality; (b) can or does impair or disable only certain non-essential Software functions; (c) does not materially affect use of the Software; and (d) has no or no more than a Trivial effect on Client's operations.	RosTech will acknowledge receipt of the Support Request within 24 hours.	RosTech will Resolve the Support Request as soon as practicable and no later than 5 Business Days after RosTech's receipt of the Support Request.

RosTech may provide the Services to Client remotely, including by means of telephone or Internet telephony, or over the Internet through the use of remote access software that RosTech installs on Client systems, to assist in analyzing and Resolving any Software Error reported by a Support Request. Client will give RosTech access to Client's systems to install and use remote access software necessary for RosTech to provide such remote Services to Client. If and to the extent such remote access software contains any technological measures designed to collect and transmit to RosTech certain diagnostic, technical, usage and related information, including information about Client's systems and any third-party products relating to or derived from use of the Software, the Parties acknowledge and agree that:

- RosTech may collect, maintain, process and use such information,

Sch. 1 - 2

- All or portions of such remote access software may remain on Client's systems after a Support Request is Resolved for the purposes set forth in the immediately preceding paragraph.

2.   <u>Evergreen</u>.

As part of the Services, RosTech will:

- Provide Client with all Improvements as they become available, including Improvements due to Software repairs (patches), new Windows, SQL or any applicable Internet web browser upgrades,

- Maintain the Software application stack (.net, MVC, Entity, Telerik and KendoUI), and

With respect to the Improvements, RosTech warrants that, during the term of this Agreement:

- each new Improvement will be compatible with the immediately preceding version of the Software and will be furnished to Client in a form suitable for incorporation into the installed Software.

3.   <u>Other Services</u>.

Client may occasionally require other Services that are not conform the definition of the services set forth under 1. Business Continuity and 2, Evergreen in Schedule 1. Such Services may include the analysis and resolution of operational issues, development of new interface software, user training, process improvements or business consultancy.

Client will submit a written request for Other Services and RosTech will respond with a time estimate, delivery time and a Software impact analysis. If parties agree, Client will issue a notice to proceed, whereupon RosTech will commence implementation of such services.

Client agrees to pay for Other Services based on time spent, materials and travel expenses as set forth in Schedule 2.

SCHEDULE 2
FEES

1.   Maintenance and Support Fees

The Fees are based on the Current Account Level for the Software, as defined in the License Agreement. Such Current Account Level (as defined in the License Agreement) is monitored by RosTech each Contract Period.

The Fees included on the first invoice issued by RosTech under this Agreement will be determined by multiplying the Current Account Level for the Software as of the Effective Date by $2.80 per Account.

The Fees included on each subsequent invoice issued by RosTech under this Agreement will be determined by multiplying the Current Account Level for the Software as of the last day of the prior Contract period by $2.80 per Account.

The per account fee will remain the same thru year 2022 and thereafter may increase no more than 7% per annum thru year 2025.

2.   Fees for Other Services

Fees for Other Services will be invoiced monthly and are required to be paid within 30 calendar days.

   a.   Hourly Rates

RosTech will apply and Client agrees, the following hourly rates if Other Services are ordered to be performed:

• Principle RosTech	$185.00
• Service Delivery Manager	$175.00
• Quality Assurance Manager	$165.00
• Billing Services & Support	$150.00
• Business Analyst	$165.00
• Travel Time	$65.00

The hourly rates do not include reimbursement of travel and expenses. Hourly rates will remain the same thru year 2022 and thereafter may increase no more than 7% per annum thru year 2025.

   b.   Travel Expenses

Travel and accommodation will be charged using the Indiana per diem rates in addition to flight, car rental and hotel expenses.

Sch. 2 - 1

Sch. 2 - 2