INFORMATION SYSTEM AGREEMENT

This Information System Agreement ("Agreement") is made and entered into as of XXX, 20XX ("Effective Date") by and among (i) Systems & Software, Inc. ("S&S"), a Vermont corporation with its principal offices at 426 Industrial Avenue, Williston, Vermont 05495; and (ii) Lexington Fayette Urban County Government, with its principal offices at 200 East Main Street, Lexington, Kentucky 40507 ("Customer"). S&S shall be referred to herein as "Licensor" and liable for all obligations of Licensor under this Agreement.

BACKGROUND

        A.   Licensor has developed application software for use in the utilities industry and is in the business of implementing information systems and providing related services to customers; and

        B.   Customer desires to license from Licensor certain software and for Licensor to implement an Information System (as defined below) and provide related services on Customer's behalf.

In consideration of the mutual promises and covenants contained in this Agreement, the parties agree as follows:

AGREEMENT

1.   DEFINITIONS

"**Account**" means an active billing account for a client of Customer. Each Account is related to a metered or non-metered sewer, landfill (refuse) or Water Quality service, and such other types of client accounts as may be agreed to by the parties.

"**Application Software**" means the fully-integrated applications and modules provided to Customer pursuant to this Agreement, any Customizations, and any other changes made pursuant to a Statement of Work, Change Order, or an amendment under this Agreement. For avoidance of doubt, the Application Software includes enQuesta, and Cognos.

"**Approved Subcontractor**" shall have the meaning set forth in Section 32(A).

"**Business Day**" is defined as a business work day (Monday through Friday) excluding holidays listed on the official Customer holiday calendar.

"**Change Order**" shall have the meaning set forth in Section 4(E).

"**Confidential Information** " means any information that is disclosed by one Party ("**Discloser**") to the other ("**Receiver**") which (a) is in written, graphic, verbal, or machine-recognizable form and marked, designated, or identified at the time of disclosure as being confidential or its equivalent; (b) is disclosed orally and identified as confidential at the time of disclosure and is confirmed in writing within thirty (30) days of the disclosure; or (c) should reasonably be considered by Receiver as confidential or proprietary to Discloser. Confidential Information does not include any information that: (i) is or becomes publicly known through no wrongful act of Receiver; (ii) is already known to Receiver without restriction when it is disclosed; (iii) is or becomes, rightfully and without breach of this Agreement, in Receiver's possession without any obligation restricting disclosure; (iv) is independently developed by Receiver without reliance on the Confidential Information or breach of this Agreement; or (v) is explicitly approved for release by written authorization of Discloser.

"**Current Base System**" means the version of the Application Software and its components that have been commercially released as of the Effective Date, along with the related Documentation.

"**Customization**" means the changing of any component of the Current Base System, including (i) Major and Minor Releases to the Current Base System and (ii) all configurations and other modifications by Licensor or its subcontractors to the Current Base System, including without limitation as described in the Cost Matrix and Payment Milestones Spreadsheet attached hereto as Exhibit 1 ("**Exhibit 1**") and the SOW.

"**Documentation**" means the standard user-oriented instructions and related materials for the operation of the Application Software in the form distributed generally with the Application Software, together with updates, modifications and enhancements thereto and any additional instructions and materials related to Customizations.

"Final Acceptance" shall have the meaning as defined in the SOW.

"**Go Live**" means the date on which the Customer is using the Application Software in a "live" production environment.

"**Information System**" means the Application Software as fully integrated with all System Equipment and Third Party Applications.

"**Major Release**" means the commercial release of a new version of the Application Software that contains significant amounts of new or significantly enhanced functionality and/or major changes to the product's architecture or file structure, typically identified by a release number that is to the left of the first decimal point, such as 4.x.

"**Milestone Acceptance**" means each of the dates on which a milestone listed on the Milestone Payment Schedule (as set forth in Exhibit 1) has been completed in accordance with the acceptance criteria specified in Exhibit 1 and the SOW. The parties acknowledge that Milestone Acceptance is expected to occur multiple times (i.e., once for each of the line items listed on the Milestone Payment Schedule in Exhibit 1), and each line item within the "Date (est.) for approval of MS Payment" column of the Milestone Payment Schedule in Exhibit 1 is a Milestone Acceptance date. In the event that Customer fails to notify Licensor within ten (10) Business Days after receipt of Licensor's sign-off request form that Customer believes a particular milestone has not been achieved and the reasons therefore, Customer shall be deemed to have agreed and the particular milestone shall be deemed to have been completed, notwithstanding Section 17, which normally requires notice to be in writing.

"**Minor Release**" means the commercial release of a set of software corrections and system performance adjustments for the Application Software, typically identified by a release number that is to the right of the first decimal point, such as x.1.

"**Performance Schedule**" shall have the meaning set forth in Section 4(C).

"**Post Go Live**" means the shorter of: (i) the period of ten (10) years following Go Live or (ii) the period between Go Live and Customer's election to terminate all Support Services under this Agreement.

"**Project**" means the procurement, implementation, training of personnel, acceptance testing, and other tasks necessary for the implementation and Go Live of the Information System for use by Customer.

"**Regulatory Authorities**" shall have the meaning set forth in Section 30(A).

"**Representative**" shall have the meaning set forth in Section 17.

"**Services**" means all services to be provided by Licensor to Customer under this Agreement.

"**Site Preparation**" means those physical installation and environmental conditioning tasks necessary to support the Information System, including specified cabling, telecommunications, Internet/VPN accessibility, network infrastructure, connections, power supply and air conditioning.

"**Specifications**" means the functional, performance, and other requirements pertaining to the Information System as set forth in the Documentation and otherwise set forth in this Agreement, including without limitation the SOW and Exhibit 1.

"**Statement of Work**" or "**SOW**" means (i) the Contract Statement of Work for CIS Replacement attached hereto as Exhibit 3, including the Contract Statement of Work for the implementation of the Metersense application; and (ii) any other statement of work entered into by the parties and intended to be an exhibit to this Agreement.

"**Support Services**" means the software maintenance and support services to be provided as further described in Section 7 and in the System and Software Support Program attached hereto as Exhibit 2.

"**System Equipment**" means the computer hardware and operating system software that is required to run the Application Software as listed in the SOW.

"**Term**" means the duration of the license for use of the Application Software (not including Cognos or any other third party software) as set forth in Section 6 of this Agreement.

"**Third Party Application**" means a third-party application licensed by Customer or an application internally developed by Customer with which the Application Software is intended to inter-operate.

"**User**" means an employee, contractor, or agent of Customer or an affiliate of Customer who is authorized by Customer pursuant to the terms of this Agreement to access and use the Application Software.

"**Warranty Period**" has the meaning ascribed to it in Section 8(A).

2.   SCOPE OF PROJECT

Licensor shall use commercially reasonable efforts to provide the Services and furnish the deliverables described in this Agreement, as may be modified from time to time by mutual consent, evidenced in writing and signed by Customer and Licensor. Licensor shall work with designated Customer personnel to implement the Information System in accordance with the Performance Schedule. Customer shall fulfill its obligations set forth in the Performance Schedule in a timely manner, ensure compliance with the specified Site Preparation, and otherwise provide and make available to Licensor such resources necessary for Licensor to successfully deliver the Services. RFP No. 19-2014 is attached hereto as Exhibit "A" and is hereby incorporated herein by reference as if fully stated. Licensor's Response to RFP No. 19-2014 is attached as Exhibit "B" and is hereby incorporated herein by reference as if fully stated. In the event that there is a conflict between or among the provisions or terms of this Agreement, the RFP, and the Response, the provisions or terms of this Agreement shall take precedence, followed by the provisions or terms of the RFP, and then those of the Response.

3.   AUTHORIZATION TO PROCEED; IMPLEMENTATION PROCESS

A.   Authorization to Proceed. Licensor shall, upon the Effective Date, commence with the implementation of the Information System. Customer's execution of this Agreement constitutes Customer's agreement to the terms herein and authorization for Licensor to commence with the implementation of the Information System.

B.   Implementation Process. Each party shall comply with its respective obligations in connection with the implementation process and as such are further described in the SOW and Exhibit 1.

4.   FEES AND PAYMENT SCHEDULE

A.   Fees. Customer's financial obligation to Licensor for the implementation of the Information System and delivery of related Services (as such Services are expressly set forth under the Agreement) is set forth in Exhibit 1. Each payment shall be payable by Customer to S&S upon Milestone Acceptance, and S&S shall be entitled to invoice Customer at that time. Upon execution of this Agreement, Customer shall also remit to S&S an initial license payment in the amount specified under Milestone Payment Number 0 ("**MP# 0**") in Exhibit 1. For clarity, any payment to S&S by Customer under this Agreement shall constitute payment to S&S, and any payment to S&S by Customer under this Agreement shall constitute payment to S&S.

B.   Invoices. All invoices submitted under this Agreement shall be due and payable within thirty (30) days of the date of the invoice unless the invoiced amount is disputed. All amounts listed in this Agreement are in U.S. dollars and shall be paid in U.S. dollars. Any undisputed invoice payable pursuant to this Agreement and not paid within thirty (30) days after the relevant payment date for said amount shall bear interest for each month or portion thereof it is delinquent at the rate of the lesser of (i) one and one-half percent (1½%) or (ii) the maximum allowable legal rate. Customer shall pay all such interest, as well as all costs and reasonable attorneys' fees incurred by Licensor in the collection of such delinquent sums. Notwithstanding the foregoing, Customer may dispute an invoice and withhold the whole or any part of any payment to such extent as may be necessary to protect Customer from any inaccuracy in, or lack of agreed-to documentation for, the invoice, and no interest shall accrue for any amounts so withheld. In that event, Customer will promptly provide notice to Licensor setting out the basis for its decision to withhold payments under this Section. If, upon receiving notice, Licensor disputes Customer's reasons for withholding payment, the parties will attempt to resolve any such dispute promptly and in good faith in accordance with the provisions of Section 13. Unless the parties have agreed to an alternative solution, payment for undisputed portions of the invoice shall be paid when due and the disputed portion will be made when the grounds for withholding such payment are removed. Payment of a milestone shall not waive any of Customer's other rights

with respect to the associated Services, including the right to re-inspect the work and to require Licensor to remedy malfunctions or defects identified at a later date provided such malfuncitons or defects are within the Warranty Period and covered by the warranty provisions of this Agreement or the Support Services to be provided under this Agreement. Payment also does not preclude Customer from pursuing any other rights or remedies it may have under this Agreement, in law or in equity.

        C.   <u>Project delays</u>.

        (i)   The parties will use commercially reasonable efforts to administer and perform their respective obligations under this Agreement in accordance with the performance schedule as set forth in the SOW, Exhibit 1, and any other Statement of Work, project plan or timeline otherwise agreed to by the parties in writing (collectively the "Performance Schedule"), and shall timely meet each milestone set forth therein. Licensor shall promptly notify Customer in writing if it believes it or any subcontractor is (or will reasonably be expected to be) the cause of any delay in the performance schedule or of an increase in the amount of services required to complete the Project. Each such notice will include the estimated impact of such delay on the Performance Schedule for the Project, and the nature and scope of additional services required. Giving such notice shall not relieve Licensor of its obligations, nor shall receipt of such notice by Customer constitute a waiver of any kind.

        (ii)   <u>Consequences of a Delay</u>. If a delay in the Performance Schedule is caused (or reasonably expected to be caused) by Licensor or any subcontractors, Licensor shall, at its expense, take all commercially reasonable steps necessary to return the Project to the Performance Schedule, including commitment of such additional resources and personnel as shall be reasonably necessary to ensure that such delay does not result in the slippage of the Performance Schedule. Licensor shall cooperate with Customer in such efforts, including by disclosing the details of such additional resources and personnel commitments. Licensor and Customer shall exercise all good faith commercially reasonable efforts to mitigate or limit the delay and damages to the each other and the Project.

        D.   <u>Change Order Process</u>. From time to time during the Term, Customer or Licensor may wish to request changes, modifications or enhancements (each, a **"Change"**) to the Services or deliverables. A party may request a Change to the Services or deliverables by delivering a written notice (a **"Change Order Request"**) to another party specifying in detail the proposed Change and the reasons therefor. For avoidance of doubt, Customer may elect to submit a Change Order Request to S&S.

Within seven (7) Business Days after receipt of the Change Order Request, the receiving party will deliver to the requesting party a written response to the Change Order Request (a "**Change Order Response**"). Such response must include sufficient details to enable the requesting party to assess the anticipated impact of the Change, including a description of how and when the Change would be implemented, the effect of the Change, if any, on the Services, an analysis of the risk associated with the Change, a statement of fees proposed to be charged (including one time and ongoing fees) and any other details reasonably requested. If a party cannot deliver a Change Order Response within such seven (7) Business Day period, it will deliver a statement setting forth the date by which it will deliver the Change Order Response in that it will not impact the project schedule negatively. No party will refuse to issue a Change Order Response to any Change Order Request.

If a party responds in the Change Order Response that it does not agree to such Change, then requesting party's applicable Change Order Request is deemed to have expired. If, after receiving a Change Order Response, the requesting party desires to make such Change, then it will provide written direction to the requesting party (a **"Change Order"**) to authorize making the Change in accordance with the terms of the Change Order Response. A Change Order will not be effective, and no party will implement a Change, unless such Change Order has been executed by Customer and Licensor in accordance with this Agreement. A Change Order will not amend this Agreement but it may amend the SOW.

Unless otherwise set forth herein, the requested party may charge the requesting party reasonable fees for such Changes, as long as such fees are agreed to in writing. Notwithstanding the foregoing, Licensor will not charge Customer for: (i) preparing Change Order Responses; and (ii) making any changes required in order for Licensor to comply with its obligations under this Agreement.

Except for the authority granted in this Section 4(E), any changes to this Agreement must be enacted by written amendment signed by authorized representatives of each of the parties.

5.   INTENTIONALLY LEFT BLANK

6.   OWNERSHIP; LICENSE

A.   <u>Ownership</u>. Licensor and its third-party licensors shall have and retain sole and exclusive ownership of all right, title and interest in and to the Application Software, including ownership of all trade secrets, trademarks, patents, copyrights and all other intellectual property or other proprietary rights pertaining thereto, subject only to the license rights and privileges expressly granted to the Customer herein. Customer agrees that Licensor and its third-party licensors shall have sole ownership of all improvements and modifications made to the Application Software, including without limitation those made in connection with any Customization, regardless of whether such improvements and modifications are made by Licensor alone or together with the Customer or third parties. Except as otherwise provided in this Agreement, Licensor is under no obligation to create a Customization. Upon request and without the necessity for further consideration, Customer shall take all necessary actions, including without limitation executing such further documents as may be requested by Licensor, to perfect or assign ownership of the Application Software and Customizations to Licensor.

B.   <u>License</u>. Subject to the terms and conditions of this Agreement, Licensor grants to Customer a personal, nonexclusive, nontransferable, limited, perpetual (except as such license may be terminated pursuant to Section x) right and license to use the Application Software on a bundled basis only and solely for Customer's internal business purposes (including use internally on behalf of Customer's affiliates) . A condition for the granting of all licenses provided under the terms of this Agreement is the payment by Customer of all applicable license fees. With the exception of Cognos, the Application Software is for use by Customer at the defined Current User Level and the Customer's Current Account Volume (with an organic active Account growth rate of 5% per annum, starting at the contract date) specified herein. The parties agree that, for purposes of this Agreement, Customer's current Account volume is considered to be 115,000 Accounts (the **"Current Account Volume"**). The parties agree that, for purposes of this Agreement, the maximum number of concurrent Users allowed to simultaneously use the Application Software is 30 (the "**Current User Level**"). Customer agrees that, if Customer expands the number of concurrent Users beyond the Current User Level, or if Customer exceeds the Current Account Volume by more than the 5% per annum ("**Inorganic Growth**"), Customer shall pay an additional license fee. The additional per User license fee and the additional Current Account Volume license fees for the two-year period following Go Live is set out in Exhibit 1, and after this period the fee shall be subject to pricing at Licensor's then-current rates. Customer shall provide Licensor with an annual report specifying the then-Current User Level and Current Account Volume.

(i)   <u>Cognos.</u> For greater certainty, the license rights granted in Section 6B of this Agreement in respect of the Cognos software and the enquesta Software may not be licensed separately on a stand alone basis. In the event that the license to enquesta software is terminated, the applicable Cognos software license shall also concurrently terminate automatically.

(ii)   <u>Cognos Terms</u>. The Cognos licenses provided as part of the Application Software in relation to the enquesta software are as follows: 1 Cognos BI Administrator Authorized User Licenses (D06WQLL); 3 Cognos BI Professional Author Authorized User Licenses (D06XLLL); and an unlimited number of Cognos BI Enhanced Consumer Authorized User Licenses (D06ZMLL).

All such licenses are restricted licenses which means that the Cognos software may only be used with the enquesta software as applicable.

Customer acknowledges that IBM's relevant standard licensing and use terms, as amended by IBM from time to time, apply to its use of Cognos and that Customer is bound by such licensing and use terms. The standard licensing and use terms shall include anything described as a "Licensing Information Document" by IBM and all licensing files and NOTICE files that are included with the Cognos software by IBM or as may be supplied by IBM to Customer from time to time. To the extent that IBM provides Licensor with any licensing and use terms or amendments thereto in relation to the Cognos software to be provided to Customer, Licensor shall provide those to Customer.

C.   Additional License Terms.

(i)   Customer is permitted to run one copy of the Application Software in an active, production environment. The Customer is permitted to have as many copies as necessary for backup and disaster recovery purposes.   The Customer may use the Application Software for active but non-production purposes, including testing and training purposes, which can run the Application Software concurrently with the active, production environment. Any further active copies of the Application Software are subject to additional licenses and fees, except Customer is permitted to run the Application Software in an active test environment for disaster recovery testing purposes once each calendar year at no additional license cost.   All permitted copies of the Application Software may be used only during the term of the applicable licenses and all such copies of the applicable portions of the Application Software must be destroyed upon the termination of the applicable licenses in accordance with the provisions of Section 11.

(ii)   Customer may prepare a reasonable number of copies of the Documentation for internal use only, and may create derivative works (as that term is defined in the U.S. Copyright Act, 17 U.S.C. §101) of the Documentation solely by supplementing the Documentation with information regarding Customer's internal processes and procedures and with Customer's trademarks, service marks or trade names, all of the foregoing only for internal distribution to Customer's employees, affiliates, consultants and agents, and only for training purposes, provided that the copies and derivative works of Documentation may be used only during the Term of the license and the copies shall be destroyed or returned to Licensor upon termination of the license in accordance with the provisions of Section 11. All copies of the Application Software and Documentation must contain the proprietary notices appearing on the copies as initially furnished to Customer. Except as permitted in this Agreement, Customer shall not copy or otherwise reproduce the Application Software or the Documentation, in whole or in part, without the prior written consent of Licensor.

(iii)   The Application Software is licensed in object code only. The Customer shall have no rights to the source code except as expressly specified in this Agreement.

(iv)   The Application Software is being licensed for use as a single product. Unless otherwise set forth in this Agreement or agreed to by the parties, the various components of the Application Software shall not be disengaged from one another in any way.

(v)   Customer shall take all reasonable steps to preserve the confidential and proprietary nature of the Application Software and Documentation which shall be no less than those steps that Customer takes to protect its own confidential and proprietary information.

(vi)   Customer shall limit access to the Application Software to Users, employees, auditors, consultants and agents of Customer who need access to the Application Software in order for the Customer to use the Application Software as permitted herein.

(vii)   Customer shall be responsible for purchasing and licensing the System Equipment and Third-Party Applications, and Licensor shall not be responsible for delays in the Performance Schedule due to Customer's failure to timely purchase and/or license those materials. Unless otherwise agreed to in a Change Order, Customer acknowledges that Licensor is neither providing nor installing the System Equipment and Third-Party Applications.

(viii)   The parties acknowledge and agree that the Application Software includes third-party software sub-licensed by Licensor for use in the Application Software. The terms and conditions of Sections 8(G)[, 8(H)], 8(I), 10, and 14 of this Agreement shall inure to such third-party licensor's benefit. Subject to the license and sublicense rights granted to Licensor in connection with its use and distribution as part of the Application Software, the third-party software owner retains right, title and interest in such software, including statutory enforcement rights in the event of infringement.

(ix)   Customer agrees that it will not sell, assign, transfer, disclose, sublicense, or otherwise make the Application Software available to others without the prior written consent of Licensor. Unless otherwise set forth in this Agreement, Customer shall not: (i) create derivative works of the Application Software, meaning that the Customer shall not create any software or other works that are based upon the Application Software or recast, transform or adapt the Application Software in any manner; or (ii) disassemble, decompile, "reverse engineer" or otherwise attempt to access the source code of the Application Software for any purpose. Nothing in

this Agreement shall be construed to prohibit Customer from integrating Third Party Applications with the Application Software.

(x)   Third-Party Applications. Licensor shall cause the Application Software to become and remain fully inter-operable with the current versions of the Third-Party Applications as of the Effective Date. Licensor shall carry forward such inter-operability into any Customizations. If the Application Software ceases to be inter-operable with a Third Party Application because of a change to the Third-Party Application, Licensor shall use commercially reasonable efforts to restore inter-operability with the Third-Party Application pursuant to a Change Order negotiated by the parties in accordance with Section 4(E). Notwithstanding any of the foregoing, Licensor shall not be responsible for a failure to maintain such inter-operability with any Third-Party Application whose Application Program Interface ("API") ceases to be transparent to others and for which any changes in future releases of the API cease to be documented and made publicly available. The Third-Party Applications as of the Schedule Effective Date are set forth in the SOW. Such list may be revised from time to time by mutual agreement of the parties.

Customer agrees that any upgrades, additions or replacements to its hardware or third party software may have a detrimental effect on the ability of the Application Software to function properly. Where the Customer wishes to substitute any hardware or software for hardware or software that does not form a part of those listed in the SOW, as amended pursuant to the terms above, the Customer must give Licensor written notice in advance of any material change in its hardware types or performance specifications so as to permit Licensor to (i) either confirm that such hardware and/or software is compatible with the Application Software or, (ii) state that such hardware and/or software is not/may not be compatible with the Application Software. Licensor is under no obligation to provide support to hardware and/or software that Licensor has stated is not/may not be compatible with the Application Software. Licensor is under no obligation to have the Application Software be compatible with such hardware or software, but shall take into account Customer's request when it is developing Major Releases of the Enquesta Software.

7.   SUPPORT SERVICES

A.   Minimum Term. Licensor shall be ready and willing to provide the Support Program to Customer during the Post Go Live Period.

B.   Support Program. Beginning at implementation of the first enQuesta environment, Customer is required to participate in the Support Program ("**Support Program**") for a period of twelve (12) months. Upon completion of this twelve (12) month period, participation in this program is required to continue to receive support from Licensor. Licensor shall remain ready, able and willing to use commercially reasonable efforts to provide the Support Program for the Post Go Live Period, including without limitation the following: (a) the provision of Minor Releases and Major Releases and updated Documentation related to the Application Software, and (b) assistance by internet, telephone, site visits, or otherwise with respect to the Application Software, including without limitation (i) clarification of functions and features of the Application Software; (ii) clarification of the Documentation; (iii) guidance in the operation of the Application Software; (iv) error verification, analysis and correction by internet and/or telephone; and (v) correction of any malfunction of the Application Software reported to Licensor by Customer that prevents the Application Software from performing in all material respects in accordance with the Specifications, including ensuring that the components comprising the Application Softwareremain fully compatible and interoperable with each other and with the other parts of the Information System. Guidelines of this Support Program are more fully defined in Exhibit 2.

The Support Services described herein will be invoiced on a prorated basis from implementation of the first enQuesta environment through the end of then-current calendar year and thereafter annually in advance on a January through December calendar-year basis. Customer's participation in the Support Program shall automatically renew on an annual basis and shall (subject to the payment of applicable fees) be valid on a calendar year basis. In the event Customer wishes to cancel participation in the Support Program, Customer must notify Licensor in writing on or before December 1st of the year preceding the year in which the Customer wishes to cancel participation. Licensor reserves the right to modify the Support Program throughout the Term so long as such modifications do not materially degrade the Support Services provided hereunder; such modifications may only apply prospectively and shall not apply to a current year. Any modification proposed by Licensor to the Support Program shall be provided to Customer in writing on or before November 1st of the year preceding the year it is to become effective. Licensor

shall supply front-line support for the Application Software where S&S shall typically be the primary resource, but Customer acknowledges that where an issue relates to Cognos or MicroFocus, Licensor may be obligated to have IBM or MicroFocus, as the case may be, provide further support, in which case the specific terms of the Support Program may not apply; in no case, however, will Customer pay additional fees to receive the Support Services from IBM or MicroFocus except as the Support Program may explicitly state otherwise.

C.   Exclusions from Support Services. Licensor shall not be required to perform corrective maintenance as part of its Support Services with respect to Application Software malfunctions caused by:

(i)   Customer's modifications to the Application Software unless performed at the direction of Licensor;

(ii)   Customer's failure to use updates, enhancements or program error corrections, if such failure is due to the actions or omissions of Customer;

(iii)   Failure to use the Application Software in accordance with this Agreement; or

(iv)   A malfunction in any System Equipment or Third-Party Application, unless that System Equipment or Third-Party Application was supplied by Licensor.

D.   Enrollment & Pricing. Customer agrees to begin participation in the Support Program commencing at implementaiton of the first enQuesta environment. Applicable pricing for the Support Program are set forth in Exhibit 1. These prices are subject to annual increase not to exceed 3 percent per annum through the Post Go Live Period. If Customer elects to discontinue its participation in the Support Program, Licensor shall be under no obligation to continue providing maintenance services past the period for which Customer has paid for enrollment in the Support Program.

E.   Major and Minor Releases. Licensor shall - at its discretion and/or when made available by the applicable third party licensor - provide Major Releases and Minor Releases to Customer as part of Support Services, provided that Customer is participating in the Support Program.

8.   REPRESENTATIONS AND WARRANTIES; DISCLAIMERS

A.   Application Software. Licensor warrants that all Application Software products licensed and sublicensed under this Agreement will perform in material compliance with the Documentation and Specifications for a period of ninety (90) days after the date of Final Acceptance (the "**Warranty Period**"). Licensor agrees to use commercially reasonable efforts to fix any defect that occurs or becomes apparent during the Warranty Period, including timely correction or replacement of the defective module or component of the Application Software, provided that Licensor must receive the notice of defect during the Warranty Period including sufficient detail to allow Licensor to verify and reproduce the defect. Licensor also warrants that, for the Warranty Period: (i) the Application Software will be fully compatible and interoperable with the other parts of the Information System, including without limitation the System Equipment; (ii) the separate modules/components of the Application Software, are and shall be compatible and fully interoperable with each other; and (iii) any additional or replacement components provided by Licensor will conform in all material respects to all requirements of the Specifications and be fully compatible and interoperable with the rest of the Information System as described in (i) and (ii).

B.   Authority; Compliance with Law; Consents; Services. Licensor further represents and warrants the following: (i) it has full power to enter into this Agreement, to carry out its obligations; (ii) it is properly registered to do business; (iii) the Services will be performed in a timely, diligent, professional and workmanlike manner; (iv) Licensor's personnel will be qualified and trained;. S&S represents and warrants that it is a corporation duly organized and validly existing under the laws of Ontario. S&S represents and warrants that it is a corporation duly organized and validly existing under the laws of Vermont.

C.   Certain Customer administrative requirements. For the duration of the Project, Licensor shall comply, and shall cause its subcontractors and personnel to comply, with Customer's reasonable safety and security policies and procedures and codes of conduct when such personnel are onsite at Customer facilities, as same may be updated by Customer from time to time upon written notice to Licensor. Customer shall supply copies of any such policies, procedures, and codes to Licensor in advance.

D.   Survival. Licensor's representations and warranty obligations with respect to the Application Software shall survive delivery, inspection, test, acceptance, and use.

E.   Customer further acknowledges that modifications made to the Application Software by Customer, and not at the direction of Licensor, will void Licensor's warranty of the Application Software, unless specifically stated otherwise in writing by Licensor. Customer also acknowledges that Licensor cannot be responsible for the Customer's use of third-party software or hardware products that are (i) not sub-licensed pursuant to this Agreement; and (ii) where Licensor did not provide, or configure the systems. For greater certainty, where Licensor configured the systems but did not provide the third party software or hardwar, Licensor shall only be responsible under the warranty provisions of this Agreement or to provide Support Services to the extent a default arises as a result of an error in such configuration.

F.   Except for the warranties expressly set forth in this Agreement, Licensor disclaims and expressly waives all warranties, express and implied, including without limitation, any implied warranty of fitness for a particular purpose. Customer acknowledges that no representations other than those contained in this Agreement have been made with respect to the goods or Services to be provided under this Agreement, and that Customer has not relied on any representation or warranty not expressly set out herein.

G.   LIMITATION OF LIABILITY. IN NO EVENT SHALL LICENSOR OR CUSTOMER BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, MULTIPLE, OR PUNITIVE DAMAGES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, EVEN IF ADVISED OF THE POSSIBILITY THEREOF. WITH THE EXCEPTION OF: (I) ANY INJURY, BODILY INJURY, SICKNESS, OR DEATH, OR TO INJURY TO OR DESTRUCTION OF PROPERTY OR INTELLECTUAL PROPERTY INFRINGEMENT CLAIMS; (II) A PARTY'S BREACH OF ITS OBLIGATIONS OF CONFIDENTIALITY OR INFORMATION SECURITY HEREUNDER; (III) A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT; (IV) EACH PARTY'S OBLIGATIONS UNDER SECTION 31; OR (V) CUSTOMER'S PAYMENT OBLIGATIONS, IN NO EVENT SHALL THE TOTAL CUMULATIVE AND AGGREGRATE CONTRACTUAL LIABILITY OF S&S FOR ANY CLAIM ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT, , EXCEED THE TOTAL AMOUNT OF FEES PAID BY CUSTOMER TO LICENSOR.

No party shall be liable for any lost profits, lost business opportunities or any other failure to realize efficiencies or economic benefits of any kind despite being made aware of such potential lossesFurthermore, Customer acknowledges that it is solely responsible for backing up its data, and that Licensor has provided no instructions to Customer in relation to the storage and proper backing up of Customer's data.

Licensor and Customer shall have a duty to mitigate damages for which the other may become responsible.

9.   SOURCE CODE ESCROW

Upon Client request throughout the Term, S&S shall supply a sealed Source Code tape for the Application Software (including any upgrades) licensed hereunder. In such event, the sealed Source Code tape shall be provided to an escrow agent pursuant to an escrow agreement mutually agreeable to the Parties. Client shall be responsible for all fees payable to the escrow agent or otherwise incurred as a result of the escrow agreement. The escrow agreement shall specify that the Source Code may be made accessible to the Client only in the event that S&S (A) whether directly or through a successor or affiliate, shall cease to be in the software business, (B) upon no less than sixty (60) days written notice (in addition to any notice requirement set forth in Section XII.B refuses to fulfill its support obligations under this Agreement, or (C) should be declared bankrupt or insolvent by a court of competent jurisdiction. The Source Code supplied pursuant to this Section shall be subject to each and every restriction on use and disclosure set forth in this Agreement, and the Client acknowledges that the Source Code and its associated documentation is the property of S&S and will use its best efforts to prevent unauthorized use or disclosure of the Source Code. The Parties acknowledge that after Go-Live, this section only applies so long as Client has not terminated the Support Services.

10.   CONFIDENTIALITY; INFORMATION SECURITY

A.   <u>Confidential Information</u>. During the Term, the parties may provide each other with Confidential Information. Receiver will maintain the confidentiality of the Confidential Information and not disclose it to any third party, except as authorized by Discloser in writing; restrict disclosure of the Confidential Information to its employees who have a "need to know" and not copy or reproduce the Confidential Information except as reasonably necessary to perform its obligations, to use or maintain the Information System, or to otherwise exercise its rights hereunder, and all such copies shall reproduce all of Discloser's confidential notices thereon; take necessary and appropriate precautions to guard the confidentiality of the Confidential Information, including informing its employees who handle the Confidential Information that it is confidential and is not to be disclosed to others, and these precautions will be at least of the same degree of care that Receiver applies to its own confidential information, which will not be less than reasonable care; and use the Confidential Information only in furtherance of the performance of this Agreement. Confidential Information is and will at all times remain the property of Discloser, and no grant of any proprietary rights in the Confidential Information is given or intended, including any express or implied license, other than the limited right of Receiver to use the Confidential Information in the manner and to the extent permitted by this Agreement. For the avoidance of doubt, Receiver may: (i) disclose any Confidential Information to its affiliates and their respective directors, officers and employees, provided that such affiliates comply with the confidentiality obligations set forth in this Section 10; (ii) disclose any Confidential Information to its legal counsel; and (iii) disclose Confidential Information where Receiver is requested by any court or other governmental body or when otherwise required by law, but in such case Receiver shall promptly inform Discloser and cooperate with it to limit the disclosure

B.   <u>Return of Confidential Information</u>. Receiver will, within ten (10) days after a written request from Discloser, return any or all Confidential Information, including any or all copies, summaries, and extracts, or, if so directed by Discloser, destroy any or all such Confidential Information, except that Receiver may maintain one archival copy of the Confidential Information. Receiver will also, within ten (10) days of a written request by Discloser, certify in writing that Receiver has satisfied its obligations under this Section. The foregoing will not limit Receiver's exercise of its rights hereunder, including the right to use the Confidential Information to use or maintain the Information System.

11.   TERMINATION, CANCELLATION OR MODIFICATION

A.   Customer shall have the right to suspend or terminate this Agreement in whole or in part at any time for any reason upon thirty (30) days written notice to Licensor. Customer shall be liable to Licensor for payment obligations that are due through the date of termination or suspension and for reasonable direct costs resulting from an unforeseen and abrupt suspension or termination, including compensation of Licensor personnel while they are retained during suspension– provided, however, that Licensor shall use commercially reasonable efforts to minimize these costs. In no event shall Customer be liable for lost profits or unabsorbed overhead. Any suspension lasting longer than six (6) months shall be treated as a termination for convenienceof the affected work. The parties agree that all fees paid and payable with respect to that part of the Agreement which is terminated for convenience up to the effective date of notice under this subsection are non-refundable.

B.   If any party is in material breach of any of the terms and conditions of this Agreement, the aggrieved party shall give written notice thereof, including a reasonably detailed statement of the nature of such breach, to the breaching party. The breaching party will have thirty (30) days after notice is given to cure such breach. However, if the breach cannot reasonably be cured within thirty (30) days, the breaching party shall (i) as soon as reasonably practicable provide a written estimate of the time needed to cure such breach; (ii) commence actions to cure such breach within ten (10) days of notice from the aggrieved party; and (iii) diligently continue to prosecute such cure to completion. If, thirty (30) days after notice is given, the breaching party has failed to cure, commence to cure in a timely manner, or at any point thereafter fails to diligently prosecute such cure to completion, the aggrieved party may terminate this Agreement or suspend its performance under the Agreement for as long as the breach remains uncorrected, and avail itself of any and all remedies available under this Agreement.

12.   SEVERABILITY

In the event that a court of competent jurisdiction holds that a particular provision or requirement of this Agreement is in violation of any applicable law, each such provision or requirement shall be enforced only to the extent it is not in violation of such law or is not otherwise unenforceable and all other provisions and requirements of this Agreement shall remain in full force and effect.

13.   DISPUTE RESOLUTION

This Section governs any dispute arising from or related to the subject matter of this Agreement, except any dispute involving Confidential Information or Intellectual Property infringement (in which case the non-breaching party is not barred from directly pursuing any legal remedy available to it, including litigation). In the event of a dispute, and prior to the filing of any suit with respect to such dispute, Licensor and Customer shall work together in good faith in the following manner:

        (i)   First, the involved parties will attempt to resolve the matter informally by discussions among the persons who are responsible for the particular issue. If the parties are not successful in resolving an issue pursuant to such process, or if the issue is material and one of the parties believes the parties will not be successful resolving such issue or dispute pursuant to such process, then any involved party may issue a formal written notice (a **"Dispute Notice"**) that a dispute (**"Dispute"**) has arisen.

        (ii)   The parties will thereafter use their best efforts to arrange personal meetings and/or telephone conferences as needed, at mutually convenient times and places, between their negotiators at the following successive management levels, each of which will have a period of allotted time as specified below in which to attempt to resolve the dispute:

	S&S	CUSTOMER	ALLOTTED TIME
First Level	Refer to SOW, Section 6.3.4 (Conflict Escalation Process)	Refer to SOW, Section 6.3.4 (Conflict Escalation Process)	Refer to SOW, Section 6.3.4 (Conflict Escalation Process)
Second Level	S&S General Manager	Customer CFO	15 Business Days

        (iii)   The allotted time for first-level negotiations will begin on the date the Dispute Notice is given. If a resolution is not achieved by the first-level negotiators at the end of their allotted time, then the allotted time for the negotiators at the next management level will begin immediately.

        (iv)   If the dispute remains unresolved following the above negotiations, then the parties will participate in mediation, which will be conducted under the rules of the American Arbitration Association ("AAA") for non-binding mediation of commercial disputes. Any mediation will be held in Lexington, Kentucky or in such other location agreed upon by the parties. If the parties cannot agree upon a mediator within ten (10) Business Days following the failure of second-level negotiations, the mediator will be selected by the AAA. The parties shall engage in mediation in good faith and use commercially reasonable efforts to resolve their dispute via mediation, including by giving their representative at mediation binding authority to settle the dispute and making such representatives reasonably available for sessions. The first mediation session shall be held as soon as reasonably practicable, and in any event no later than forty-five (45) days following the failure of second-level negotiations. Each party shall be responsible for its own attorneys' fees and all costs of mediation shall be borne equally by the parties. No party may commence litigation with respect to the matters in Dispute until after the completion of at least the initial mediation session, unless the involved party refuses to mediate or does not reasonably cooperate in scheduling and holding the session.

        (v)   Continued Performance. Except as otherwise provided in this Agreement, each party agrees to continue performing its obligations under this Agreement while any Dispute is being resolved, except to

the extent the issue in Dispute precludes or substantially impairs performance or continued performance (provided that any Dispute over payment will not be deemed to preclude performance) and without limiting any party's termination rights under this Agreement.

14.   INDEMNIFICATION

A.   Indemnification The Risk Management Provisions of RFP No. 19-2014 (Exhibit A&B) are incorporated herein by reference as if fully stated. Copies of the required Certificates of Insurance shall be provided to OWNER as required therein.

B.   <u>Intellectual Property Infringement</u>. Without limiting the obligations in this Section 14, if all or any part of the Application Software becomes, or in Licensor's reasonable opinion is likely to become, the subject of an infringement or misappropriation claim, Licensor will, in addition to honoring the obligations in this Section 14, at its sole option and expense: (i) procure for itself and Customer to the extent required the right to use the allegedly infringing material as specified in this Agreement; or (ii) modify the allegedly infringing material so that it is non-infringing without materially degrading its quality, performance and functionality, or replace same with a substitute of substantially equal quality, performance and functionality, in which case Customer will immediately cease use of the allegedly infringing materials and any license to same shall be deemed terminated and replaced with a license to the new (modified or replaced) version.

The foregoing subsection C. states Licensor's entire liability, and the Customer's exclusive remedy, with respect to any claims of infringement of any copyright, patent, trade secret, or other intellectual property interest rights relating to the Information System, or any part thereof, or use thereof.

C.   <u>Process</u>. Licensor and Customer shall promptly notify each other of any claim or proceeding for which it is requesting indemnification and shall give the indemnifying party full and complete authority, information, and assistance to defend such claim or proceeding. The indemnifying party shall have sole control of the defense of any claim or proceeding and all negotiations for its compromise or settlement and shall be obliged to provide the indemnity, subject to the following restrictions:

(i)   The indemnifying party will not consent to the entry of any judgment or enter into any settlement without the other's prior written consent unless: (1) the judgment or proposed settlement involves only the payment of monetary damages by the indemnifying party, and does not impose injunctive or other equitable relief upon the indemnified party; (2) there are no additional third-party claims that are reasonably likely to be made against the indemnified party, (3) there are no likely adverse impacts on existing third-party claims as a result of the judgment or proposed settlement; and (4) the indemnified party will have no liability with respect to such judgment or proposed settlement. In cases where consent is required, it will not be unreasonably withheld.

(ii)   With the exception of the IP infringement indemnity, the indemnified party shall have the right to revoke the indemnifying party's control over the conduct of any such protest, defense or appeal if: (a) the claim relates to a Data Security Breach; (b) the protest, defense, or appeal involves any Regulatory Authority; or (c) in the indemnified party's reasonable judgment, such protest, defense or appeal jeopardizes the indemnified party's continued right or privilege to conduct business. If the indemnified party revokes the indemnifying party's control over the conduct of any such protest, defense or appeal, such revocation shall be effective immediately upon its receipt by the indemnifying party, and the latter shall take all such reasonable action, and execute such necessary documents, as requested by the indemnified party to withdraw from the protest, defense or appeal and/or otherwise cede control to the indemnified party. The indemnifying party shall not be reimbursed for any costs or expenses paid or incurred by it should the indemnified party revoke the indemnifying party's control at any time.

(iii)   The parties will cooperate in the compromise or defense of any indemnified claim, reserving until resolution of each such claim any issues between them concerning allocation of responsibility, liability or obligations to indemnify. Except to the extent necessary to preserve claims against each other, the parties will present a united defense to such third party claims. All issues relating to whether Customer is entitled to indemnification under this Agreement or the relative responsibility, liability or blameworthiness of parties will be resolved after the third party claim is resolved. Subject to the foregoing, to the extent that an indemnified party is found to be at fault and apportioned liability by a decision of a court of competent jurisdiction, adjudicator, or in a

settlement agreement agreed to by the parties, the indemnified party shall promptly reimburse the indemnifying party for its proportionate share of all amounts paid by the indemnifying party pursuant to the latter's fulfillment of its indemnity obligations. The parties acknowledge and agree that any statute of limitations relating to claims, actions or causes of action between each other relating to any third party claims will be tolled during the pendency of such third party claim.

D. <u>Third-Party Intellectual Property</u>. A third-party licensor of Licensor may assume Licensor's obligations under Sections 14(C) and (D) where (a) the alleged intellectual property infringement relates to that third party's software; and (b) (i) the third party agrees to be bound by the provisions of those Sections or (ii) the software is Cognos or MicroFocus, in which case that third party is permitted to have sole control of the defense of any claim or proceeding and all negotiations for its compromise or settlement, provided that Licensor shall continue to be liable and responsible for all other aspects related to the indemnity.

15. INSURANCE

The Risk Management Provisions of RFP No. 19-2014 (Exhibit A&B) are incorporated herein by reference as if fully stated. Copies of the required Certificates of Insurance shall be provided to OWNER as required therein except for the requirement in c. for insurance that is specific to this Agreement and/or the requirement to have a separate policy; notice of cancellation by the insurer shall be provided with at least 30 days advance notice; and Licensor is not permitted to supply copies of the policy to Customer. These terms amend the document attached.

16. FORCE MAJEURE

No party shall be responsible for delays or failures in performance resulting from a Force Majeure. If either Licensor or Customer becomes aware of a Force Majeure that will materially delay performance, it shall: (a) provide prompt written notice of the Force Majeure to the other party (and in no event later than ten (10) days) after it discovers the Force Majeure), giving a detailed written explanation of the event, including an estimation of its expected duration and the probable impact on the performance of its obligations; (b) exercise all reasonable efforts to continue to perform its obligations; (c) expeditiously take action to correct or cure the Force Majeure; provided, however, that settlement of labor disputes will be completely within the sole discretion of the party affected by such labor dispute; (d) exercise all good faith commercially reasonable efforts to mitigate or limit damages to the other party; and (e) provide prompt notice to the other party of the cessation of the Force Majeure. If a Force Majeure occurs during the Project, the parties will execute a Change Order to extend the Performance Schedule for a time period that is reasonable under the circumstances. "**Force Majeure**" means an event, circumstance, or act of a third party (e.g., an act of god, an act of the public enemy, an act of a government entity, strike or other labor disturbance, hurricane, earthquake, fire, flood, severe snow or ice storm, epidemic, disease, embargo, war, and riot), that is beyond a party's reasonable control and which, by the exercise of reasonable diligence, the affected party is unable to prevent, avoid, mitigate, or overcome.

17. NOTICES; PARTY REPRESENTATIVES

All notices required or permitted to be given hereunder shall be in writing and shall be delivered in hand or by a nationally recognized overnight courier, to the parties at the following addresses or other such address or addresses as to which a party shall have notified the other party in accordance with this Section:

If to Licensor:	If to Customer:
Systems & Software, Inc.	Lexington Fayette Urban County Government.
426 Industrial Avenue, Suite 140	200 East Main Street
Williston, Vermont 05495	Lexington, Kentucky 40507
Attention: General Manager	Attention: Director of Revenue, LFUCG Div. of Revenue

Director of Revenue, LFUCG Divison of Revenue, shall act as representative of the Customer, and the General Manager shall act as representative of Licensor with respect to this Agreement (each a "**Representative**"). These Representatives, or their designees, shall have the authority to transmit instructions, receive information, interpret and define policies and make decisions with respect to the Project. Additional or substitute Representatives of Licensor and the Customer, as well as any designees of a Representative, must be added by written notice of one party to the other. For clarity, any notice to S&S by Customer under this Agreement shall constitute notice to S&S.

18.   INDEPENDENT CONTRACTORS

The relationship of Licensor to Customer is that of an independent contractor, and nothing herein shall be construed to create a partnership, joint venture, franchise, employment, or agency relationship between Licensor and Customer. Neither Customer nor Licensor shall have any authority to enter into agreements on behalf of the other or to bind or obligate the other in any manner. For clarity, S&S shall be deemed to have authority to bind or obligate S&S under this Agreement, and vice versa. Consent given to Customer by S&S under this Agreement shall be deemed consent by S&S, and consent given to Customer by S&S under this Agreement shall be deemed consent by S&S. A waiver or consent given to S&S by Customer under this Agreement shall be deemed to have also been given to S&S, and vice versa.

19.   NON-SOLICITATION

During the Term of this engagement, and for a period of one (1) year following its expiration or termination, Licensor and Customer agree that neither will directly or indirectly solicit, employ or otherwise engage any employees (including former employees) or contractors of the other party ("**Personnel**") who were involved in the engagement. Notwithstanding the foregoing, Customer shall have the right to employ or engage Licensor Personnel in the event of a Release Trigger for the purpose of using or maintaining the source code for permitted purposes under this Agreement. In that event, Licensor agrees to release such Licensor Personnel from any contractual obligations that would preclude them from assisting Customer in such a manner.

20.   NAMING THE CUSTOMER AS A REFERENCE; PRESS RELEASE

Customer agrees that Licensor may, at its option, name Customer as a reference for prospective customers and identify Customer as a customer for Licensor's promotional purposes, including without limitation in press releases, on Licensor's web site, and in presentations to prospective customers. Where Licensor is required to provide details of this Agreement pursuant to securities laws and/or stock exchange requirements, Licensor is permitted to provide no more than the minimum required information where Customer has not provided its consent to a broader press release.

21.   GOVERNING LAW; JURISDICTION; VENUE

This Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Kentucky, without giving effect to the principles of conflicts of laws. The parties irrevocably agree that any legal action or proceeding arising under, or relating to, this Agreement shall be brought in any state or federal court located in Fayette County, Kentucky. Each party irrevocably consents to exclusive jurisdiction and venue in the state and federal courts sitting in Fayette County, Kentucky, and agrees that final judgment in any action or proceeding brought in such courts will be conclusive and may be enforced in any other jurisdiction by suit on the judgment (a certified copy of which will be conclusive evidence of the judgment) or in any other manner provided by law. Each party irrevocably waives any objection that it may now have or in the future have to such jurisdiction as the proper forum and venue for any action or proceeding arising under, or relating to, this Agreement.

22.   ENTIRE AGREEMENT

This Agreement, including the Exhibits attached hereto, constitutes the entire agreement between the parties with respect to the Information System. Accordingly, all prior agreements, representations, statements, negotiations and undertakings are hereby superseded. Further, the parties acknowledge and agree that the "quote for project management services" previously entered into between the parties (the "Quote") is hereby replaced and superseded in its entirety and is no longer of any force or effect. All Services previously performed by S&S under the Quote shall be governed by the terms of this Agreement. Any payment obligations of Customer under the Quote are hereby extinguished and null and void.

23.   BINDING EFFECT; ASSIGNMENT

This Agreement shall be binding upon and inure to the benefit of Licensor and Customer and their permitted successors and assigns. Neither Licensor nor Customer may assign this Agreement or any right or interest under this Agreement, nor delegate any work or obligation to be performed hereunder, without the other party's prior written consent. Notwithstanding the foregoing, either party may assign this Agreement to its successor, without the other party's consent, in the event of a sale of substantially all of its assets or in the event of a merger pursuant to which substantially all of its assets are transferred to the surviving entity, as long as said successor assumes all liabilities and obligations hereunder.

24. COUNTERPARTS

This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which when so executed and delivered shall be an original document, but all of which counterparts shall together constitute one and the same instrument.

25. EXHIBITS

The following Exhibits, attached hereto and incorporated herein by reference, form a part of this Agreement:

Exhibit 1 – Cost Matrix and Payment Milestones
Exhibit 2 – S&S Support Program
Exhibit 3 – Statement Of Work (SOW)
SOW - Exhibit 1 – Project Deliverables
SOW - Exhibit 2 – Functional Matrix
Exhibit 4 – Hosting SLA's
Exhibit A – RFP #19-2014 Utility Billing System and IVR
Exhibit B – S&S Response to RFP #19-2014 Utility Billing System and IVR

26. WAIVER; REMEDIES CUMULATIVE

Failure or delay by any party to exercise a right or power under this Agreement will not be a waiver of the right or power. For a waiver of a right or power to be effective, it must be in a writing signed by the party waiving its right. An effective waiver of a right or power will not be construed as either a future or continuing waiver of that same right or power, or the waiver of any other right or power. Unless specifically set forth in this Agreement or provided by law, all remedies a party may have under this Agreement, whether at law or in equity, are cumulative and not exclusive. Despite the foregoing, neither party will unduly delay any required consent or signature as mandated by this Agreement or the SOW.

27. AUTHORITY TO EXECUTE AGREEMENT

Each party represents that: (i) it has the full power, authority, and legal right to execute this Agreement and perform its obligations hereunder; (ii) the person executing this Agreement on its behalf has the full power, authority, and legal right to do so; (iii) upon execution and delivery of this Agreement by the parties, it is a legal, valid and binding contract, enforceable in accordance with its terms; (iv) the authorization, execution, delivery, and performance of this Agreement is valid; and (v) this Agreement, and the transactions contemplated hereby, do not conflict with or violate any bylaw, charter, regulation, law or any other governing authority of the party.

28. MATERIAL ADVERSE CHANGE

Licensor shall promptly notify Customer in writing of: (i) the occurrence of any event which, if it had existed on the Effective Date of this Agreement, would have required qualification of the representations and warranties set forth herein; (ii) a Material Adverse Change; or (iii) any material litigation which if adversely determined would cause a Material Adverse Change. For purposes of this Section, a "**Material Adverse Change**" means any condition or event that has or is reasonably likely to have a material adverse effect on (i) the business operations, property or condition (financial or otherwise) or prospects of Licensor, (ii) the validity or enforceability of this Agreement, or (iii) performance of the Services or implementation of the Information System.

29.   SURVIVAL OF TERMS

The following shall survive the expiration or termination of this Agreement: provisions relating to indemnification, limitations of liability, proprietary rights, confidentiality, information security, reporting to Regulatory Authorities, such other provisions as are necessary for the interpretation thereof, and any other provisions hereof the nature and intent of which is to survive termination or expiration of this Agreement.

30.   COMPLIANCE

<u>Compliance with Regulatory Requirements</u>. Licensor will comply with all federal and state laws, rules and regulations directly applicable to its role as a provider of the Services hereunder, and Customer will comply with all federal and state laws, rules and regulations directly applicable to the operation of Customer's business involving the use of and access to any Service (as applicable to each of Licensor and Customer, respectively, "**Mandatory Regulatory Requirements**"). In the event Customer requests Licensor to modify the Application Software as Customer may deem necessary in order to keep Customer in compliance with any of its Mandatory Regulatory Requirements, such modification shall be set forth in a Change Order according to the provisions of Section 4(E) of this Agreement, provided, however, that Customer shall only be responsible for its pro rata portion of the cost of such modifications in the event such modifications are requested and required by other customers of Licensor.

31.   SUBCONTRACTING

Unless otherwise agreed to by Customer in writing or set forth in this Agreement, Licensor shall not employ or engage any subcontractors to perform, or otherwise delegate to any third party, any Services or other obligations relating to the Agreement. Those subcontractors to which Customer has agreed shall be known as "**Approved Subcontractors**." The scope of Services to be provided by any Approved Subcontractor will be limited to the scope agreed by the parties in writing. As of the Effective Date, there are no Approved Subcontractors. In no event shall Licensor be relieved of its obligations hereunder by use of any Approved Subcontractor. Licensor shall remain fully responsible and liable for the acts and omissions of any Approved Subcontractor. Licensor shall cause any Approved Subcontractor to comply with the terms and conditions of this Agreement. If at any time during the Project, Customer determines that any Approved Subcontractor is in breach of this Agreement or other applicable terms and conditions or is otherwise incompetent or undesirable, Customer will notify Licensor accordingly and Licensor shall immediately take steps necessary to terminate such Approved Subcontractor. Notwithstanding the foregoing, Licensor may engage individual subcontractors to supplement Licensor's workforce and to perform services for Licensor without Customer's approval, provided that such individual subcontractors' services are not dedicated to Customer and that such individual subcontractors do not access or visit Customer's premises in connection with performing services ("**Individual Subcontractors**"). For avoidance of doubt, Licensor shall remain fully responsible and liable for the acts and omissions of any Individual Subcontractor.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties accept and agree to the terms of this Agreement.

SYSTEMS & SOFTWARE, INC.   **Lexington Fayette Urban County Government**

By:_____   By:_____

Title:_____   Title:_____

Date:_____   Date:_____

By:_____   By:_____

Title:_____   Title:_____

Date:_____   Date:_____

EXHIBIT 1

Cost Matrix and Payment Milestones

See attached.

EXHIBIT 2

S&S Support Program

See attached.

EXHIBIT 3

Statement of Work (SOW)

See attached.

EXHIBIT 4

Hosting SLA's

See attached

EXHIBIT A

RFP #19-2014 Utility Billing System and IVR

See attached.

EXHIBIT B

S&S Response to RFP #19-2014 Utility Billing System and IVR

See attached.