



Support Services Agreement 2021-2022

Customer: Village of Buffalo Grove, IL

Concentric Job Number: 211101.00

Concentric Integration, LLC (Concentric) agrees to enter into a support agreement with the Customer to provide support services based on the "Services" indicated below and in agreement with the Terms & Conditions and Service Definitions.

Services & Fees

- Fixed Fee Services indicates a fixed scope as described in the attached Service Definitions. Since the scope is negotiated upfront, we are able to establish this price at the beginning of the contract.
- Time and Material (T&M) Services denotes a variable scope determined by the Customer. T&M Services are requested on a case-by-case basis and are approved by a responsible representative of the Customer. Monthly invoices will be sent for T&M Services as they are used. Labor will be billed on the basis of our standard hourly billing rates for actual work time performed plus reimbursement of out-of-pocket expenses including travel costs. Labor rates differ for Concentric staff members.
 - The hourly rate charged is the same for regular hours, after hours, emergency service, weekend, holiday, and overtime.
 - There is no minimum call-out charge during normal business hours. There is a 1.0 hour minimum charge for after-hours emergency support.
 - Mileage for travel is billed at the IRS approved amount as calculated from the employee's office location to site visited during normal business hours, or from deployment location to the site visited for urgent service.
 - Travel time is charged at the same hourly billing rate indicated on the rate sheet.
- Please see the attached Rate Sheet for our current hourly billing rates. Under this agreement, there is a fixed discount on labor of 5% off those standard billing rates. Please note that the rates listed on the attached rate sheet are our current rates and may increase during the term of the project.

Description	Included	Fee
Fixed Fee Services		\$48,059
Project Management	<input checked="" type="checkbox"/>	
Proactive Maintenance	<input checked="" type="checkbox"/>	
Technology & SCADA Budget Planning	<input checked="" type="checkbox"/>	
Third-Party Support Renewals	<input checked="" type="checkbox"/>	
Time and Material Services	<input checked="" type="checkbox"/>	\$91,570
	Total Fee	\$139,629

2021 Rate Sheet¹

Principal	\$210	Provides oversight & direction. Responsible for contracts, scope, overall satisfaction.
Automation Engineer IV	\$180	Advanced controls, automation startups and project involvement. High level troubleshooting of technical issues.
Automation Engineer III	\$145	Performs and coordinates advanced design, programming, and field activities, including controls, automation startup assistance, project involvement, and high level troubleshooting of technical issues. Can be involved with client assessments and writing technical reports to set direction related to process automation and technology.
Automation Engineer II	\$130	Works as a team member to perform more advanced design, programming, and field activities (PLCs, OITs, controls, & related repairs) with direction from senior staff, typically on larger WTPs, WWTPs, and integrated systems.
Automation Engineer I	\$120	Provides panel/CAD design and programming tasks for small processes (lift stations, pump control, etc.). Provides panel/CAD design, as well as Instrumentation & Control design. Works as a team member to perform design, programming, and field activities with direction from senior staff.
IT Consultant IV	\$180	Lead industrial/automation information technology designer and responsible for commissioning, quality control, and project management. Works as a leader to coordinate work with consultants/analysts. Performs and coordinates advanced design of client networks/systems.
IT Consultant III	\$145	Performs server, network, and desktop architecture, design, management, and oversight. High level troubleshooting of network, security, and server technical issues. Works as a team leader to coordinate work with consultants/analysts. Performs and coordinates advanced design of client networks/systems.
IT Consultant II	\$125	Performs server, network, and desktop management and oversight and typical higher-level network administration duties. Can also be a project coordinator or manager.
IT Consultant I	\$110	Provides basic systems and network administration/support services. Performs PC Workstation/Server Administration services and tasks. Works as a team member for support of client systems and network administration.
Administrative Support	\$85	Coordinates purchasing and logistics/shipping for automation, controls, instrumentation, and related IT and security equipment. Prepares equipment specifications.

¹ Rates are subject to change on January 1 of each year.

Time Period and Payment

Start Date: August 1, 2021 End Date: December 31, 2022

Fixed Fee Services: Payment to be made in seventeen (17) equal payments of \$2,827 upon being invoiced on a monthly basis.

Time & Material Services: The fees for services that are not included in the Fixed Fee Services portion of this contract will be invoiced separately on a monthly basis, as they are incurred.

Standard Terms and Conditions References

Effective Date: The Effective Date of this Proposal and the associated Standard Terms and Conditions shall be the date this Proposal is accepted as shown by Customer's dated signature.

Third Party Materials (See Standard Terms and Conditions Paragraphs 3.2 & 8.3):

- ☒ DOES apply
☐ DOES NOT apply

Notices: Notices required to be provided to Customer in accordance with Paragraph 16.3 of the Standard Terms and Conditions shall be delivered to the individual and address given above, unless Customer provides updated notification information to Concentric in writing

Standard Terms and Conditions

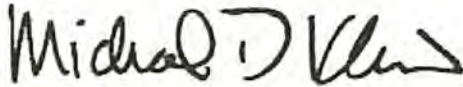
Concentric Integration, LLC's Standard Terms and Conditions, Version 10 (V10), ~~located at~~ **ATTACHED** ~~<http://goconcentric.com/standard-terms/>~~ are hereby incorporated into this Project Proposal as though fully attached hereto. By signing below, each of the undersigned represents and warrants that Concentric Integration, LLC's Standard Terms & Conditions are legal, valid and binding obligations upon the parties for which they are the authorized representative.

Acceptance

If this agreement is acceptable, please sign one copy and return to us. Feel free to contact me if you have any questions.

Sincerely,

CONCENTRIC INTEGRATION, LLC



Michael D. Klein, PE
President
MDK

CUSTOMER:
VILLAGE OF BUFFALO GROVE, IL

ACCEPTED BY:



TITLE:

VILLAGE MANAGER

DATE:

9-5-2021

Service Definitions

Fixed Fee Services

Project Management

Plan, schedule, and coordinate the activities that must be performed to complete the project and provide support services.

Proactive Maintenance

If included, all services described within this section will be provided by Concentric for the specified fee regardless of actual hours of work performed. Proactive Maintenance is provided for hardware that appears in the Hardware List included in this Agreement.

If included, Concentric will monitor certain aspects of the IT infrastructure, as well as perform periodic routine scheduled maintenance (detailed in the following table) in order to minimize unexpected system shutdowns by resolving issues before they reach a critical nature. Upon completion of the scheduled service, Concentric will provide written confirmation the service was completed.

Scheduled services will be provided during Standard Hours if service does not significantly impact network performance. Scheduled services that may significantly impact network performance, and are not urgently needed to maintain network security, will be scheduled during other hours as agreed upon by Concentric and the Customer. Standard Hours are considered Monday – Friday 7:30 am to 5:00 pm, excluding major holidays.

The following table details the Proactive services included under this Support Agreement, and at what frequency:

Proactive Maintenance	Minimum Service Frequency:					
	N/A	Twice Monthly	Monthly	Quarterly	Twice Annually	Annually
Firewall Maintenance:						
• Upgrade Firmware	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Review Security Logs & Backup Configuration						
Backup Review (Remote):						
• Upgrade Firmware & Check Free Space	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Check and Back Up Configuration						
Server Maintenance (Remote):						
• Review Windows System Logs						
• Review Windows Services						
• Apply Windows Updates						
• Check Drive Free Space	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Verify & Update Anti-Virus Software						
• Verify Backups Functioning Properly						
• Back Up SCADA Applications, if Applicable						
• Check UPS Operation (remotely, if possible)						
Server Infrastructure (Onsite):						
• Perform Updates for BIOS, Drivers, Firmware, etc.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
• Review Server Hardware Operation						
Server Software (Onsite):						
• Perform Backup and Anti-Virus Software Version Upgrades.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Workstation Maintenance:						
• Apply Windows Updates	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Verify & Update Anti-Virus Software						
PLC, OIT, & Control Panel Maintenance (Onsite):						
• Check functionality of Control Panel UPS						
• Back Up Programs						
• Check Status of Fuses, Circuit Breakers, & Surge Protectors						
• Check Control Panel Thermal Management	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
• Check for Environmental Issues with Water, Moisture, Dirt, Dust, etc.						
• Check for published PLC vulnerabilities and recommend upgrade (to be implemented using T&M Services)						
Radio Maintenance (Onsite):						
• Check signal strength and back up configuration	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
SCADA Alarm Testing (Onsite):						
• Manually test critical alarms (up to 50) from SCADA to ensure they continue to work properly	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
SCADA Patching:						
• Apply security related updates and patches to SCADA software (excludes full version upgrades, which are handled under T&M Services)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Documentation (Remote):						
• Verify & Update Network Diagram	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Backup Review, Server Maintenance, Server Infrastructure, Server Software, Documentation –
IT Consultant I / James Narofsky

PLC, OIT, & Control Panel Maintenance, Radio Maintenance, SCADA Alarm Testing –
Automation Engineer II / Jacob Deitz

Technology & SCADA Budget Planning

Budgeting for SCADA and related technology items can be used to help prioritize and guide decisions and overall budget planning for capital improvements. Concentric believes that providing advanced notice (where possible) of recommended equipment, software, security, and communications improvements will provide a much more effective planning and implementation cycle. When this service is selected, our senior level design staff intentionally review the system architecture to determine the risk and benefit of both inaction or selected improvements. Our staff discusses the recommended improvements, phasing, and costs with you and then provides a letter and prioritized table of recommended improvements that summarize the costs of the recommended initiatives.

Budget Planning & Cost Preparation - Annual	Deliverable	Included?
Budget Planning & Cost Preparation (for following fiscal year)	Budgetary Memorandum	<input checked="" type="checkbox"/>
Client: What month would you like to receive the budget letter?		

Third-Party Support Renewals

The supported system includes hardware and software that may have applicable support and extended warranty agreements that are provided by a third party, such as the manufacturer or vendor/supplier. Once the initial installation's support/warranty period has expired, it is recommended that these agreements are maintained and renewed on a regular basis. If listed in the Included Services & Fees section of this agreement, Concentric will provide the renewals listed in the Third-Party Support Renewal list on Page 10.

Third-Party Support Renewals - Annual	Deliverable	Included?
Renew Third-Party Support Contracts	Contracts from OEM/Supplier	<input checked="" type="checkbox"/>

Time & Materials (T&M) Services

Break – Fix (Repairs)

Provide as-needed services. This service will be provided 24 hours a day, 7 days per week for the length of this agreement regardless of standard working hours. Concentric's daytime and after-hours phone number is 815-788-3600. Concentric staff typically answers the phone during standard business hours. A call center answers the phone after hours or when staff is not available to answer. Concentric will return any phone calls for urgent service within 30 minutes from when the phone call is placed, and dispatch a staff member within 60 minutes if a site visit is required.

Improvements

Occasionally, staff identify small changes to the system that can have large impacts on operational efficiency, safety, and quality. These improvements can be easily designed and built without use of Consulting & Design services.

Consulting & Design

Through consulting and design, a system can be effectively maintained, improved, and upgraded. This service will provide for retained smaller project design services as it relates to IT infrastructure, instrumentation & controls, and Supervisory Control and Data Acquisition (SCADA).

Hardware List

If Proactive Maintenance is included as part of this Support Services Agreement, Concentric will proactively support the following hardware:

Hardware Description	Location	Quantity
Server (including physical and virtual)	Public Works & Pump Stations	8
Programmable Logic Controllers (PLCs)	Public Works & Pump Stations	22
Operator Interface Terminals (OITs)	Public Works & Pump Stations	10

Third-Party Support Renewals

If Third-Party Support Renewals are included as part of this Support Services Agreement, renewals will be processed as listed in the table below:

Warranty	Included?	Coverage Period	Qty	Total
Carbonite 100GB Backup Support	<input checked="" type="checkbox"/>	1/1/2022 - 12/31/2022	1	\$227
WonderWare Customer First Agreement	<input checked="" type="checkbox"/>	1/16/2022 - 12/31/2022	1	\$16,857
TOP Server	<input checked="" type="checkbox"/>	3/29/2021 - 12/31/2022	1	\$612
Specter WIN-911 Maintenance Support Program (S/N: W07161539001C0D)	<input checked="" type="checkbox"/>	4/9/2021 - 12/31/2022	1	\$715
Rockwell TechConnect for Factory Talk Historian	<input checked="" type="checkbox"/>	4/29/2021 - 12/31/2022	1	\$2,809
Windows 7 Extended Security Updates	<input checked="" type="checkbox"/>	7/1/2021 - 7/1/2023	1	\$2,809
			TOTAL	\$24,029



STANDARD TERMS AND CONDITIONS v10

THESE STANDARD TERMS AND CONDITIONS APPLY TO ALL PRODUCTS AND SERVICES WHICH MAY BE PROVIDED BY CONCENTRIC INTEGRATION, LLC ("CONSULTANT"). A WRITTEN PROPOSAL, SUPPORT SERVICES AGREEMENT, WORK ORDER, OR OTHER DOCUMENT THAT REFERENCES THESE STANDARD TERMS AND CONDITIONS IS REFERRED TO AS A "SIGNED ACCEPTANCE DOCUMENT." BY EXECUTING ANY SIGNED ACCEPTANCE DOCUMENT, YOU AGREE TO BE BOUND BY THESE STANDARD TERMS AND CONDITIONS. THE SIGNED ACCEPTANCE DOCUMENT AND THESE STANDARD TERMS AND CONDITIONS COLLECTIVELY CONSTITUTE THE "AGREEMENT".

1. Definitions.

"Affiliate" of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person through the ownership of voting securities, by contract or otherwise/ownership of more than fifty percent (50%) of the voting securities of a Person.

"Business Day" means a day other than a Saturday, Sunday, or other day on which federal banks are authorized or required by Law to be closed for business.

"Core System" means the information technology, system, and infrastructure, including computers, software, hardware, databases, electronic systems, and networks on or with which the System is intended to be built and operate, as set forth in the Signed Acceptance Document.

"Customer" means the customer as identified on the Signed Acceptance Document.

"Customer Materials" means the specific documents and materials, including specifications, software, hardware, systems, and technologies, that are provided or made available to Consultant or any of its Subcontractors by or on behalf of Customer in connection with this Agreement.

"Deliverables" means the System, including any and all Consultant Software, Consultant Hardware, Specifications, Documentation, Third-Party Materials, and other subject matter that Consultant (a) actually provides to Customer in connection with this Agreement or (b) is required to provide to Customer under this Agreement as identified in the Signed Acceptance Document.

"Designated Site(s)" means the Customer facility or facilities identified in the Signed Acceptance Document.

"Documentation" means any and all user manuals, operating manuals, and instructions, specifications, together with other documents and materials that may be specifically identified in the Signed Acceptance Document that Consultant provides or makes available to Customer in any medium and which describe the operation, use, support, or maintenance of the System.

"Effective Date" means the date on which Customer executes the Signed Acceptance Document.

"Consultant Hardware" means any computer or other equipment or device that is proprietary to Consultant and provided to Customer hereunder.

"Consultant Materials" means the Signed Acceptance Document, the Consultant Hardware, and all other Deliverables other than Third-Party Materials, and any and all information, code, custom developed applications, data, documents, drawings, materials, inventions, technologies, ideas, concepts, processes, methodologies, know-how, works, and other subject matter, including all software, hardware, systems, methods, processes, and devices, and all specifications, descriptions, requirements, plans, and reports, that Consultant or any of its Subcontractors conceives, discovers, designs, develops, reduces to practice, prepares, makes, modifies, improves or, other than Customer Materials and Third-Party Materials, uses, exclusively or nonexclusively in connection with the Services or this Agreement.

"Consultant Personnel" means all individuals involved in the performance of Services as employees or independent contractors of Consultant or any Subcontractor.



"Consultant Software" means any and all software (including any software interface or code) that is proprietary to Consultant and provided to Customer hereunder, whether (a) without modification, (b) modified by Consultant under this Agreement, or (c) developed by Consultant specifically for Customer.

"Intellectual Property Rights" means all or any of the following: (a) patents, patent disclosures, and inventions (whether patentable or not); (b) trademarks, service marks, trade dress, trade names, logos, corporate names, and domain names, together with all of the goodwill associated therewith; (c) copyrights and copyrightable works (including computer programs), mask works, and rights in data and databases; (d) trade secrets, know-how, and other confidential information; and (e) all other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection.

"Law" means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, or other requirement of any federal, state, local, or foreign government or political subdivision thereof, or any arbitrator, court, or tribunal of competent jurisdiction.

"Losses" means any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees and other costs and fees incurred in enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers.

"Permitted Use" means use only by and for the benefit of Customer and solely for or in the ordinary course of Customer's internal business operations.

"Person" means an individual, corporation, partnership, joint venture, limited liability entity, governmental authority, unincorporated organization, trust, association, or other entity.

"Representatives" means, with respect to a party, that party's and its Affiliates' employees, officers, directors, consultants, agents, independent contractors, service providers, sublicensees, subcontractors, and legal advisors.

"Specifications" means the Scope of Services for the System as described in the Signed Acceptance Document.

"System" means the integrated information technology system to be designed, developed, and provided by Consultant to Customer pursuant to this Agreement.

"Third-Party Materials" means materials and information, in any form or medium, including any software (including open source software), applications, documents, data, content, specifications, products, hardware or equipment, technology, or components of or relating to the System, in any form or media in which any person or entity other than Consultant owns an interest.

2. Engagement of Consultant; General Service Obligations.

2.1 Engagement of Consultant. Customer hereby engages Consultant, and Consultant hereby accepts such engagement, to provide the Deliverables and perform the system integration and other professional services related thereto as further described in the Signed Acceptance Document (collectively, the "Services") in accordance with the Agreement.

2.2 Project Management. Each party shall, throughout the Term of the Agreement, maintain within its organization a project manager to serve as such party's primary point of contact for day-to-day communications, consultation, and decision-making regarding the Services. Each such project manager shall be responsible for providing all day-to-day consents and approvals on behalf of such party under this Agreement. Each party shall ensure its project manager has the requisite organizational authority, skill, experience, and other qualifications to perform in such capacity. If either party's project manager ceases to be employed by such party or such party otherwise wishes to replace its project manager, such party shall promptly name a new project manager by written notice to the other party.

2.3 Changes. Either party may, at any time during the Term of the Agreement, request in writing changes to the Services. The parties shall evaluate and, if agreed, implement all such changes in accordance with a written change order ("Change Order"). In the event that such changes cause an increase in Consultant's fee or time required for performance of any Services, whether or not reflected in any Change Order, an equitable adjustment shall be made and this Agreement shall be modified in writing accordingly. Consultant, in its sole and absolute discretion, may withhold the provision or delivery of any Service or Deliverable for which additional compensation will be charged until its receipt of a Change Order and



written authorization from Customer. No changes will be effective unless and until memorialized in a written Change Order signed by both parties.

2.4 Subcontractors. Consultant may from time to time in its discretion engage third parties to perform the Services (each, a "Subcontractor").

3. Services.

3.1 Services Provided. Consultant will provide to Customer the Services described in the Signed Acceptance Document in accordance with the Agreement. Consultant will use commercially reasonable efforts to meet any performance dates specified in the Signed Acceptance Document, and any such dates are estimates only.

3.2 Third-Party Materials. The System may include or operate in conjunction with Third-Party Materials. If Third-Party Materials are included in or required for use with any of the Deliverables, Consultant will indicate this in the Signed Acceptance Document, or in a subsequent written notice given in accordance with Section 16.3 below, and provide a list of such Third-Party Materials upon request. All Third-Party Materials are provided pursuant to the terms and conditions of the applicable third-party license agreement. Customer shall comply with all such third-party license agreements for which Consultant provides a copy or link, as well as any applicable third-party license agreements which are posted in the "3rd Party Terms" document at www.goconcentric.com/standard-terms.

4. Customer Obligations.

4.1 Customer Resources and Cooperation. Customer shall timely provide such cooperation and assistance as Consultant reasonably requests to enable Consultant to perform the Services in accordance with the Signed Acceptance Document, including any applicable performance dates set forth therein. Without limitation of the foregoing, Customer shall timely:

- (a) perform all obligations identified as customer responsibilities in the Signed Acceptance Document;
- (b) provide the Customer Materials and all such other resources as may be specified in the Signed Acceptance Document;
- (c) provide Consultant Personnel with safe access to Customer's premises, the Core System and suitably qualified personnel;
- (d) ensure the Core System is set up and in working order to allow Consultant to perform the Services and deliver and, where applicable, install each Deliverable in accordance with the Signed Acceptance Document;
- (e) participate through suitably qualified and authorized Customer personnel in such meetings as may be scheduled by either party on at least ten (10) days' prior notice; and
- (f) provide all consents, approvals, notices and other communications as required under this Agreement and, where applicable, as specified in the Signed Acceptance Document.

4.2 Effect of Customer Failure or Delay. Consultant is not responsible or liable for any late delivery or delay or failure of performance caused in whole or in part by Customer's delay in performing, or failure to perform, any of its obligations under this Agreement. In the event of any such delay or failure, Consultant may, in its sole discretion and by written notice to Customer, extend all such performance dates as Consultant deems reasonably necessary and, where applicable, amend the Signed Acceptance Document to reflect such extensions. The foregoing is in addition to, and not in lieu of, all other remedies Consultant may have for any such failure or delay by Customer.

4.3 Non-Solicitation. During the Term of the Agreement and for one (1) year after, Customer shall not, and shall not assist any other Person to, directly or indirectly, recruit or solicit for employment (or engagement as an independent contractor) any Person then or within the prior twelve (12) months employed by Consultant. In the event of a violation of this Section 4.3, Consultant will be entitled to liquidated damages equal to the compensation paid by Consultant to the applicable employee during the prior twelve (12) months.

5. Delivery; Testing and Acceptance.



5.1 Delivery. Consultant will deliver or cause to be delivered or made available to Customer each Deliverable in accordance with the Signed Acceptance Document. Except as otherwise expressly set forth in the Signed Acceptance Document, Consultant will deliver Consultant Software in binary code (object code) only. Customer acknowledges and agrees that Customer has no right or license under this Agreement to receive the source code for any Consultant Software.

5.2 Review and Acceptance. Acceptance of the Deliverables or System will be conducted as follows:

(a) Following delivery of any Deliverables provided for in a Signed Acceptance Document (including where applicable installation of the System), Customer will have fourteen (14) calendar days (the "Review Period") to thoroughly inspect and review the Deliverables and/or System and confirm that the Services have been completed in accordance with the Signed Acceptance Document (the "Project Acceptance Review"). Consultant has the right to observe or participate in all or any part of the Project Acceptance Review.

(b) Promptly upon the completion of the Project Acceptance Review, Customer shall notify Consultant in writing of its acceptance or, solely if the Project Acceptance Review identifies any material failure of the Deliverables or System to conform to the Specifications or perform in accordance with the Documentation (each, a "Nonconformity"), rejection of the Deliverables or System. Customer shall not unreasonably withhold its acceptance and shall include in any rejection notice a reasonably detailed description of the Project Acceptance Review conducted, the results thereof and each identified Nonconformity. The Deliverables or System will be deemed accepted by Customer upon the expiration of the Review Period if Customer has not delivered a notice accepting or rejecting the Deliverables or System prior to such expiration.

(c) Subject to Section 5.2(d), following receipt of a rejection notice, Consultant shall use commercially reasonable efforts to remedy the Nonconformities reported by Customer. Customer shall, at no charge to Consultant, provide all such cooperation and assistance as Consultant may reasonably request to assist Consultant's efforts to remedy Nonconformities. Upon Consultant's notice of its correction of the reported Nonconformities, Customer shall have an additional Review Period to conduct Project Acceptance Reviews to determine whether such Nonconformities have been remedied.

(d) The parties shall repeat the process set forth in Section 5.2(a) through Section 5.2(b) until Customer has accepted the Deliverables or System as set forth in Section 5.2(b), provided, however, if Customer issues more than three (3) rejection notices: (i) Customer may accept the Deliverables or System as nonconforming, in which case the parties agree to mutually negotiate any appropriate reduction in Fees to reflect the impact of the Nonconformities; or (ii) if Customer does not accept the System as nonconforming, either party may terminate this Agreement in accordance with Section 11.2(c) below.

(e) Consultant has the right to dispute, in good faith, Customer's rejection or qualified acceptance of the Deliverables or System by providing written notice to Customer of such dispute within fourteen (14) calendar days after Consultant's receipt of Customer's written notice of such rejection or qualified acceptance, as applicable. Consultant shall specify in the notice of dispute the basis of the dispute in sufficient detail to facilitate investigation by Customer and resolution by the parties. The parties shall first attempt in good faith to promptly resolve the dispute by negotiation and consultation between themselves. If the dispute is not resolved on an informal basis within ten (10) calendar days after Consultant's notice thereof, the parties shall seek to resolve the dispute pursuant to Section 11.5. Pending the resolution of such dispute, Consultant will have no obligation to correct any alleged Nonconformity or repair or replace any Deliverables.

This Section 5.2 sets forth Consultant's sole obligations and Customer's exclusive remedies for any failure of the Deliverables or System to conform to the Specifications or perform in accordance with the Documentation.

6. Maintenance and Support. During the Warranty Period, Consultant will provide to Customer System maintenance and support services as part of the Services and without additional charge.

7. Fees; Payment Terms.

7.1 Fees. Customer shall pay to Consultant the fees set forth in the Specification and Signed Acceptance Document ("Fees").



7.2 Time and Materials. Where the Services are provided on a time and materials basis:

(a) the Fees payable for the Services shall be calculated in accordance with Consultant's hourly fee rates for the Consultant Personnel set forth in the Specification and Signed Acceptance Document; and

(b) Consultant will issue invoices to Customer monthly in arrears for its Fees for time for the immediately preceding month, calculated as provided in this Section 7.2, together with a breakdown of any Reimbursable Expenses incurred during that period.

7.3 Fixed Price. Where Services are provided for a fixed price, the total Fees for the Services shall be the amount set out in the Specification and Signed Acceptance Document. The total Fees shall be paid to Consultant in installments as set out in the Specification and Signed Acceptance Document together with Customer's payment of any Reimbursable Expenses incurred by Consultant during the installment period. At the end of a period for which an installment is due under the Specification and Signed Acceptance Document, Consultant will issue invoices to Customer for the Fees and Reimbursable Expenses that are then payable for that period.

7.4 Reimbursable Expenses. Customer shall reimburse Consultant for all travel and out-of-pocket expenses incurred by Consultant in connection with performing the Services ("Reimbursable Expenses").

7.5 Fee Increases. The parties agree that for Services provided on a time and materials basis, Consultant may increase its standard fee rates specified in the Specification and Signed Acceptance Document upon ninety (90) days prior written notice to Customer.

7.6 Payment Terms. Customer shall pay all Fees and Reimbursable Expenses on or prior to the due date therefor set forth in the Specification and Signed Acceptance Document or, where the Specification and Signed Acceptance Document does not specify such date, within thirty (30) days after the date of Consultant's invoice therefor. Customer shall make payments to the address or account specified in the Specification and Signed Acceptance Document or such other address or account as is specified by Consultant in writing from time to time.

7.7 Late Payment. If Customer fails to make any payment when due then, in addition to all other remedies that may be available:

(a) Consultant may charge interest on the past due amount at the rate of 1.5% per month calculated daily and compounded monthly or, if lower, the highest rate permitted under applicable Law;

(b) Customer shall reimburse Consultant for all costs incurred by Consultant in collecting any late payments or interest, including attorneys' fees, court costs and collection agency fees; and

(c) if such failure continues for ten (10) calendar days following written notice thereof, Consultant may suspend performance of the Services until all past due amounts and interest thereon have been paid, without incurring any obligation or liability to Customer or any other Person by reason of such suspension. When such default is cured by Customer, the amount to be paid for the scope of work will be equitably increased to account for Consultant's damages arising from such suspension (including without limitation demobilization and remobilization expenses and increased costs of performance) and the time for Consultant to complete the scope of work will be equitably extended to account for such suspension.

7.8 Taxes. All Fees and other amounts payable by Customer under this Agreement are exclusive of taxes and similar assessments. Customer is responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state or local governmental or regulatory authority on any amounts payable by Customer hereunder, other than any taxes imposed on Consultant's income.

7.9 No Deduction or Setoff. Customer shall pay all amounts due under this Agreement without setoff, deduction, recoupment or withholding of any kind for amounts owed or payable by Consultant whether under this Agreement, applicable Law or otherwise and whether relating to Consultant's breach, bankruptcy or otherwise.

7.10 Prompt Payment Laws. In the event of a conflict between the provisions of this Section 7 and any applicable "prompt payment" laws or regulations within the State of Illinois, including without limitation the Local Government Prompt Payment Act, 50 ILCA 505/1 and the Contractor Prompt Payment Act, 815 ILCS 603/1 (collectively the "Illinois Prompt



Payment Laws”), the provisions of the Prompt Payment Laws shall control. Consultant shall have all remedies that may be available at law, in equity, or otherwise with respect to Customer’s payment obligations hereunder and pursuant to the Illinois Prompt Payment Laws.

8. Intellectual Property Rights. The following provisions shall govern all Intellectual Property Rights which may arise in the course of performing this Agreement.

8.1 Consultant Materials. All right, title, and interest in and to (a) the Consultant Materials and (b) all works, inventions and other subject matter incorporating, based on or derived from any Consultant Materials, including all customizations, enhancements, improvements and other modifications thereof (collectively, “Derivatives”), in each case (subclause (a) and subclause (b)) by whomsoever made and including all Intellectual Property Rights therein, are and will remain, as appropriate, with Consultant. Customer has no right or license with respect to any Consultant Materials or Derivatives except as expressly licensed under Section 9.1, in each case subject to Section 9.2. Consultant expressly reserves all other rights in and to the Consultant Materials and Derivatives. If Customer permits any third party to access or modify the Consultant Materials, Customer must do so pursuant to a written agreement that: (i) prohibits such third party from using, disclosing or distributing the Consultant Materials for any purpose other than as reasonably necessary to facilitate Customer’s internal use of the Deliverables provided hereunder; and (ii) prohibits such third party from removing, obscuring or altering any legal notices or copyright management information included in or upon the Consultant Materials; and (iii) states that such third party shall not disassemble, decompile or “unlock”, decode or otherwise reverse translate or engineer, or attempt in any manner to reconstruct or discover any source code or underlying algorithms of the Consultant Materials. Customer acknowledges that permitting a third party to modify the Consultant Materials shall void the warranty set forth in Section 12 below.

8.2 Customer Materials. As between the parties, Customer is and will remain the sole and exclusive owner of all right, title, and interest in and to the Customer Materials, including all Intellectual Property Rights therein, subject only to the license granted under Section 9.3. Customer expressly reserve all other rights in and to the Customer Materials.

8.3 Third-Party Materials. All right, title, and interest in and to the Third-Party Materials, including all Intellectual Property Rights therein, are and will remain with their respective third-party rights holders subject to the terms and conditions of the applicable third-party license agreements. Customer has no right or license with respect to any Third-Party Materials except as expressly licensed under such third-party license agreements.

(a) Reseller Products. In some cases, Consultant or its affiliated entities will act as a reseller of Third-Party Materials, which are referred to as “Reseller Products” for convenience. Customer acknowledges that Consultant may receive compensation in the form of a commission or profit share in connection with Reseller Products. All Reseller Products are warranted solely by the original manufacturer’s warranty. Customer will be deemed to contract directly with the licensor or seller of any Reseller Products, and will be directly responsible for complying with any license, end user license agreement, or other terms and conditions associated with Reseller Products.

(b) Licensed Embedded Products. “Licensed Embedded Products” means any software component that is provided by Consultant from a licensed development platform utilized by Consultant. Regarding all Licensed Embedded Products, Customer will be deemed an authorized end user, and Consultant grants Customer a royalty-free, fully paid-up, non-exclusive right and license to use and execute the Licensed Embedded Products as part of the Consultant Materials and Deliverables provided hereunder or in the future. With respect to all Licensed Embedded Products, Customer agrees: (i) Customer is prohibited from distribution of the Licensed Embedded Products; (ii) all Licensed Embedded Products are warranted solely by the original manufacturer’s warranty; (iii) any and all liability of Licensed Embedded Product licensors and suppliers shall be limited to the maximum extent permitted by applicable law; and (iv) Customer may not attempt to disassemble, decompile or “unlock”, decode or otherwise reverse translate or engineer, or attempt in any manner to reconstruct or discover any source code or underlying algorithms of the Licensed Embedded Products. Customer agrees to review and comply with any other terms and conditions associated with Licensed Embedded Products which are posted from time to time in the “3rd Party Terms” document at www.goconcentric.com/standard-terms.

(c) Open Source Products. “Open Source Products” means any software component that is subject to any open-source copyright license agreement, including any GNU General Public License or GNU Library or Lesser Public License,



or other license agreement that substantially conforms to the Open Source Definition as prescribed by the Open Source Initiative or otherwise may require disclosure or licensing to any third party of any source code with which such software component is used or compiled. Consultant will identify any Open Source Products which are incorporated into the Consultant Materials and post or link to the applicable license agreement associated with any such Open Source Products on its website. Customer acknowledges that it has access to such information and a duty to read and comply with the applicable license agreements.

(d) No Third-Party Materials Representations or Warranties. Customer's remedies with respect to all Third-Party Materials will be limited to whatever recourse may be available against the applicable licensor thereof. Without limiting the generality of the foregoing, wherever Consultant may agree to provide configuration, installation, or deployment services relating to any Third-Party Materials, any warranties of Consultant relate to and are applicable to Consultant's Services only, not to Third-Party Materials. CONSULTANT MAKES NO REPRESENTATIONS, EXPRESS, IMPLIED OR OTHERWISE, REGARDING ANY THIRD-PARTY MATERIALS. CUSTOMER EXPRESSLY ACKNOWLEDGES AND AGREES THAT ITS USE OF THIRD-PARTY MATERIALS IS AT CUSTOMER'S SOLE RISK AND THAT THIRD-PARTY MATERIALS ARE RECOMMENDED BY CONSULTANT "AS IS" AND WITHOUT WARRANTY OF ANY KIND FROM CONSULTANT INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT.

9. Licenses.

9.1 Consultant License. Subject to and conditioned upon Customer's payment of the Fees and compliance with Section 9.2 and all other applicable provisions of this Agreement, Consultant hereby grants to Customer a fully paid-up and royalty-free, non-transferable, non-sublicensable license exercisable in perpetuity, solely: (a) to install, operate, and use the System (including Consultant Software in object code only) for the Permitted Use in the Core System at the Designated Site(s) in accordance with the Documentation; and (b) to use the Documentation and other Deliverables in connection therewith.

9.2 Consultant License Restrictions. Customer shall not, and shall not permit any other Person to, access or use any Consultant Materials except as expressly permitted by this Agreement. For purposes of clarity and without limiting the generality of the foregoing, with respect to all Consultant Materials, Customer shall not, except as this Agreement expressly permits:

- (a) copy, modify or create derivative works or improvements of the Consultant Materials;
- (b) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available the Consultant Materials to any other Person, including through or in connection with any time-sharing, service bureau, software as a service, cloud or other technology or service;
- (c) reverse engineer, disassemble, decompile, decode or otherwise attempt to derive or gain access to the source code of the Consultant Materials or any part thereof;
- (d) remove, delete, alter or obscure any trademarks or any copyright, trademark, patent or other intellectual property or proprietary rights notices from any Consultant Materials, including any copy thereof;
- (e) use any Consultant Materials in a manner or for any purpose that infringes, misappropriates, or otherwise violates any Law or Intellectual Property Right;
- (f) use the Consultant Materials for purposes of competitive analysis of the System, the development of a competing system, product or service, or any other purpose that is to Consultant's commercial disadvantage;
- (g) use any Consultant Materials in, or in association with, the design, construction, maintenance or operation of any hazardous environments, systems, or applications; or,
- (h) otherwise use the Consultant Materials beyond the scope of the license granted under Section 9.1.

9.3 Customer Materials License. Customer hereby grants to Consultant a fully paid-up and royalty-free, non-exclusive right and license to use, reproduce, perform, display, distribute, modify, and create derivative works and improvements of the Customer Materials to perform the Services or to further develop and improve the Consultant Materials



as necessary or desirable to perform the Services. This license commences upon Customer's first delivery of Customer Materials to Consultant and is irrevocable and perpetual.

10. Confidentiality.

10.1 Confidential Information. In connection with this Agreement, each party (as the "Disclosing Party") may disclose or make available Confidential Information to the other party (as the "Receiving Party"). Subject to Section 10.2, "Confidential Information" means information in any form or medium (whether oral, written, electronic, or other) that the Disclosing Party considers confidential or proprietary, including information consisting of or relating to the Disclosing Party's technology, trade secrets, know-how, business operations, plans, strategies, customers, and pricing, and information with respect to which the Disclosing Party has contractual or other confidentiality obligations, whether or not marked, designated or otherwise identified as "confidential". Without limiting the foregoing, the Consultant Materials are the Confidential Information of Consultant.

10.2 Exclusions. Confidential Information does not include information that: (a) was rightfully known to the Receiving Party without restriction on use or disclosure prior to such information's being disclosed or made available to the Receiving Party in connection with this Agreement; (b) was or becomes generally known by the public other than by the Receiving Party's or any of its Representatives' noncompliance with this Agreement; (c) was or is received by the Receiving Party on a non-confidential basis from a third party that was not or is not, at the time of such receipt, under any obligation to maintain its confidentiality; or (d) the Receiving Party can demonstrate by written or other documentary records was or is independently developed by the Receiving Party without reference to or use of any Confidential Information.

10.3 Protection of Confidential Information. As a condition to being provided with any disclosure of or access to Confidential Information, the Receiving Party shall:

(a) not access or use Confidential Information other than as necessary to exercise its rights or perform its obligations under and in accordance with this Agreement;

(b) except as may be permitted by and subject to its compliance with Section 10.4, not disclose or permit access to Confidential Information other than to its Representatives who: (i) need to know such Confidential Information for purposes of the Receiving Party's exercise of its rights or performance of its obligations under and in accordance with this Agreement; (ii) have been informed of the confidential nature of the Confidential Information and the Receiving Party's obligations under this Section 10.3; and (iii) are bound by written confidentiality and restricted use obligations at least as protective of the Confidential Information as set forth in this Section 10.3.

(c) safeguard the Confidential Information from unauthorized use, access or disclosure using at least the degree of care it uses to protect its most sensitive information and in no event less than a reasonable degree of care; and

(d) ensure its Representatives' compliance, and be responsible and liable for any of its Representatives' noncompliance, with this Section 10.

10.4 Compelled Disclosures. If the Receiving Party or any of its Representatives is compelled by applicable Law to disclose any Confidential Information then, to the extent permitted by applicable Law, the Receiving Party shall: (a) promptly, and prior to such disclosure, notify the Disclosing Party in writing of such requirement so that the Disclosing Party can seek a protective order or other remedy, or waive its rights under Section 10.3; and (b) provide reasonable assistance to the Disclosing Party in opposing such disclosure or seeking a protective order or other limitations on disclosure. If the Disclosing Party waives compliance or, after providing the notice and assistance required under this Section 10.4, the Receiving Party remains required by Law to disclose any Confidential Information, the Receiving Party shall disclose only that portion of the Confidential Information that the Receiving Party is legally required to disclose.

11. Term and Termination.

11.1 Term. The term of this Agreement commences as of the Effective Date and, unless terminated earlier pursuant to any of the Agreement's express provisions, will continue in effect until the parties have performed their obligations under the Signed Acceptance Document ("Term").

11.2 Termination. In addition to any other express termination right set forth elsewhere in this Agreement:



(a) Consultant may terminate this Agreement, effective on written notice to Customer, if: (i) Customer fails to pay any amount when due hereunder, and such failure continues more than ten (10) calendar days after Consultant's delivery of written notice thereof; (ii) there have been three (3) or more such payment failures in the preceding twelve (12) month period, regardless of whether any such failures were timely cured; or (iii) Customer breaches any of its obligations under Section 9.2 (License Restrictions) or Section 1.0 (Confidentiality).

(b) Either party may terminate this Agreement effective on written notice to the other party if the other party materially breaches this Agreement through no fault of the terminating party, and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured thirty (30) calendar days after the non-breaching party provides the breaching party with written notice of such breach.

(c) If the System cannot be installed and made fully operational, and either party reasonably determines that the System cannot be made to function properly, such party may terminate this Agreement upon written notice to the other party. In the event of such termination, all Fees accrued through the date of termination shall be due upon such termination.

(d) Either party may terminate this Agreement, effective immediately, if the other party: (i) is dissolved or liquidated or takes any corporate action for such purpose; (ii) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (iii) files or has filed against it a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency Law; (iv) makes or seeks to make a general assignment for the benefit of its creditors; or (v) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

11.3 Effect of Termination Pursuant to Section 11.2. Upon any expiration or termination of this Agreement:

(a) Consultant shall immediately cease all use of and within five (5) days deliver to Customer, or, if return is impractical, shall destroy, all documents and tangible materials containing, reflecting, incorporating or based on the Customer Materials or Customer's Confidential Information; provided, however, that Consultant may retain one archival copy of the Customer Materials and Customer's Confidential Information to the extent Consultant requires or will require such Customer Materials or Confidential Information to meet its internal recordkeeping requirements or perform any of its obligations or exercise any of its rights or licenses under any surviving provisions of this Agreement.

(b) Customer shall (i) immediately cease all use of and within five (5) days deliver to Consultant, or at Consultant's written request destroy, all documents and tangible materials containing, reflecting, incorporating, or based on the Consultant Materials or Consultant's other Confidential Information; and (ii) permanently erase the Consultant Materials and Consultant's other Confidential Information from its computer systems, except, in each case, to the extent that Customer requires or will require such Consultant Materials or Consultant's Confidential Information to perform any of its obligations or exercise any of its rights or licenses under any surviving provisions of this Agreement.

(c) If Customer terminates this Agreement pursuant to Sections 11.2(b) or (c), Customer will be relieved of any obligation to pay any Fees hereunder for Services and Deliverables that Consultant has not provided as of the effective date of termination and Consultant will refund to Customer Fees paid in advance for such Services and Deliverables.

(d) If Consultant terminates this Agreement pursuant to Sections 11.2(a), (b), or (c), Customer shall pay all previously-accrued but not yet paid Fees and Reimbursable Expenses through the effective date of termination, on receipt of Consultant's invoice therefor.

(e) If Consultant terminates this Agreement, all licenses granted to Customer under this Agreement will also automatically and immediately terminate on the effective date of such termination.

(f) Customer shall certify to Consultant in a notarized written instrument signed by Customer's duly authorized executive officer that it has complied with the requirements of this Section 11.3.

11.4 Surviving Provisions. The provisions set forth in the following Sections, and any other right or obligation of the parties in this Agreement that, by its nature, should survive termination or expiration of this Agreement, will survive any



expiration or termination of this Agreement: Section 8, Section 9.1, Section 9.2, Section 9.3, Section 10, Section 11.3, this Section 11.4, Section 12, Section 13, Section 14, Section 15, and Section 16.

11.5 Dispute Resolution. Any dispute arising out of or relating to this Agreement, including the alleged breach, termination, validity, interpretation and performance thereof ("Dispute") shall be resolved with the following procedures:

(a) Negotiation. Upon written notice of any Dispute, the parties shall attempt to resolve it promptly by negotiation between executives who have authority to settle the Dispute and this process should be completed within thirty (30) calendar days (the "Negotiation").

(b) Mediation. If the dispute has not been resolved by negotiation in accordance with Section 11.5(a), then the parties shall proceed to mediation unless the parties at the time of the dispute agree to a different timeframe. A "Notice of Mediation" shall be served, signifying that the Negotiation was not successful and to commence the mediation process. The parties shall agree on a mediator; however, if they cannot agree within fourteen (14) calendar days then Customer and Consultant shall each select a mediator and such mediators shall together unanimously select a neutral mediator who shall conduct the mediation. The mediation session shall be held within forty-five (45) days of the retention of the mediator, and last for at least one (1) full mediation day, before any party has the option to withdraw from the process. The parties may agree to continue the mediation process beyond one (1) day, until there is a settlement agreement, or the mediator states that there is no reason to continue because of an impasse that cannot be overcome and sends a "notice of termination of mediation." All reasonable efforts will be made to complete the mediation within thirty (30) days of the first mediation session.

During the course of the mediation, no party can assert the failure to fully comply with Section 11.5(a) as a reason not to proceed or to delay the mediation. The service of the Notice of Mediation shall stay the running of any applicable statute of limitations regarding the Dispute until thirty (30) days after the parties agree that the mediation is concluded or the mediator issues a Notice of Impasse. Each side shall bear an equal share of the mediation costs unless the parties agree otherwise.

All communications, both written and oral, during the parties' efforts under Sections 11.5(a) and 11.5(b) are confidential and shall be treated as settlement negotiations for purposes of applicable rules of evidence; however, documents generated in the ordinary course of business prior to the Dispute, that would otherwise be discoverable, do not become confidential simply because they are used in the Negotiation and/or Mediation process. The process shall be confidential based on terms acceptable to the mediator and/or mediation service provider.

12. Representations and Warranties.

12.1 Mutual Representations and Warranties. Each party represents and warrants to the other party that:

(a) it is a duly organized, validly existing, and in good standing as a corporation or other entity under the Laws of the jurisdiction of its incorporation or other organization;

(b) it has the full right, power, and authority to enter into, and to perform its obligations and grant the rights and licenses it grants or is required to grant under, this Agreement;

(c) the execution of this Agreement by its representative whose signature is set forth at the end of this Agreement has been duly authorized by all necessary corporate or organizational action of such party; and

(d) when executed and delivered by both parties, this Agreement will constitute the legal, valid, and binding obligation of such party, enforceable against such party in accordance with its provisions.

12.2 Additional Consultant Representations and Warranties; Limited Remedy.

(a) Consultant represents and warrants to Customer that Consultant will perform the Services using personnel of required skill, experience, and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and will devote adequate resources to meet its obligations under this Agreement.



(b) Consultant warrants that for twelve (12) months following Customer's acceptance of the System pursuant to Section 5.2, as installed in the Core System and used in accordance with the Documentation, the System will in all material respects function and otherwise be in conformity with the Specifications. In the event of Consultant's breach of the foregoing warranty, Consultant's sole and exclusive obligation and liability and Customer's sole and exclusive remedy shall be as follows:

(i) Consultant shall use commercially reasonable efforts to cure such breach by either the repair or replacement of the defective Consultant Material without cost to the Customer, provided that Customer had not altered the System in any way and has maintained the System in accordance with Consultant's recommendations; further provided that, if Consultant cannot cure such breach within a reasonable time (but no more than sixty (60) days) after Customer's written notice of such breach, either party may, at its option, terminate the Agreement effective immediately upon written notice to the other party.

(ii) Consultant shall not be in breach of its warranty under this Section 12.2(b), and the foregoing remedy shall not be available, unless Customer provides written notice of such breach within twenty (20) calendar days of its discovery of such defect or failure and in no event later than twelve (12) months after Customer's acceptance or deemed acceptance of the System.

(iii) In no event will Consultant be responsible for (a) any modifications to any Consultant Materials or Deliverables made by anyone other than Consultant; (b) damages caused by misuse, improper operation, or improper or insufficient maintenance of any Consultant Materials or Deliverables; (c) normal wear and tear; (d) any data loss or corruption or personal information data breach; or (e) any alleged defects in any Consultant Materials or Deliverables that arise from Consultant's compliance with designs or other criteria or requirements provided by or through Customer.

(c) Any claim arising out of or in connection with this Agreement or its subject matter must be filed within twelve (12) months after the Customer's acceptance or deemed acceptance of the System or be permanently barred.

12.3 Additional Customer Representations and Warranties. Customer represents, warrants, and covenants to Consultant that Customer owns or otherwise has and will have the necessary rights and consents in and relating to the Customer Materials so that, as received by Consultant and used in accordance with this Agreement, they do not and will not infringe, misappropriate or otherwise violate any Intellectual Property Rights of any third party or violate any applicable Law.

12.4 DISCLAIMER OF WARRANTIES. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTION 12.1 AND SECTION 12.2, THE SYSTEM AND ALL SERVICES AND WORK PRODUCT ARE PROVIDED "AS IS" AND CONSULTANT HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHER, AND CONSULTANT SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, CONSULTANT MAKES NO WARRANTY OF ANY KIND THAT THE SYSTEM OR ANY OTHER WORK PRODUCT, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER SERVICES (EXCEPT IF AND TO THE EXTENT EXPRESSLY SET FORTH IN THE SPECIFICATIONS), OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE OR ERROR FREE. ALL THIRD-PARTY MATERIALS ARE PROVIDED "AS IS" AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD-PARTY MATERIALS IS STRICTLY BETWEEN CUSTOMER AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF THE THIRD-PARTY MATERIALS.

13. Insurance. At all times during the Term of the Agreement, Consultant shall procure and maintain insurance of the following policy limits:

Workers Compensation: Statutory Limits

Excess Umbrella Liability: \$5,000,000 per claim and aggregate

General Liability: \$1,000,000 per claim
\$2,000,000 aggregate

Professional Liability: \$5,000,000 per claim
\$5,000,000 aggregate



Automobile Liability: \$1,000,000 combined single
limit

14. Limitations of Liability.

14.1 EXCLUSION OF DAMAGES. IN NO EVENT WILL CONSULTANT OR ANY OF ITS LICENSORS, SERVICE PROVIDERS OR SUPPLIERS BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (a) LOSS OF PRODUCTION, USE, BUSINESS, REVENUE, OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE; (b) USE, QUALITY, OR PERFORMANCE OF THE SYSTEM, SYSTEM COMPONENTS, OR OTHER DELIVERABLES OTHER THAN AS EXPRESSLY SPECIFIED IN THE SPECIFICATIONS, DOCUMENTATION, OR THIS AGREEMENT, INCLUDING ANY INABILITY TO USE OR NON-PERFORMANCE OF THE SYSTEM, IN WHOLE OR IN PART; OR (c) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES, IN EACH CASE REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

14.2 CAP ON MONETARY LIABILITY. {EXCEPT FOR INDEMNIFICATION OBLIGATIONS} IN NO EVENT WILL THE COLLECTIVE AGGREGATE LIABILITY OF CONSULTANT AND ITS LICENSORS, SUBCONTRACTORS, SERVICE PROVIDERS AND SUPPLIERS UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER, UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE, EXCEED THE FOLLOWING (WHICHEVER IS GREATER): (A) THE AMOUNT PAID BY CUSTOMER TO CONSULTANT PURSUANT TO THIS AGREEMENT IN THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM; OR, (B) IF THE COLLECTIVE AGGREGATE LIABILITY IS INSURED IN WHOLE OR IN PART, THE AGGREGATE AMOUNT RECOVERED BY CONSULTANT FROM ANY INSURERS OF THE LIABILITY. THE FOREGOING LIMITATION APPLIES NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

14.3 Customer acknowledges and agrees that the parties entered into the Agreement in reliance upon the limitations of liability set forth in Section 14, that the same reflect an allocation of risk between the parties (including the risk that a contract remedy may fail of its essential purpose and cause consequential loss), and that the same form an essential basis of the bargain between the parties.

14.4 TORT IMMUNITY DEFENSES - Nothing contained in this Agreement is intended to constitute nor shall constitute a waiver of the rights, defenses, and immunities provided or available to the Village under the Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10 *et seq.*

15. Force Majeure. In no event will either party be liable or responsible to the other party, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any portion of this Agreement, (except for any confidentiality or payment obligations), when and to the extent such failure or delay is caused by any circumstances beyond such party's reasonable control (a "Force Majeure Event"), including acts of God, flood, fire, lightning, earthquake or explosion, war, terrorism, invasion, riot or other civil unrest, embargoes or blockades in effect on or after the date of this Agreement, national or regional emergency, strikes, labor stoppages or slowdowns or other industrial disturbances, passage of Law or any action taken by a governmental or public authority, including imposing an embargo, export or import restriction, quota, or other restriction or prohibition or any complete or partial government shutdown, or national or regional shortage of adequate power or telecommunications or transportation. Either party may terminate this Agreement if a Force Majeure Event continues substantially uninterrupted for a period of thirty (30) calendar days or more. In the event of any failure or delay caused by a Force Majeure Event, the affected party shall give prompt notice to the other party, stating the period of time the occurrence is expected to continue and use diligent efforts to end the failure or delay and minimize the effects of such Force Majeure Event.

16. Miscellaneous.

16.1 Further Assurances. Upon a party's reasonable request, the other party shall, at the requesting party's sole cost and expense, execute and deliver all such documents and instruments, and take all such further actions, necessary to give full effect to this Agreement.



16.2 Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

16.3 Notices. All notices, requests, consents, claims, demands, waivers, and other communications under this Agreement have binding legal effect only if in writing and addressed to a party as follows (or to such other address or such other person that such party may designate from time to time in accordance with this Section 16.3):

If to Consultant: Concentric Integration, LLC
8678 Ridgefield Rd.
Crystal Lake, IL 60012
Attn: Mike Klein
Facsimile: (815) 455-0450
E-mail: mklein@goconcentric.com

If to Customer: At the addresses and to the attention as specified in the Signed Acceptance Document.

Notices sent in accordance with this Section 16.3 will be deemed effectively given: (a) when received, if delivered by hand, with signed confirmation of receipt; (b) when received, if sent by a nationally recognized overnight courier, signature required; (c) when sent, if by facsimile or e-mail, (in each case, with confirmation of transmission), if sent during the addressee's normal business hours, and on the next business day, if sent after the addressee's normal business hours; and (d) on the third (3rd) day after the date mailed by certified or registered mail, return receipt requested, postage prepaid.

16.4 Interpretation. For purposes of this Agreement, (a) the words "include," "includes" and "including" are deemed to be followed by the words "without limitation;" (b) the word "or" is not exclusive; (c) the words "herein," "hereof," "hereby," "hereto" and "hereunder" refer to this Agreement as a whole; (d) words denoting the singular have a comparable meaning when used in the plural, and vice-versa; and (e) words denoting any gender include all genders. The parties intend this Agreement to be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. Any exhibits, attachments, and riders referred to herein are an integral part of this Agreement to the same extent as if they were set forth verbatim herein. The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.

16.5 Entire Agreement; Amendment and Modification; Waiver. This Agreement, together with any other documents incorporated herein by reference, constitutes the sole and entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter. No amendment to or modification of this Agreement is effective unless it is in writing and signed by each party. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

16.6 Assignment. Customer shall not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this Agreement, in each case whether voluntarily, involuntarily, by operation of law, or otherwise, without Consultant's prior written consent. No delegation or other transfer will relieve Customer of any of its obligations or performance under this Agreement. Any purported assignment, delegation, or transfer in violation of this Section 16.6 is void. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective permitted successors and assigns.

16.7 No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective permitted successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit, or remedy of any nature whatsoever, under or by reason of this Agreement.



16.8 Severability. If any provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement or invalidate or render unenforceable such provision in any other jurisdiction. Upon such determination that any provision is invalid, illegal, or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

16.9 Governing Law; Submission to Jurisdiction. This Agreement is governed by and construed in accordance with the internal laws of the State of Illinois without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of Illinois. Any legal suit, action or proceeding arising out of or related to this Agreement or its subject matter shall be instituted exclusively in the federal courts of the United States or the courts of the State of Illinois in each case located in or having jurisdiction over McHenry County, Illinois, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding. Service of process, summons, notice, or other document by mail to such party's address set forth herein shall be effective service of process for any suit, action, or other proceeding brought in any such court.

16.10 Waiver of Jury Trial. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY THAT MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

16.11 Equitable Relief. Each party acknowledges and agrees that a breach or threatened breach by such party of any of its obligations under Sections 8, 9, or 10, would cause the other party irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, the other party shall not be required to submit itself to the Dispute Resolution process set forth in Section 11.5 and will be entitled to equitable relief, including a restraining order, an injunction, specific performance, and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity, or otherwise.

16.12 Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. A signed copy of the Agreement delivered by facsimile, e-mail, or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.