

SOFTWARE AS A SERVICE AGREEMENT

This Software as a Service Agreement, including the attached Exhibits ("Agreement"), is entered into by and between Bellefeuil, Szur & Associates, Inc. ("BSA"), a Michigan corporation and the Village of Buffalo Grove, Cook County IL ("Customer"), effective the date of the signature of the last Party to sign the Agreement ("Effective Date"). Each party to the Agreement is referred to as a "Party" and the parties, collectively, are referred to as "Parties."

This Agreement sets the terms and conditions under which BSA will furnish certain Software as a Service ("SaaS") and certain professional services described herein to Customer.

SECTION A – SAAS SERVICES

1. Rights Granted.

1.1. Upon the Effective Date, subject to the terms of this Agreement and Customer's ongoing compliance therewith, BSA hereby grants to Customer a non-exclusive, non-transferable, and non-assignable license to use the BSA Software Products. "BSA Software Product(s)" means, the: (i) BSA Software as a Service set forth in **Schedule 1 to Exhibit A**; (ii) related interfaces and customizations; (iii) BSA manuals, BSA official specifications, and BSA user guides provided in or with BSA software products set forth in **Schedule 1 to Exhibit A** ("Documentation"); and (iv) all modifications to the BSA software products set forth in **Schedule 1 to Exhibit A**, including, but not limited to, fixes, new versions, new releases, updates, upgrades, corrections, patches, work-arounds (collectively, "Modifications"). For the avoidance of doubt, Documentation does not include advertising, other general statements about products, or statements by sales or other staff members.

1.2. Customer acknowledges that BSA will not ship copies of the BSA Software Products as part of the SaaS Services.

2. Restrictions. Customer will not (i) sublicense, modify, adapt, translate, or otherwise transfer, reverse compile, disassemble or otherwise reverse engineer BSA Software Products or any portion thereof without prior written consent of BSA; (ii) access or otherwise use the BSA Software Products to create or support, and/or assist a third party in creating or supporting software products competing with the BSA Software Products; or (iii) assign, disclose, display, distribute, host, lease, license, outsource, permit timesharing or service bureau use, rent, sell, transfer or otherwise use the BSA Software Products for any commercial use other than fulfilling Customers own internal business purposes. Without limiting the foregoing, the BSA Software Products may not be modified by anyone other than BSA. If Customer modifies the BSA Software Products without BSA's prior written consent, any BSA obligation to provide support services on, and the warranty for, the BSA Software Products will be void. All rights not expressly granted are reserved.

3. SaaS Fees. Customer agrees to pay BSA, and BSA agrees to accept from Customer as payment in full for the rights granted herein, the SaaS fees set forth in **Schedule 1 to Exhibit A**.

4. Ownership.

4.1. BSA retains all ownership and intellectual property rights to the SaaS Services, the BSA Software Product(s), and anything developed by BSA under this Agreement. Customer does not acquire under this Agreement any license to use the BSA Software Product(s) beyond the scope and/or duration of the SaaS Services. Customer agrees not to challenge such rights and hereby assigns any and all copyrights and other intellectual property rights in and to the BSA Software Products to BSA and agrees to execute any and all documents necessary to effect the purpose of this paragraph. "Intellectual property rights" means all trademarks, copyrights, patents, trade secrets, moral rights, know-how, and all other proprietary rights.

- 4.2. Customer retains all ownership and intellectual property rights to the data.
5. **Limited Software Warranty.** BSA warrants and represents for a period of one (1) year from the installation of BSA's software product that ; (i) such BSA software product will perform substantially in the same manner as official demonstration versions and in accordance with BSA's authorized online tutorials and videos that may have been made available as part of the sales and negotiation process leading up to this agreement; and (ii) BSA's software product shall conform to the documentation and be free of material defects in workmanship and materials. Any claim under this Limited Software Warranty must be made within one (1) year from the Activation Date of the applicable BSA software product. Customer's exclusive remedy in the event of a breach of this warranty shall be to have BSA use reasonable efforts to repair or replace the non-conforming BSA software product so as to render it conforming to the warranty, or in the event that it is not possible to render it conforming with reasonable efforts, to receive a refund of the amount paid for the first year subscription fee to the applicable BSA software product. The foregoing Limited Software Warranty is in lieu of all other representations or warranties relating in any way to the BSA software products, including, but not limited to, their features, attributes, functionality and performance. The foregoing Limited Software Warranty is in lieu of all such representation or warranties whether express or implied, including, but not limited to, any implied warranties or representations of merchantability, merchantable quality and fitness for a particular purpose and those arising by statute or otherwise in law or from the course of dealing or usage of trade. BSA does not represent or warrant that the BSA software products will meet any or all of Customer's particular requirements, that the operation of the BSA software will operate error-free or uninterrupted, or that all programming errors in the BSA software product(s) can be found in order to be corrected.
6. **One Year Money Back Guarantee.** BSA offers a one (1) year Money Back Guarantee on all SaaS products. If, for any reason, Customer is not satisfied with the BSA Software Product, Customer may cancel service within one (1) year of the date that the BSA Software Product becomes available for use ("Activation Date"), for a full refund of the SaaS Fees, as identified in **Schedule 1 to Exhibit A**. Customer must notify BSA of intention to terminate at least thirty (30) days prior to the end of the one (1) year period.
7. **SaaS Services.**
- 7.1. Customer will utilize shared hardware in a data center, but in a database dedicated to Customer's use, which is not accessible to other customers.
- 7.2. Microsoft Azure data centers, or any replacement data centers utilized by BSA during the term of this Agreement are accessible only by authorized personnel, for specific business purposes, with prior approval required.
- 7.3. Data centers utilized by BSA will have redundant telecommunications access, electrical power, and the necessary hardware to provide access to the BSA Software Products in the event of a disaster or component failure. In the event any of Customer's data is lost or damaged due to a negligent act or omission of BSA, or due to a defect in the BSA Software Product, BSA will use reasonable commercial efforts to restore data on servers in accordance with the system capabilities and with the objective of minimizing any data loss possible. BSA's systems are reasonably designed to ensure that the recovery point shall not exceed a maximum of twenty-four (24) hours from declaration of disaster. For purposes of this section, the declaration of disaster shall be declared by BSA in response to issues discovered by BSA, or upon confirmation of issues relayed by Customer to BSA. Said declaration of disaster will not be unreasonably withheld by BSA.
- 7.4. In the event that a backup must be restored due to a declaration of disaster, or database failure, BSA will be responsible for importing backup data and verifying that Customer can log in. Customer will be solely responsible for running reports and testing critical processes to verify the restored data.

- 7.5. BSA's systems are reasonably designed to ensure that, access to the BSA Software Products can be restored within one (1) business day of the declaration of disaster.
- 7.6. Customer will not attempt to reverse engineer, bypass, or otherwise subvert security restrictions in the BSA Software Products or the SaaS environment related to the BSA Software Products. Unauthorized attempts to access files, passwords, other confidential information, or unauthorized vulnerability and penetration testing of BSA's system (hosted or otherwise) is prohibited without the prior express written approval of BSA.
- 7.7. **Insurance. Contemporaneous with BSA's execution of this Agreement, BSA shall provide certificates and policies of insurance, all with coverages and limits acceptable to the Customer, and evidencing at least the minimum insurance coverages and limits as set forth in 7.8 Insurance Requirements to this Agreement. For good cause shown, the Deputy Village Manager ("Manager") may extend the time for submission of the required policies of insurance upon such terms, and with such assurances of complete and prompt performance, as the Manager may impose in the exercise of his sole discretion. Such certificates and policies shall be in a form acceptable to the Customer and from companies with a general rating of A minus, and a financial size category of Class X or better, in Best's Insurance Guide. Such insurance policies shall provide that no change, modification in, or cancellation of, any insurance shall become effective until the expiration of 30 calendar days after written notice thereof shall have been given by the insurance company to the Customer. BSA shall, at all times during the term of this Agreement, maintain and keep in force, at BSA's expense, the insurance coverages provided above, including, without limitation, at all times while correcting any failure to meet the warranty requirements of Subsection 5. Limited Software Warranty of Services, of this Agreement.**
- 7.8. **Insurance Requirements** BSA shall maintain during the entire term of this Agreement, the following insurance coverages.
- a) **Commercial General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury, and property damage. The general aggregate shall be \$2,000,000 per project.**
 - b) **Professional Liability: \$1,000,000 single limit for errors and omissions, professional /malpractice liability.**
 - c) **Worker's Compensation and Employers' Liability: Worker's Compensation limits of \$1,000,000 and as Employers' Liability limits of \$500,000 per accident or as required by Illinois law.**
 - d) **Umbrella Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury, and property damage.**
- 7.9. **No Personal Liability. No elected or appointed official, agent, or employee of the Customer shall be personally liable, in law or in contract, to BSA as the result of the execution of this Agreement.**

SECTION B – PROFESSIONAL SERVICES

8. **Professional Services.** BSA shall provide the services ("Professional Services") set forth in **Schedule 2 to Exhibit A**, for the prices indicated, provided Customer fulfills its obligations set forth in this Agreement. BSA and Customer may enter into future Statements of Work, which shall become part of this Agreement. Future Statements of Work resulting from a change in scope to the contracted services may necessitate Change Orders to indicate changes to the agreed upon scope of work and any increase or decrease in costs related to the change in scope. Customer acknowledges that the fees stated in the Cost Summary are good-faith estimates of the amount of time and materials required for Customer's implementation. BSA will bill Customer for the actual fees incurred based on the services provided to Customer.

9. Change Orders. In the event of a change in the agreed upon project scope for professional services not covered or otherwise included in the existing Agreement, Customer shall deliver to BSA's Project Manager a written change order and specify in such change order the proposed work with sufficient detail to enable BSA to evaluate it ("Change Order"). BSA may, at its discretion, prescribe the format of the Change Order. BSA shall provide the Customer with an evaluation of the Change Order, which may include a written proposal containing the following: (i) implementation plan; (ii) the timeframe for performance; and (iii) the estimated price for performance of such change, based on the then current rates for said services. Upon execution, all Change Orders shall be governed by the terms and conditions of this Agreement, unless mutually agreed upon otherwise in writing. Customer acknowledges that such Change Orders may affect the implementation schedule and dates otherwise established as part of the project plan. The implementation schedule and schedule of activities for contracted services (the "Project") shall be established based on a timeline mutually agreed upon between the Parties following the execution of this Agreement.

10. License and Ownership.

10.1. All rights, including intellectual property rights, in and to work product delivered as a result of Professional Services under this Agreement shall be owned by BSA. For the avoidance of doubt, work product that constitutes a BSA Software Product, or portion thereof shall be governed by Section A of this Agreement, including Section 1.1 thereof.

10.2. Subject to Section 9.1 and Customer's compliance with this Agreement (including payment in full), BSA grants to Customer a non-exclusive, non-transferrable, and non-assignable license to use the work product and the intellectual property rights therein for Customer's internal business purposes only.

11. Cancellation. In the event Customer cancels or reschedules Professional Services (other than for Force Majeure or breach by BSA), and without prejudice to BSA's other rights and remedies, Customer is liable to BSA for: (i) all non-refundable expenses actually incurred by BSA on Customer's behalf; and (ii) daily Project Management or Training fees associated with the cancelled Professional Services (in accordance with the daily fee rate), if less than thirty (30) days advance notice is given regarding the need to cancel or reschedule and BSA cannot reasonably reassign its affected human resources to other projects where comparable skills are required.

12. Limited Professional Services Warranty.

12.1. BSA warrants that its Professional Services will be performed in a professional and workmanlike manner, consistent with industry standards. In the event of a breach of the foregoing warranty and a claim in accordance with the breach, BSA's sole obligation and Customer's exclusive remedy with respect to such claim will be to have BSA reperform the portion of the Professional Services with respect to which the warranty has been breached, to bring it into compliance with such warranty. Any claim for breach of the foregoing warranty must be made by notice to BSA within thirty (30) days of performance of the portion of the Professional Services with respect to which the claim is made or said claim shall be deemed waived.

12.2. THE FOREGOING LIMITED PROFESSIONAL SERVICES WARRANTY IS IN LIEU OF ALL OTHER REPRESENTATIONS OR WARRANTIES RELATING TO THE PROFESSIONAL SERVICES, EXPRESS OR IMPLIED. INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OR REPRESENTATIONS OF MERCHANTABILITY, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND THOSE ARISING BY STATUTE OR OTHERWISE IN LAW, OR FROM THE COURSE OF DEALING OR USAGE OF TRADE.

13. Customer Site Access and Assistance.

13.1. Customer agrees and acknowledges that the implementation of the BSA Software Products is a cooperative process requiring time and resources of Customer personnel. Customer shall, and shall cause Customer personnel to, use all reasonable efforts to cooperate with and assist BSA as may be reasonably required to

meet the project deadlines and other project milestones agreed to by the Parties for implementation. BSA shall not be liable for failure to meet such deadlines and milestones when such failure is due to force majeure (as defined in Section 30, below) or to the failure by Customer personnel to provide such cooperation and assistance (either through action or omission.)

- 13.2.** At no cost to BSA, Customer agrees to provide to BSA full access to and use of personnel, facilities, and equipment as reasonably necessary for BSA to provide implementation and training services. Such access will be subject to any reasonable security protocols or written policies provided to BSA prior to Effective Date of this Agreement, or mutually agreed to thereafter.

SECTION C – MAINTENANCE AND SUPPORT

14. Maintenance and Support Generally.

- 14.1.** For a one (1) year period, commencing on the Activation Date, and subject to Customer's compliance with the Agreement, BSA will provide, at no charge to Customer, "Maintenance and Support", meaning the following; (i) Modifications (such as patches, corrections and updates) as are generally provided at no additional charge by BSA to BSA customers; and (ii) technical support assistance, as further described in Section 14, during BSA's normal business hours.
- 14.2.** Commencing one (1) year from the Activation Date, Maintenance and Support will continue to be provided subject to compliance with the terms of the Agreement and payment of the SaaS Fees outlined in **Exhibit B**.
- 14.3.** BSA guarantees that the annual SaaS Fees, as set forth in **Exhibit B** will not change for two (2) years from the Activation Date. After that date, BSA reserves the right each year to increase the fee over the previous year by no more than an amount that is proportionate to the increase (measured from the beginning of such previous year) in the Consumer Price Index as set forth by the U.S. Department of Labor, Bureau of Labor Statistics, Consumer Price Index – All Urban Customers – U.S. City Average (CPI-U), or a similar measure should such data become unavailable.
- 14.4.** Maintenance and Support and the SaaS fee do not include amounts that may be due for such items as additional training, additional BSA Software Products, custom development work, hardware purchases, BSA staff time to create or modify report writer based reports, configurable imports or exports, or data entry. Additional fees may be payable for items charged on a per event basis, such as Permit Application Submission Fees related to online permit applications.

15. Support.

- 15.1.** With respect to Errors following expiration of the Limited Software Warranty, BSA's sole obligation and Customer's sole remedy are set forth in this Section 15. Subject to Customer's compliance with the terms of the Agreement and payment of SaaS fees, BSA shall use commercially reasonable efforts, commensurate with the severity level, to achieve its support response and resolution targets with respect to Errors as set forth in **Exhibit C**. An "Error" means a verifiable and reproducible failure of a BSA Software Product to operate in accordance with the Documentation under conditions of normal use and where the Error is directly attributable to the BSA Software Product as updated with current Modifications. If the customer modifies the BSA Software Products without BSA's written consent, BSA's obligation to provide support services on the BSA Software Products will be void.
- 15.2.** Support does not include the following: (i) installation or implementation of the BSA Software Products; (ii) onsite training/support, remote training, application design, and other consulting services; (iii) support of an operating system, hardware, or support outside of BSA's normal business hours; (iv) support or support time due to a cause external to the BSA Software Products adversely affecting their operability or serviceability, which shall include, but not be limited to, water, fire, lightning, other natural calamities, misuse, abuse, or neglect; (v) repair of the BSA Software Products modified in any way other than modifications made by BSA or its authorized agents; and (vi) support of any other third-party vendors' software, such as operating system

software, network software, database managers, word processors, etc. All such excluded Maintenance and Support Services performed by BSA at Customer's request shall be invoiced to Customer on a time and materials basis, plus reasonable expenses associated therewith.

- 15.3.** Notwithstanding anything to the contrary, Customer shall provide prompt notice of any Errors discovered by Customer, or otherwise brought to the attention of Customer. Proper notice may include, without limitation, prompt telephonic and written (either via e-mail or postal mail) notice to BSA of any purported Error. If requested by BSA, Customer agrees to provide written documentation of Errors to substantiate those Errors and to otherwise assist BSA in the detection and correction of said Errors. BSA will use its commercially reasonable judgment to determine if an Error exists, and the severity of the Error.
- 15.4.** Customer acknowledges and agrees that BSA and product vendors may require online access to the BSA Software Product in order for BSA to provide Maintenance and Support Services hereunder. Accordingly, Customer shall provide a high-speed internet connection to facilitate BSA's remote access to the BSA Software Products. BSA shall provide remote connection software, which may require installation of a software component on a workstation or server computer.

SECTION D – THIRD PARTY PRODUCTS

16. Third Party Products.

- 16.1.** BSA will sell, deliver and install onsite any hardware products not produced by BSA ("Third-Party Hardware"), if purchased by Customer, for the prices set forth in **Schedule 1 to Exhibit A**, as modified by any subsequent Change Order(s).
- 16.2.** BSA shall not provide any warranty services on Third Party Hardware sold. BSA is not the manufacturer of the Third-Party Products. To the extent applicable, BSA will grant and pass through to Customer any warranty that BSA may receive from the supplier of the Third-Party Product(s).

SECTION E – GENERAL TERMS AND CONDITIONS

17. BSA Proprietary Information.

- 17.1.** Customer acknowledges that the information associated with or contained within the BSA Software Products and information used in the performance of Professional Services include information relating to BSA Software Products, BSA's business, and the terms of this Agreement (the "Proprietary Information").
- 17.2.** Customer shall maintain in confidence and not disclose Proprietary Information, directly or indirectly, to any third party without BSA's prior written consent. Customer shall safeguard the Proprietary Information to the same extent that it safeguards its own most confidential materials or data, but in no event shall the standard implemented be less than industry standard. Proprietary Information shall be used by Customer solely to fulfill its obligations under this Agreement. Customer shall limit its dissemination of such Proprietary Information to employees within the Customer's business organization who are directly involved with the performance of this Agreement and have a need to use such Proprietary Information. Customer shall be responsible for all disclosures by any person receiving Proprietary Information, by or through it, as if Customer itself disseminated such information.
- 17.3.** Proprietary Information shall not include any information that: (a) is or becomes publicly known through no wrongful act of breach of any obligation of confidentiality by Customer; (b) was lawfully known to Customer prior to the time it was disclosed to or learned by Customer in connection with this Agreement, provided that such information is not known to Customer solely because of its prior business relationship with BSA; (c) was received by Customer from a third party that is not under an obligation of confidentiality to BSA; or (d) is independently developed by Customer for a party other than BSA without the use of any Proprietary Information. The following circumstances shall not cause Proprietary Information to fall within any of the exceptions (a) through (d) above: (i) a portion of such Proprietary Information is embraced by more general

information said to be in the public domain or previously known to, or subsequently disclosed to, the Customer; or (ii) it is a combination derivable from separate sources of public information, none of which discloses the combination itself.

- 17.4. If Customer is required, or anticipates that it will be required, to disclose any Confidential Information pursuant to a court order or to a government authority, Customer shall, at its earliest opportunity, provide written notice to BSA so as to give BSA a reasonable opportunity to secure a protective order or take other actions as appropriate. Customer shall at all times cooperate with BSA so as to minimize any disclosure to the extent allowed by applicable law.
18. **Limitation on Liability and Damages. Except for breaches of Section 38. Disabling Code BSA's entire liability and responsibility for any and all claims, damages, or losses arising from the BSA software products (including but not limited to their use, operation, and/or failure to operate), professional services, maintenance and support, any third-party performance or lack thereof, or otherwise arising out of or relating to this agreement, shall be absolutely limited to direct damages not in excess of the greater of Exhibit A Schedule 1 or the amount of insurance proceeds actually available without reservation at the time of settlement or judgment to cover the claim(s), damages or losses by the customer under insurance placed or provided pursuant to this agreement. For avoidance of doubt, and without limiting any obligation of any insurer, customer shall not have recourse against BSA for amounts unfunded by insurance proceeds in excess of \$23,055. Notwithstanding any provision contained herein, BSA shall not be liable for any indirect, consequential, special, incidental, or contingent damages or expenses, whether in contract, tort (including negligence) or otherwise, arising in any way out of this agreement, BSA software products, any third-party performance, or lack thereof, or BSA's performance, or lack thereof, under this agreement, including without limiting the generality of the foregoing, loss of revenue, profit, or use. To the extent that applicable law does not permit the limitations set forth herein, the liability and damages shall be limited and restricted to the extent permitted by law.**
19. **Additional Disclaimer.** BSA PROVIDES NO WARRANTY FOR ANY THIRD-PARTY SOFTWARE AND/OR HARDWARE, EXCEPT AS SET FORTH IN THIS AGREEMENT, BSA WILL NOT BE RESPONSIBLE FOR ANY THIRD-PARTY SOFTWARE, THIRD-PARTY SERVICES AND/OR HARDWARE.
20. **Infringement Indemnity. If the deliverable (including but not limited to any System elements) provided by BSA (other than items provided by the Customer) to provide the System and any related services becomes, or in BSA's reasonable opinion is likely to become, the subject of an infringement or misappropriation claim or proceeding, then BSA will promptly notify the Customer of such claim or proceeding and at BSA's expense take one of the following actions: (i) secure the right to continue using the item; (ii) modify the item to make it non-infringing, provided that such modification will not degrade the performance or quality of the affected component of the Services in any material way; (iii) replace the item with a non-infringing substitute that does not degrade the performance or quality of the affected component of the Services in any material way; or (iv) if the infringement or misappropriation claim or threatened claim is a bona fide claim with a basis in fact, remove the item from the Services and equitably adjust BSA's charges to adequately reflect such removal. BSA shall be responsible for all costs and expenses (including costs of building new interfaces) incurred by BSA or by the Customer in connection with the activities contemplated by this Section**
21. **No Intended Third-Party Beneficiaries.** This Agreement is entered into solely for the benefit of BSA and Customer. No third party will be deemed a beneficiary of this Agreement, and no third party will have the right to make any claim or assert any right under this Agreement.

- 22. Governing Law and Venue.** This Agreement shall be governed by, and construed in accordance with, the laws of the state of Illinois, without regard to its choice of law rules. BSA and the Customer agree that the exclusive venue for any legal or equitable action shall be the Courts of the County of Cook, State of Illinois.
- 23. Entire Agreement.** This Agreement represents the entire agreement of Customer and BSA with respect to the subject matter hereof, and supersedes any prior agreements, understandings, and representations, whether written, oral, expressed, implied, or statutory. Customer hereby acknowledges that in entering into this Agreement, it did not rely on any information not explicitly set forth in this Agreement.
- 24. Contract Term.** This initial term of this Agreement extends from the Effective Date of the Agreement until one (1) year from the Activation Date. Upon expiration of the initial term, this Agreement will renew automatically for successive one (1) year terms under the same terms and conditions set forth herein without further documentation being required unless and until either party provides written notice to the other party, at least sixty (60) days prior to the end of the then current term. Customer's right to access or use the BSA Software Product will terminate at the end of the Agreement.
- 25. Payment Terms.** Customer shall pay BSA for all amounts in accordance with this Agreement and **Exhibit A**.
- 26. Termination.** Without prejudice to other rights and remedies, and except as otherwise provided in this Agreement, either Party may terminate this Agreement as set forth below. Upon termination of this Agreement: (a) Customer shall promptly pay BSA for all fees and expenses that are not subject to a good faith dispute and that are related to the software, products, and/or services received, or expenses BSA has incurred or delivered, prior to the effective date of the termination (b) Customer shall return or destroy, at the direction of BSA, BSA's Proprietary Information in its possession. The termination of this Agreement will not discharge or otherwise affect any pre-termination obligations of either Party existing under this Agreement at the time of termination. Sections 2, 4, 16 through 18, 21-23, 25 -39, and the provisions of this Agreement which by their nature extend beyond the termination of this Agreement, will survive the termination of the Agreement. No action arising out of this Agreement, regardless of the form of action, may be brought by Customer more than one (1) year after the date the action occurred.
- 26.1. Termination for Cause.** If Customer believes that BSA has materially breached this Agreement, Customer may terminate this Agreement for Cause in the event BSA does not cure, or create a mutually agreeable plan to address, a material breach of this agreement within thirty (30) days after Notification by Customer. Notice shall be provided in accordance with Section 31, below.
- 26.2. Force Majeure.** Either Party may terminate this Agreement if a Force Majeure event suspends performance of the SaaS Services for a period of forty-five (45) days or greater.
- 26.3. Lack of Appropriations.** If Customer cannot appropriate, or otherwise make available funds sufficient to continue to utilize the SaaS Services, Customer may unilaterally terminate this Agreement with thirty (30) days written notice to BSA. Customer shall not be entitled to a refund, offset, or credit for previously paid, but unused SaaS fees.
- 26.4. Failure to Pay SaaS Fees.** Customer acknowledges that timely payment of SaaS Fees is necessary to maintain continued access to the SaaS Services. In Customer does not make timely payment of SaaS fees, BSA may discontinue the SaaS Services, and deny access to the BSA Software Products. If such failure to pay is not cured within forty-five (45) days of receiving BSA's notice of intent to terminate, BSA may terminate this Agreement.
- 26.5. Convenience.** If Customer terminates SaaS Services for convenience, any SaaS fees already paid will not be prorated, and will be retained by BSA.
- 27. Severability.** If any term or provision of this Agreement, or the application thereof, to any extent, is held invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or

circumstances other than those as to which it is held invalid or unenforceable, will not be affected thereby, and each term and provision of this Agreement will be valid and enforced to the fullest extent permitted by law.

28. Waiver. No waiver of any provision of this Agreement shall be deemed to or constitute a waiver of any other provision of this Agreement (whether or not similar) nor shall any such waiver be deemed to or constitute a continuing waiver unless otherwise expressly provided in this Agreement.

29. Successors and Assigns. This Agreement shall be binding upon the successors, permitted assigns, representatives, and heirs of the Parties hereto. For avoidance of doubt, any expanded use by Customer of the Program, for example, in the event of annexation or desired shared services, shall require the consent of BSA.

30. Force Majeure. "Force Majeure" is defined as an event beyond the reasonable control of a Party, including governmental action, war, riot or civil commotion, fire, natural disaster, epidemic, pandemic, other public health emergency, problematic weather, lack of availability of Customer provided technology, labor disputes, restraints affecting shipping or credit, delay of carriers or any other cause that could not, with reasonable diligence, be foreseen, controlled or prevented by the Party. Neither Party shall be liable for delays in performing its obligations under this Agreement to the extent that the delay is caused by Force Majeure.

31. Notice. All notices, requests, demands, and determinations under the Agreement (other than routine operational communications), shall be in writing and shall be deemed duly given: (i) when delivered by hand; (ii) one (1) business day after being given to a nationally recognized overnight delivery service for next-business-day delivery, all fees prepaid; (iii) when sent by confirmed facsimile with a copy sent by another means specified in this provision; or (iv) six (6) calendar days after the day of mailing, when mailed by United States mail, *via* registered or certified mail, return receipt requested, postage prepaid, and in each case addressed as shall be set forth below. A Party may from time-to-time change its address or designee for notification purposes by giving the other prior written notice of the new address or designee and the date upon which it will become effective.

If to BSA:
BSA Software
14965 Abbey Lane
Bath, MI 48808
Attn: Contracts Manager
Telephone: 517-641-8900

If to Customer:
Village of Buffalo Grove
50 Raupp Blvd
Buffalo Grove, IL 60089
Telephone: (847) 459-2500

32. Independent Contractor. This is not an agreement of partnership or employment of BSA or any of BSA's employees by Customer. BSA is an independent contractor for all purposes under this Agreement.

33. Cooperative Procurement. To the maximum extent permitted by applicable law, BSA agrees that this Agreement may be used as a cooperative procurement vehicle by eligible jurisdictions. BSA reserves the right to

negotiate and customize the terms and conditions set forth herein, including but not limited to pricing, to the scope and circumstances fitting to that cooperative procurement.

- 34. Business License.** In the event a local business license is required for BSA to perform the services under this Agreement, Customer agrees to promptly notify and inform BSA of such requirement, as well as to provide BSA with the necessary paperwork and contact information so that BSA can obtain such license in a timely manner.
- 35. Nondiscrimination.** BSA will not discriminate against any person employed, or applying for employment, concerning the performance of BSA's responsibilities under this Agreement. This discrimination prohibition will apply to all matters of employment including hiring, tenure, and terms of employment, or otherwise with respect to any matter directly or indirectly relating to employment concerning race, color, religion, national origin, age, sex, sexual orientation, ancestry, disability that does not impact the individual's ability to perform the duties of a particular job or position, height, weight, marital status, or political affiliation. BSA will post, where appropriate, all notices related to nondiscrimination as may be required by applicable law.
- 36. Taxes.** Fees for SaaS Services, Professional Services, or any other fees shown in Schedule 1 to Exhibit A do not include any taxes, including, without limitation, any sales, use or excise tax. Customer shall be responsible for all taxes, exclusive of taxes on BSA's net income, arising out of this Agreement. If Customer is not validly tax-exempt, and BSA is required to remit taxes on customer's behalf, Customer agrees to reimburse BSA for any taxes by BSA.
- 37. U.S. Government Rights.** Each instance of the Documentation, Modifications and software that are constituents of BSA Software Products is a "commercial item" as that term is defined at 48 C.F.R. § 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. § 12.212. Any use, modification, reproduction release, performance, display or disclosure of the Application by the U.S. Government shall be solely in accordance with the terms of this Agreement.
- 38. Export Control.** Certain uses of the Software by Licensee may be subject to restrictions under United States regulations relating to exports and ultimate end uses of computer software. Licensee agrees to fully comply with all applicable United States laws and regulations, including but not limited to the Export Administration Act of 1979, as amended from time to time, the Arms Export Control Act, as amended from time to time, any regulations promulgated thereunder to implement those statutes, and all sanctions programs administered by the U.S. Government.
- 39. Disabling Code** BSA covenants, warrants and represents that it has taken all reasonable steps to test any software licensed or developed hereunder (including software modifications) for Disabling Code (as defined below) and that the software is and shall be free of Disabling Code as of the date of delivery by BSA, and that BSA shall continue to take such steps with respect to future enhancements or modifications to the software. BSA shall not invoke any Disabling Code on any of the Village of Buffalo Grove's systems. The term "Disabling Code" means computer instructions, features or functions that may permit BSA or a third party to, or may automatically: (a) alter, destroy or inhibit the software and/or Village of Buffalo Grove's processing environment; (b) erase, destroy, corrupt or modify any data, programs, materials or information used by Village of Buffalo Grove or store any data, programs, materials or information on Village of Buffalo Grove's computers without the consent of Village of Buffalo Grove; (c) discontinue Village of Buffalo Grove's effective use of the software except in the event of non-payment for ongoing software services, or Termination under Section 25; or (d) bypass any internal or external software security measure to obtain access to any hardware or software of Village of Buffalo Grove

without the consent or knowledge of Village of Buffalo Grove, including, but not limited to, other programs' data storage and computer libraries. Disabling Code includes, but is not limited to, programs that self-replicate without manual intervention, instructions programmed to activate at a predetermined time or upon a specified event, and/or programs purporting to do a meaningful function but designed for a different function. BSA further covenants, warrants and represents that it shall maintain a master copy of each version of the software free and clear of any Disabling Code. Upon Village of Buffalo Grove's request, BSA agrees to make such master copy available to Village of Buffalo Grove, with appropriate provisions for security thereof, for comparison with, and if necessary, correction by BSA of Village of Buffalo Grove's copy of the software.

- 40. Virus Protection** To the extent that any computer equipment is used by BSA in conjunction with the Services and BSA provides software or equipment to Village of Buffalo Grove, BSA must use up-to-date anti-virus software on all such equipment and systems, which shall constitute commercially reasonable efforts to deliver all software and equipment virus free. As used in the preceding sentence, "up-to-date anti-virus software" shall mean that BSA uses virus definition files made available by the anti-virus software publisher no more than seven (7) calendar days prior to the date of the complained of incident. BSA must have approved anti-virus protection software and update virus definition files on a weekly basis. All storage media will be scanned on a daily basis or files will be scanned on a real time basis by virus protection software as those files are accessed, and any infected files will be immediately deleted. BSA will be responsible for making any and all configuration changes or purchases, which may be required, based on the above referenced Village of Buffalo Grove evaluation. It is the responsibility of BSA to ensure timely updates, patches, etc., and to ensure their software and protection remains current (as specified above). With respect to software deliverables, immediately before delivering them to Village of Buffalo Grove, BSA will scan such deliverables for viruses with the most recent virus definition files available from the anti-virus software publisher. If BSA fails to perform any obligation set forth in this section and if as a result, the software deliverable or interfacing equipment introduces a virus into Village of Buffalo Grove's system(s), BSA will be responsible for any costs in removing the virus from the affected system(s), in addition to being liable for other damages resulting from such introduction.
- 41. Freedom of Information.** BSA agrees to furnish all documentation related to this Agreement and any documentation related to the Customer required under an Illinois Freedom of Information Act (ILCS 140/1 et. seq.) ("FOIA") request within five (5) calendar days after Customer issues notice of such request to Contractor. Contractor agrees to defend, indemnify and hold harmless the Customer, and agrees to pay all reasonable costs connected therewith (including, but not limited to reasonable attorney's and witness fees, filing fees and any other expenses) for the Customer to defend any and all causes, actions, causes of action, disputes, prosecutions, or conflicts arising from BSA's, actual or alleged violation of the FOIA or BSA's failure to furnish all documentation related to this Agreement or related to the Village pursuant to a request within five (5) calendar days after Customer issues notice of a request. Furthermore, should BSA request that Customer utilize a lawful exemption under FOIA in relation to any FOIA request thereby denying that request, BSA agrees to pay all costs connected therewith (such as reasonable attorneys' and witness fees, filing fees and any other expenses) to defend the denial of the request. The defense shall include, but not be limited to, challenged or appealed denials of FOIA requests to either the Illinois Attorney General or a court of competent jurisdiction. BSA agrees to defend, indemnify and hold harmless the Customer, and agrees to pay all costs connected therewith (such as reasonable attorneys' and witness fees, filing fees and any other expenses) to defend any denial of a FOIA request by BSA's request to utilize a lawful exemption to the Customer.
- 42. No Waiver of Tort Immunity.** Nothing contained in this Agreement shall constitute a waiver by the Customer of any right, privilege or defense available to the Customer under statutory or common law, including, but not limited

to, the Illinois Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101 et seq., as amended.

43. Contract Documents and Order of Precedence. The text of this Agreement without any Exhibits and Schedules shall control over any inconsistent text in any of the Exhibits or Schedules. This Agreement includes the following Exhibits and Schedules:

- Exhibit A – Payment Terms Generally*
- Schedule 1 to Exhibit A – SaaS/Interface/Customization Fees*
- Schedule 2 to Exhibit A – Professional Service Fees*
- Exhibit B – Annual Service and Hosting Fees*
- Exhibit C – Support Call Process*

IN WITNESS THEREOF, the Parties hereto have executed this Agreement as of the dates set forth below.

BSA SOFTWARE, INC.

DocuSigned by:
 By: Mark Puetz
B3031FE53C404E6...
 Name: Mark Puetz
 Title: Product Manager
 Date: 3/22/2023

CUSTOMER

DocuSigned by:
 By: Dane Bragg
0D1CDA7A1090407...
 Name: Dane Bragg
 Title: Village Manager
 Date: 3/22/2023

EXHIBIT A

Payment Terms

1. Invoices and Payment. BSA shall be paid as provided in Exhibit A & B. BSA shall submit invoices to the Customer in a Customer approved format for those portions of the Services performed and completed by BSA. The amount billed in any such invoice shall be based on the method of payment set forth in Exhibit A and B. The Customer shall pay to BSA the amount billed pursuant to the Illinois Local Government Prompt Payment Act (50 ILCS 505/1 et seq.)
2. Any amount not subject to good faith dispute and not paid within fifteen (15) days of the due date of each invoice shall, without prejudice to other rights and remedies, be subject to an interest charge equal to the lesser of 1.5% monthly or the maximum interest charge permissible under applicable law, payable on demand. Any charges not disputed by Customer in good faith will be deemed approved and accepted by Customer. For purposes of this Agreement, a good faith dispute regarding amounts owed exists only if Customer provides in writing at least ten (10) days prior to due date of payment on the invoice, notification of such dispute, the specific portion of the invoice in dispute, and the specific grounds of the dispute (which must be asserted in good faith), and Customer pays in timely fashion such portions that are not subject to such dispute.
3. BSA shall invoice Customer \$15,600 upon Effective Date for BSA's Project Management/Implementation Planning Fees and Data Conversion fees as set forth in Schedule 2.
4. BSA shall invoice Customer \$23,055 upon activation of Customer's site for use of the BSA Software Product(s). Such amount equals BSA's SaaS Fees as set forth in Schedule 1.
5. BSA shall invoice Customer \$45,760 at completion of On-Site Implementation and Training. Such amount equals On-Site Implementation and Training costs, Customization and Interface costs, and travel expenses, as set forth in Schedule 2.
6. If the contract is fully executed prior to April 1, 2023 a credit in the amount of \$40,119 will be applied to the final invoice. Providing for a new payment of \$5,641 upon the completion of On-Site Implementation and Training.

Schedule 1 to Exhibit A**SaaS Fees****Upgrade - Cloud Modules****Community Development**

| | |
|---------------------|-----------------|
| Building Department | \$12,105 |
| Business Licensing | \$7,850 |

BS&A Online

| | |
|--|------------|
| Community Development <i>Permit Application Feature - Enables contractors and the general public to submit permit applications online (A fee of \$3/application is accumulated and billed to the municipality).</i> | \$0 |
|--|------------|

Subtotal **\$19,955**

Hosting Fees

Fees relating to the hosting and storage of data through Microsoft Azure are to be billed annually, for all modules included above.

\$3,100

Schedule 2 to Exhibit A

Professional Services Fees

Project Management and Implementation Planning

Services include:

- Analyzing customer processes to ensure all critical components are addressed.
- Creating and managing the project schedule in accordance with the customer's existing processes and needs.
- Planning and scheduling training around any planned process changes included in the project plan.
- Modifying the project schedule as needed to accommodate any changes to the scope and requirements of the project that are discovered.
- Providing a central contact between the customer's project leaders, developers, trainers, IT staff, conversion staff, and other resources required throughout the transition period.
- Installing the software and providing IT consultation for network, server, and workstation configuration and requirements.
- Reviewing and addressing the specifications for needed customizations to meet customer needs (when applicable).

\$15,600

Implementation and Training

- \$1,200/day
- Days quoted are estimates; you are billed for actual days used

Services include:

- Setting up users and user security rights for each application
- Performing final process and procedure review
- Configuring custom settings in each application to fit the needs of the customer
- Setting up application integration and workflow methods
- Onsite verification of converted data for balancing and auditing purposes
- Training and Go-Live

| | | | | |
|-------------------------------|--------|----|----------|-----------------|
| Software Setup | Days: | 4 | | \$4,800 |
| Community Development Modules | Days: | 16 | | \$19,200 |
| | Total: | 20 | Subtotal | \$24,000 |

Contingency

Significant efforts are made by both parties to ensure that the scope of a project such as this is well-defined. Occasionally, unforeseen situations occur, such as customization requests for non-standard functionality, reporting or integration with a third-party system, or the need for additional training due to process changes, staff changes, etc. In order to easily accommodate these situations during your project, BS&A recommends the establishment of a Contingency budget. The Contingency budget allows for unexpected situations to be addressed efficiently, without the need for additional council approval.

Recommended Contingency: Remote Training 10 days @ \$1,200/day **\$12,000**

Travel Expenses **\$9,760**

EXHIBIT B

Annual Service Fees

Unlimited support is included in your Annual Service Fee. Service Fees are billed annually. After two (2) years, BS&A Software reserves the right to increase the Annual Service Fee by no more than the yearly Consumers Price Index for All Urban Consumers U.S. city average (CPI-U)."

| | |
|----------------------------------|-----------------|
| Community Development | |
| Building Department | \$12,105 |
| Business Licensing | \$7,850 |
| <hr/> | |
| BS&A Online | |
| Community Development | \$3,230 |
| <hr/> | |
| Total Annual Service Fees | \$23,185 |

EXHIBIT C

Support Call Process

BSA's standard hours for telephone support are from 8:30 a.m. to 6:00 p.m. (EST), Monday through Thursday, and from 8:30 a.m. to 5:00 p.m. (EST), Friday, excluding holidays.

Customer can lodge a support request in three ways: (i) **Contact Customer Support** option located within the Help menu of all of BSA's applications (ii) BSA's toll-free support line (1-855-BSA-SOFT) or via email.

BSA targets less than thirty (30) minutes for initial response ("Initial Response Target").

Customer service requests fall into four main categories:

- A. Technical.** Questions or usage issues relating to I.T. functionality, future hardware purchases, and configuration. BSA tries to resolve these issues within BSA's Initial Response Target or as soon thereafter as reasonably possible.
- B. Questions/Support.** General questions regarding functionality, use, and set-up of the applications. BSA tries to resolve these issues within BSA's Initial Response Target or as soon thereafter as reasonably possible.
- C. Requests.** Customer requests for future enhancements to the applications. Key product management personnel meet with development staff on a regular basis to discuss the desirability and priority of such requests. BSA tries to resolve these issues within BSA's Initial Response Target or as soon thereafter as reasonably possible.
- D. Issues/Bugs.** Errors fall into three (3) subcategories:
 - i. Critical.** Cases where an Error has rendered the application or a material component unusable or not usable without substantial inconvenience causing material and detrimental consequences to business -- with no viable Customer workaround or alternative. The targeted resolution time for critical issues is less than one (1) business day.
 - ii. Moderate.** Cases where an Error causes substantial inconvenience and added burden, but the application is still usable by Customer. The targeted resolution time for all moderate issues is within two (2) weeks, which is within BSA's standard update cycle.
 - iii. Minimal.** Cases that are mostly cosmetic in nature, and do not substantially impede functionality in any significant way. These issues are assigned a priority level at BSA's regular meetings, and resolution times are based on the specified priority.

Remote Support Process

Some support calls may require further analysis of Customer's database or set-up to diagnose a problem or to assist Customer with a question. BSA's remote support tools share Customer's desktop *via* the Internet to provide Customer with virtual on-site support. BSA's support team is able to connect remotely to Customer's desktop and view its setup, diagnose problems, or assist Customer with screen navigation.