



PUBLIC MEETING NOTICE AND AGENDA  
COMMITTEE OF THE WHOLE MEETING

AUGUST 20, 2024  
7:30 P.M.

AGENDA

1. Call to Order
2. Pledge of Allegiance
3. Audience Participation  
The public is invited to make an issue-oriented comment on any matter of public concern. The public comment may be no longer than 3 minutes in duration.
4. Staff Presentations
  - A. Administration
    1. Issuance of a Pyrotechnic Fireworks License to Mad Bomber Fireworks for the Summer Sunset Festival
  - B. Police Department
    1. Purchase and Installation of a Tornado Siren
  - C. Public Works
    1. Agreement with Concentric Integration for HMI SCADA Upgrades
    2. Agreement with Concentric Integration for Tower Control Radio Upgrades
    3. Reassignment of Ground Lease with Pyott Road Solar LLC
5. Board of Trustees
6. Village President
  - A. Proclamation - Payroll Week (Thursday)
7. Adjournment

MEETING LOCATION

Lake in the Hills Village Hall  
600 Harvest Gate  
Lake in the Hills, IL 60156

The Village of Lake in the Hills is subject to the requirements of the Americans with Disabilities Act of 1990. Individuals with disabilities who plan to attend this meeting and who require certain accommodations so that they can observe and/or participate in this meeting, or who have questions regarding the accessibility of the meeting or the Village's facilities, should contact the Village's ADA Coordinator at (847) 960-7400 [TDD (847) 658-4511] promptly to allow the Village to make reasonable accommodations for those persons.

Posted by: \_\_\_\_\_ Date: \_\_\_\_\_ Time: \_\_\_\_\_



# REQUEST FOR BOARD ACTION

---

**MEETING DATE:** August 20, 2024

**DEPARTMENT:** Administration

**SUBJECT:** Issuance of a Pyrotechnic Fireworks License to Mad Bomber Fireworks for the Summer Sunset Festival

## EXECUTIVE SUMMARY

---

The Village issued a Request for Quotation (RFQ) for the Summer Sunset Festival Fireworks Display to be held on September 1, 2024. The Village received three responses, one of which was provided after the stated RFQ deadline and deemed 'non-responsive'. It should be noted that the quote received after the deadline was from a firework provider who had proposed a \$20,000 firework show for a cost to the Village of \$100. The other quote received did not provide a level of detail as outlined in the requested RFQ format, making it difficult to evaluate the size and scope of the show. As a result, Mad Bomber Fireworks was selected as the pyrotechnics provider for this year's event. Mad Bomber is proposing a 20-minute show with 1,265 shells which is a reduction in both time and shells from 2023 where a 25-minute show with 2,610 shells was provided. Staff recommends increasing the budget for fireworks in future years to provide a robust final act to the Summer Sunset Festival.

Mad Bomber has submitted the required "Application for License for Public Displays of Fireworks, Pyrotechnics or Other Explosives." Their application has been reviewed by staff, who has confirmed that the Village is in receipt of the required documents. In addition, the applicant has advised of their coordination with the Huntley Fire Protection District, consistent with the Village's requirements.

The applicant has requested a waiver of the \$250 application fee, which is consistent with the Village's practice in prior years. Having met all of the Village's requirements, staff is recommending the Board approve the application and waive the \$250 application fee as requested.

## FINANCIAL IMPACT

---

FY2024 includes \$15,000 for the fireworks for the Summer Sunset Festival. The agreement with Mad Bomber Fireworks is \$15,000.

## ATTACHMENTS

---

1. Application for License for Public Displays of Fireworks, Pyrotechnics or Other Explosives
2. Waiver request of Application Fee
3. Mad Bomber Proposal Response

## RECOMMENDED MOTION

---

Motion to issue a pyrotechnic fireworks license to Mad Bomber Fireworks for the Summer Sunset Festival on Sunday, September 1, 2024 and waive the application fee.



**VILLAGE OF LAKE IN THE HILLS  
APPLICATION FOR LICENSE FOR PUBLIC DISPLAYS OF FIREWORKS,  
PYROTECHNICS OR OTHER EXPLOSIVES**

Attached to this Application is a full copy of Chapter 43, Section 43.06 of the Lake in the Hills Municipal Code. Please review this to ensure that your application meets all criteria.

Applicant: Submit this application and the following additional items to the Village Clerk's Office, Village of Lake in the Hills, 600 Harvest Gate, Lake in the Hills, Illinois 60156; Phone (847) 960-7410. Application must be submitted to the Village Clerk with supporting documentation at least fifteen (15) business days in advance of the proposed date of the display. Once the application has been approved, the Village will forward you a copy which will serve as evidence of your permit. This copy must be made available upon request during the Public Display.

1. A current BATFE license for distribution to display fireworks.
2. A copy of the Pyrotechnic license issued by the State of Illinois and a list of Pyrotechnic licenses issued to the Applicant by other states.
3. Proof of insurance coverage for General Liability of \$1,000,000 per occurrence with a \$2,000,000 aggregate and an additional \$1,000,000 excess umbrella policy, Worker's Compensation with statutory levels and employer's liability of \$500,000 per occurrence. All Certificates of Insurance must have the Village of Lake in the Hills listed as an additional insured.
4. Proof of a current United States Department of Transportation (USDOT) Identification Number and Hazardous Materials Registration Number.
5. Proof that the applicant is eighteen years of age.
6. Application fee in the amount of \$250.00.
7. Proof of approval of such proposed display by the Chief of the Fire Protection District that has jurisdiction where the display will be conducted.
8. Depiction of the site where the proposed pyrotechnic display will be conducted drawn to scale.

Applicant Name: Mark Loewe  
 Company Name: MIAND Inc dba: Mad Bomber Fireworks FEIN: 35-2048232  
 Address: 3999 E Hupp Rd Building R-3-1 LaPorte, IN 46350  
 Phone Number: 877 623-2662 Date of Birth: ██████████

Individual in charge of firing the display: (*licensed lead pyrotechnic operator*)  
 Name: Jerry Milnar  
 Address: ██  
 Phone Number: ██████████ Date of Birth: ██████████

Experience of Individual in charge of firing the display: State of Illinois licensed Lead Pyrotechnician,  
with 14 years of professional display experience and just over 200 shows.

Date and Time of day at which display is to be held: 9/1/24 @ approx 2100 Hrs

Numbers and Kinds of Fireworks to be Discharged: Refer to submitted proposal

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Manner and Place of Storage of Fireworks Prior to the Display: Delivered day of display

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

In the past 24 months, has anyone listed above received a citation for, been convicted of, or entered a guilty plea to violation(s) of the State of Illinois Fireworks Act, Federal Fireworks Laws and Regulations, other States' Firework Laws, or any court order relating to the sale or offer to sell of wholesale or retail fireworks?

Yes  No IF YES, PROVIDE DETAILS: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I swear that the statements made on this application are correct according to the best of my knowledge and belief. I further affirm that I am not currently in default of any financial obligation to the Village of Lake in the Hills. The Service Provider will hold the Village of Lake in the Hills harmless for any and all claims.

[Signature]  
(Applicant's Signature)

8-5-24  
(Date)

Subscribed and sworn to before me this

5<sup>th</sup> day of August, 24  
[Signature]  
Notary Public



By: \_\_\_\_\_  
Village President

Attest: \_\_\_\_\_  
Village Clerk

# MAD BOMBER

## FIREWORKS PRODUCTIONS

411 Windermere Way \* Lake in the Hills, IL 60156 \* (847) 354-5105  
Email: [mark@madbomberfireworks.com](mailto:mark@madbomberfireworks.com)

Trevor Bosack  
Village of Lake in the Hills  
600 Harvest Gate  
Lake in the Hills, IL 60156

August 1st, 2024

Mr. Bosack,

I wish to thank those involved for selecting Mad Bomber Fireworks for this year's Summer Sunset Festival. We look forward to thrilling your spectators with our unique pyrotechnic display!

I would like to request a waiver of the \$250.00 application fee for a license for public display of fireworks. Thank you.

Sincerely,



Mark L. Loewe



# Request for Quotation

## EXHIBIT B FIREWORKS DISPLAY PROPOSAL

### OPENING BARRAGE

Shell Information:	Quantity	Size (in inches)	Description/Type of Shell
	96	x 1 inch	See attached paperwork
	25	x 2 inch	See attached paperwork
		x	
		x	
		x	
<b>Total Shells:</b>	121		
<b>Length (in minutes):</b>	.75 minutes		

### SPECIAL FLIGHTS & BARRAGES

Shell Information:	Quantity	Size (in inches)	Description/Type of Shell
	24	x 3 inch	See attached paperwork
	6	x 4 inch	See attached paperwork
	1	x 5 inch	See attached paperwork
		x	
		x	
<b>Total Shells:</b>	31		
<b>Length (in minutes):</b>	2 minutes		

### MAIN DISPLAY

Shell Information:	Quantity	Size (in inches)	Description/Type of Shell
	108	x 3 inch	See attached paperwork
	80	x 4 inch	See attached paperwork
	60	x 5 inch	See attached paperwork
	10	x 6 inch	See attached paperwork
		x	
<b>Total Shells:</b>	258		
<b>Length (in minutes):</b>	12 minutes		



## Request for Quotation

### MIDWAY BARRAGE

Shell Information:	Quantity	Size (in inches)	Description/Type of Shell
	642	x 1 inch	See attached paperwork
	50	x 2 inch	See attached paperwork
		x	
		x	
		x	
<b>Total Shells:</b>	692		
<b>Length (in minutes):</b>	3 minutes		

### GRAND FINALE

Shell Information:	Quantity	Size (in inches)	Description/Type of Shell
	50	x 2 inch	See attached paperwork
	96	x 3 inch	See attached paperwork
	6	x 4 inch	See attached paperwork
	9	x 5 inch	See attached paperwork
	2	x 6 inch	See attached paperwork
<b>Total Shells:</b>	163		
<b>Length (in minutes):</b>	2.25 minutes		

<b>GRAND TOTAL LENGTH (in minutes):</b>	20 minutes
<b>GRAND TOTAL SHELLS:</b>	1265
<b>TOTAL SUM FOR DISPLAYS:</b>	\$ 15000.00



# REQUEST FOR BOARD ACTION

---

**MEETING DATE:** August 20, 2024

**DEPARTMENT:** Police Department

**SUBJECT:** Waive the Competitive Bidding Requirements and Approve Purchase and Installation of a Tornado Siren

## EXECUTIVE SUMMARY

---

Staff seeks Board approval to waive competitive bidding and approve the purchase of a Federal Signal Corp. Model 2001 tornado siren to be installed by Braniff Communications, Inc.

The Village's outdoor warning system is used to alert residents of a tornado, which consists of six sirens located throughout the Village. Five of the six sirens are Federal Signal Corp. Model 2001. The sixth Federal Signal Corp. tornado siren located at the intersection of Plum St. and Burr St., on Lake in the Hills Sanitary District property, is a model T-1000 and is over fifty years old. Federal Signal Corp. deemed this model siren obsolete and ceased manufacturing the siren.

Currently all tornado sirens are controlled by Motorola Mission Critical Smart Siren Tornado System, commonly referred to as OptiWarn. OptiWarn is an updated mechanism for testing, daily monitoring, and activation of the Village's tornado sirens. The Model 2001 sirens are able to fully utilize the capabilities of the OptiWarn system. Due to its age, the Model T-1000 siren is only able to utilize a portion of the OptiWarn capabilities. OptiWarn is unable to determine if the model T-1000 is properly rotating.

Since the existing siren is currently located on Sanitary District property, staff determined that this would be an appropriate opportunity to relocate the replacement siren onto nearby Village property, specifically 651 E. Oak St. This allows the Village total control of its asset.

Braniff Communications, Inc. is the exclusive Authorized Manufacturer's Representative for Federal Signal Alerting & Notification Systems covering northern and central Illinois. Braniff Communications is the only Factory-Authorized Warranty Service Center and Repair Depot for FS Alerting & Notification Systems in Illinois. Braniff Communication, Inc. maintains all six of the Villages tornado sirens and installed all five of the Village's Model 2001 tornado sirens.

## FINANCIAL IMPACT

---

The contract with Braniff for the acquisition and installation of the tornado siren will be completed at a cost of \$31,295.00. The removal and relocation costs will be an additional \$2,360.00, plus any additional costs incurred by the Public Works Department to provide electricity to the tornado siren.



## **ATTACHMENTS**

---

1. Federal Signal Sole Source Letter for Braniff Communications
2. Tornado Siren Quotation Braniff
3. Model 2001 Siren Datasheet
4. Federal Signal Terms of Sale

## **RECOMMENDED MOTION**

---

Motion to waive the competitive bidding requirements and approve the purchase and installation of a Federal Signal Corp. siren by Braniff Communication, Inc., at a cost not to exceed \$33,655.00.



*Advancing security and well-being.*

January 21, 2020

**RE: Braniff Communications, Inc.**

To Whom It May Concern:

Please accept this letter as notification and/or clarification of status pertaining to Braniff Communications, Inc. regarding the sale, distribution, maintenance, service and repair of alerting, notification and communications products manufactured and marketed by Federal Signal Alerting & Notification Systems, a business division of Federal Signal Corporation.

For the past 38 years, Braniff Communications, Inc. has been the exclusive Authorized Manufacturer's Representative for Federal Signal Alerting & Notification Systems covering northern and central Illinois. Additionally, Braniff Communications is the only Factory-Authorized Warranty Service Center and Repair Depot for FS Alerting & Notification Systems in Illinois.

Should you have any questions or if I can offer any support and/or assistance, please don't hesitate to contact me personally at your earliest convenience.

Respectfully,

Teague Cliff  
Regional Sales Manager  
Alerting & Notification Systems  
Federal Signal Corporation  
[tcliff@fedsig.com](mailto:tcliff@fedsig.com)  
630-247-3835

**Quotation No.:** ANS 0625202302B.2  
 Reference quote no. on your order

**Quoted To:**  
 Village of Lake in the Hills  
 Attn: Patrick Boulden  
 1115 Crystal Lake Road  
 Lake in the Hills, IL 60156  
 Phone: 847-658-5676  
 E-Mail: pboulden@lith.org

**Quotation Date:** 7/22/2024  
**Expiration Date:** 10/22/2024

**Sales Representative:** Jeffrey Ryba  
**Representative Firm:** Braniff Comm.

Upon receipt of your order and acceptance by Federal Signal Corporation, the equipment herein will be supplied at the quoted prices below. Delivery schedule cannot be established until radio information is supplied, if applicable.

Delivery		Terms		FOB	Ship Via
10 Weeks		Equipment - NET30 upon shipment, Services - NET30 as completed		Origin	Braniff Comm.
Line	Qty.	Part Number	Description	Unit Price	Total
<b>Village of Lake in the Hills, IL</b>					
<b>Proposal for Replacement of Sanitary District Outdoor Warning Siren</b>					
<b>New Warning Siren &amp; Controls</b>					
1	1	2001-130	Electro-Mechanical Siren, Rotating Uni-Directional, 130dB, 800Hz	\$9,684.00	\$9,684.00
2	1	DCTB-ACE	Mechanical Siren Controller, AC/DC, Motorola ACE Interface	\$6,843.00	\$6,843.00
3	1	2001TRBP	Transformer Rectifier, 208-240VAC, 48VDC	\$3,111.00	\$3,111.00
<b>Installation Services</b>					
4	1	TK-IO-CUSTINS	Installation Services, Custom, Installation of new siren equipment on a new 55' Class 2 treated timber pole including related installer-provided material/hardware. Includes standard duty batteries as well as siren commissioning services.	\$10,360.00	\$10,360.00
5	1	TK-IO-CRTPAY-CU	Admin Fee, Prevailing Wage / Certified Payroll / Davis-Bacon Act.	\$1,297.00	\$1,297.00
<b>Optional Services</b>					
6	1	TK-IO-CUSTINS	Removal, haul-away and disposal of existing warning siren equipment & related timber pole.	\$2,360.00	ADD
7	1	FREIGHTANS	Shipping & Handling Fees	\$0.00	\$0.00
				<b>Quotation Total:</b>	<b>\$31,295.00</b>

**Quotation No.: ANS 0625202302B.2**  
Reference quote no. on your order

**Quoted To:**

Village of Lake in the Hills  
Attn: Patrick Boulden  
1115 Crystal Lake Road  
Lake in the Hills, IL 60156  
Phone: 847-658-5676  
E-Mail: pboulden@lith.org

**Quotation Date:** 7/22/2024  
**Expiration Date:** 10/22/2024

**Sales Representative:** Jeffrey Ryba  
**Representative Firm:** Braniff Comm.

Upon receipt of your order and acceptance by Federal Signal Corporation, the equipment herein will be supplied at the quoted prices below. Delivery schedule cannot be established until radio information is supplied, if applicable.

Prices are firm for 90 days from the date of quotation unless shown otherwise. Upon acceptance, prices are firm for 6 months. This quotation is expressly subject to acceptance by Buyer of all Terms stated in the attached Terms document, and any exception to or modification of such Terms shall not be binding on Seller unless expressly accepted in writing by an authorized agent or Officer of Seller. Any order submitted to Seller on the basis set forth above, in whole or in part, shall constitute an acceptance by Buyer of the Terms. Any such order shall be subject to acceptance by Seller in its discretion. If the total price for the items set forth above exceeds \$50,000 then this quotation IS ONLY VALID if countersigned below by a Regional Manager of the Safety & Security Systems Group, Federal Signal Corporation. Installation is not included unless specifically quoted as a line item above. Adverse Site Conditions, including rock, caving soil conditions, contaminated soil, poor site access availability, and other circumstances which result in more than 2 hours to install a pole, will result in a \$385.00 per hour fee, plus equipment. Trenching is additional. Power Clause, bringing power to the equipment is the responsibility of the purchaser. Permit Clause, any special permits, licenses or fees will be additional. See attached Terms sheet.

**Quotation Notes:**

- 1 Sales tax, if applicable, is not included and will be additional.
- 2 Any fees associated with the connection of power, by the Utility provider or any other entity, shall be the responsibility of the Village of Lake in the Hills.
- 3 Electrical service equipment including, and limited to a weatherproof fused service disconnect is included in this proposal. Any additional electrical service or power distribution equipment is not included, nor provided for, in this proposal.
- 4 Braniff Communications (Federal Signal's installation services subcontractor) shall contact JULIE and exercise due care during the equipment installation to prevent damage to underground utilities and surrounding facilities.
- 5 Site restoration is not provided for, nor included, in this proposal.
- 6 Permits, bonds, licenses and fees, if applicable and required, are not included and will be additional.
- 7 Existing Motorola MC-EDGE RTU to be utilized for new siren equipment quoted herein.
- 8 Removal of existing concrete pad for existing blower pump assembly is not included.

**Proposed By:** Jeffrey Ryba  
**Company:** Braniff Communications, Inc.  
**Address:** 4741 W. 136th Street, Crestwood, IL 60418  
**Country:** USA  
**Phone:** 708-597-3200  
**Fax:** 708-597-3307  
**E-Mail:** jryba@braniffcommunications.com  
**RSM Approval:** Teague Cliff

**Purchase order MUST be made out to:**

Federal Signal Corporation, Alerting & Notification Systems, 2645 Federal Signal Drive, University Park, IL 60484

**Accepted By:** \_\_\_\_\_

**Date:** \_\_\_\_\_



► Model 2001-130 and Equinox

## High Power, Directional Rotating Siren

The Federal Signal 2001-130 and Equinox siren is a high power, rotating, unidirectional outdoor warning siren. The high-decibel output provides maximum coverage with minimum installation cost. Radio/cellular/satellite or wireless IP activation can further minimize installation costs by eliminating the need for leased dedicated control lines.

The siren's projector produces a 60-degree projection of sound which rotates at 3 RPM and can produce three distinct warning signals: steady, wail and fast wail. The siren will supply a minimum of 15 minutes of full power output from its batteries after AC power loss. The siren controls are available with battery operation, solar, AC operation, and AC operation with battery back-up, one-way and two-way radio control, wired or wireless Ethernet, satellite/cellular or landline. The 2001 Series is offered in low frequency (500 Hz) or mid-range frequency (790 Hz).

Ideal applications for this warning siren include hazardous weather conditions, fires, floods, chemical spills and other types of community or facility emergencies.

### F E A T U R E S

- High-powered rotating siren for maximum coverage
- Available in low and mid-range frequency
- Three distinct warning signals
- AC or Solar powered with battery operation or back-up
- Weather-resistant coating

# High Power, Directional Rotating Siren (2001-130/Equinox)

## SPECIFICATIONS

**Power:**<sup>1</sup>

Sirens can be powered from 120VAC, 240VAC, with battery back-up or battery operation. Solar powering can also be provided

<b>Signal Information:</b>	<b>2001-130</b>	<b>Equinox</b>
Signal /Sweep Rate	Frequency Range	500 Hz
Steady /Continuous	790 Hz	
Wail /10 sec.	470-790 Hz	180-500 Hz
Fast Wail /3.5 sec.	600-790 Hz	300-500 Hz
<b>Coverage:</b> <sup>2</sup>	<b>2001-130</b>	<b>Equinox</b>
70dB	Up to 6,500'	Up to 6,100'
60dB	Up to 13,200'	Up to 12,200'

**Pole Mounts:**

Wood, steel, composite or concrete poles can be provided. Contact Federal Signal for details

**Communications:**

Federal Signal can supply one-way and two-way communications. Radio, IP, Landline, Satellite and Cellular can be combined to provide a robust alerting solution

Operating Temperature:<sup>3</sup> -22°F to 140°F -30°C to 60°C

Dimensions H x W x D: 62" x 37" x 41"  
(157 cm x 94 cm x 104 cm)

Net Weight:	420 lbs	190 kg
Shipping Weight:	460 lbs	205 kg
Equinox Net Weight	390 pounds	159 kg
Equinox Shipping Weight	460 pounds	205 kg

## HOW TO ORDER

Contact our Federal Signal Sales Engineers to design a system that meets your specific requirements.

**Description**

**Part Number**

**Siren Ordering Information:**

Rotating electro-mechanical siren 130 dBc +/- 1dBc @ 100' (30.5m) 48VDC, pole mount included

**2001-130**

Rotating electro-mechanical siren, low frequency, 125 dBc +/- 1dBc @ 100' (30.5m) 48VDC, pole mount included

**Equinox**

**Siren Control Ordering Information:**

One-way FC Controller, 120VAC operation

**FC/H/U**

Two-way FC Controller, 120VAC operation

**FCTBD/H/U**

One-way FC Controller, 120VAC to battery operation

**DCFCB/H/U<sup>4</sup>**

Two-way FC Controller, 120VAC to battery operation

**DCFCTBD/H/U<sup>4</sup>**

**Command and Control for Multiple Siren Installation:**

Console for siren activation (R for rack mount)

**SS2000+/R**

Commander software for PC based siren activation, monitoring and control

**SFCD<sup>5</sup>**

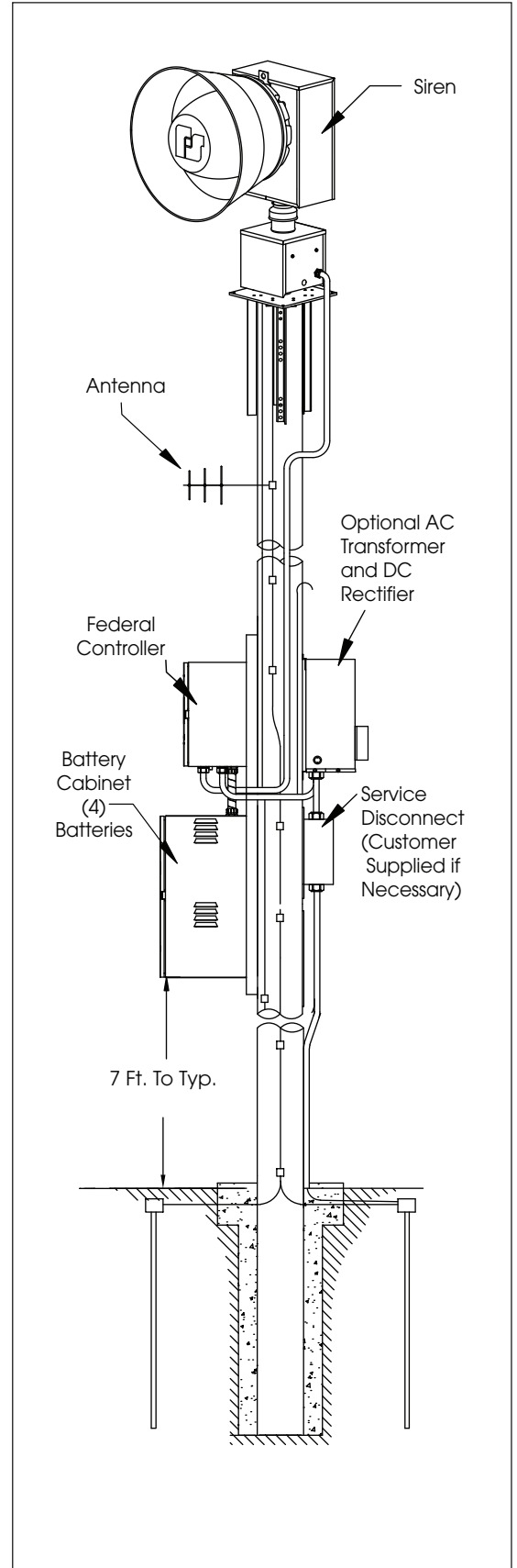
<sup>1</sup> Contact Federal Signal for powering options

<sup>2</sup> Actual coverage is dependent on many factors, contact Federal Signal for sound analysis of your specific location

<sup>3</sup> The siren can operate throughout this temperature range provided that battery temperature is maintained at 18°C or higher

<sup>4</sup> Batteries not included

<sup>5</sup> See product page for additional information



### SALES AGREEMENT

(1) **Agreement.** This agreement (the "Agreement") between Federal Signal Corporation ("FSC") and Buyer for the sale of the products and services described in FSC's quotation and any subsequent purchase order shall consist of the terms herein. This Agreement constitutes the entire agreement between FSC and Buyer regarding such sale and supersedes all prior oral or written representations and agreements. This Agreement may only be modified by a written amendment signed by authorized representatives of FSC and Buyer and attached hereto except that stenographic and clerical errors are subject to correction by FSC or upon FSC's written consent. FSC objects to and shall not be bound by any additional or different terms, whether printed or otherwise, in Buyer's purchase order or in any other communication from Buyer to FSC unless specifically agreed to by FSC in writing. Prior courses of dealing between the parties or trade usage, to the extent they add to, detract from, supplant or explain this Agreement, shall not be binding on FSC. This Agreement shall be for the benefit of FSC and Buyer only and not for the benefit of any other person.

(2) **Termination.** This Agreement may be terminated only upon FSC's written consent. If FSC shall declare or consent to a termination of the Agreement, in whole or in part, Buyer, in the absence of a contrary written agreement signed by FSC, shall pay termination charges based upon expenses and costs incurred in the assembly of its products or in the performance of the services to the date such termination is accepted by FSC including, but not limited to, expenses of disposing of materials on hand or on order from suppliers and the losses resulting from such disposition, plus a reasonable profit. In addition, any products substantially completed or services performed on or prior to any termination of this Agreement shall be accepted and paid for in full by Buyer. In the event of a material breach of this Agreement by Buyer, the insolvency of Buyer, or the initiation of any solvency or bankruptcy proceedings by or against Buyer, FSC shall have the right to immediately terminate this Agreement, and Buyer shall be liable for termination charges as set forth herein.

(3) **Price/Shipping/Payment.** Prices are F.O.B. FSC's Factory. Buyer shall be responsible for all shipping charges. If this Agreement is for more than one unit of product, the products may be shipped in a single lot or in several lots at the discretion of FSC, and Buyer shall pay for each such shipment separately. FSC may require full or partial payment or payment guarantee in advance of shipment whenever, in its opinion, the financial condition of Buyer so warrants. FSC will invoice for product upon shipment to Buyer and for services monthly as completed. Amounts invoiced by FSC are due 30 days from date of invoice, except that payment terms for turn-key sales of product and services are 10% of total contract mobilization fee due with Buyer's order. Invoice deductions will not be honored unless covered by a credit memorandum. Minimum billing per order is \$75.00.

(4) **Risk of Loss.** The risk of loss of the products or any part thereof shall pass to the Buyer upon delivery thereof by FSC to the carrier. Buyer shall have sole responsibility for processing and collection of any claim of loss against the carrier.

(5) **Taxes.** Price quotes by FSC do not include taxes. Buyer shall pay FSC, in addition to the price of the products or services, any applicable tax (however designated) imposed upon the sale, production, delivery or use of the products or services to the extent required or not forbidden by law to be collected by FSC from Buyer, whether or not so collected at the time of the sale, unless valid exemption certificates acceptable to the taxing authorities are furnished to FSC before the date of invoice.

(6) **Delivery.** Although FSC shall in good faith endeavor to meet estimated delivery dates, delivery dates are not guaranteed but are estimated on the basis of immediate receipt by FSC of all information required from Buyer and the absence of delays, direct or indirect, as set forth in paragraph 29 herein.

(7) **Returns.** Buyer may return shipped product to FSC only upon FSC's prior written consent (such consent to be in the sole discretion of FSC) and upon terms specified by FSC, including prevailing restocking and handling charges. Buyer assumes all risk of loss for such returned product until actual receipt thereof by FSC. Agents of FSC are not authorized to accept returned product or to grant allowances or adjustments with respect to Buyer's account.

(8) **Inspection.** Buyer shall inspect the product immediately upon receipt. All claims for any alleged defect in FSC's product or deficiency in the performance of its services under this Agreement, capable of discovery upon reasonable inspection, must be fully set forth in writing and received by FSC within 30 days of Buyer's receipt of the product or FSC's performance of the services. Failure to make any such claim within said 30 day period shall constitute a waiver of such claim and an irrevocable acceptance of the product and services by Buyer.

(9) **Limited Warranty.** FSC warrants each new product to be free from defects in material and workmanship, under normal use and service, for a period of two years from delivery to Buyer (one-year for Informers and all software products, five years on 2001 & ECLIPSE Series siren head). During this warranty period, FSC will provide warranty service for any unit which is delivered, shipping prepaid by the Buyer, to a designated warranty service center for examination and such examination reveals a defect in material and/or workmanship. FSC will then, at its option, repair or replace the product or any defective part(s), or remit the purchase price of the product to Buyer. This warranty does not cover travel expenses, the cost of specialized equipment for gaining access to the product, or labor charges for removal and re-installation of the product for warranty service at any location other than FSC's designated warranty service center. This warranty shall not apply to components or accessories that have a separate warranty by the original manufacturer, such as, but not limited to, radios and batteries, and does not extend to any unit which has been subjected to abuse, misuse, improper installation or which has been inadequately maintained, nor to units with problems due to service or modification by other than an FSC warranty service center. FSC will provide on-site warranty service during the first 60 days after the completion of the installation when FSC has provided a turn-key installation including optimization and/or commissioning services. **THERE ARE NO OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

(10) **Remedies and Limitations of Liability.** Buyer's sole remedy for breach of warranty shall be as set forth above. **IN NO EVENT SHALL FSC BE LIABLE FOR ANY LOSS OF USE OF ANY PRODUCT, LOST PROFITS OR ANY INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES, NOR SHALL FSC'S LIABILITY FOR ANY OTHER DAMAGES WHATSOEVER ARISING OUT OF OR CONNECTED WITH THIS AGREEMENT OR THE MANUFACTURE, SALE, DELIVERY OR USE OF THE PRODUCTS OR SERVICES EXCEED THE PURCHASE PRICE OF THE PRODUCTS OR SERVICES.**

(11) **PATENTS.** FSC shall hold Buyer harmless, to the extent herein provided, against any valid claim by any third person of infringement of any United States Patent by product manufactured by FSC, but if Buyer furnished product or system design specifications to FSC, Buyer shall hold FSC harmless against any infringement claim consisting of the use of product manufactured by FSC in accordance with Buyer's product or system design or in combination with product manufactured by Buyer or others. In the event that any product manufactured by FSC is held to infringe any patent and its use is enjoined by any competent court of law, FSC, if unable within a reasonable time to secure for Buyer the right to continue using such product, either by suspension of the injunction, by securing for Buyer a license, or otherwise, shall, at its own expense, either replace such product with non-infringing product or modify such product so that it becomes non-infringing, or accept the return of the enjoined product and refund the purchase price paid by Buyer less allowance for any period of actual use thereof. FSC makes no warranty that its product will be delivered free of a valid claim by a third person of infringement or the like and Buyer's remedies for such a claim will be limited to those provided in this paragraph.

(12) **Assignment and Delegation.** Buyer shall not assign any right or interest in this Agreement, nor delegate the performance of any obligation, without FSC's prior written consent. Any attempted assignment or delegation shall be void and ineffective for all purposes unless made in conformity with this paragraph.

(13) **Severability.** If any term, clause or provision contained in this Agreement is declared or held invalid by a court of competent jurisdiction, such declaration or holding shall not affect the validity of any other term, clause or provision herein contained.

(14) **Installation.** Installation shall be by Buyer unless otherwise specifically agreed to in writing by FSC.

(15) **Governing Law and Limitations.** This Agreement shall be governed by the laws of the State of Illinois. Venue for any proceeding initiated as the result of any dispute between the parties that arises under this Agreement shall be either the state or federal courts in Cook or DuPage County, Illinois. Whenever a term defined by the Uniform Commercial Code as adopted in Illinois is used in this Agreement, the definition contained in said Uniform Commercial Code is to control. Any action for breach of this Agreement or any covenant or warranty contained herein must be commenced within one year after the cause of action has accrued.

(16) **Receiving Product and Staging Location.** Buyer is responsible to receive, store and protect all products intended for installation purposes, including, but not exclusively, siren equipment, poles, batteries, and installation materials. Materials received in cardboard containers must be protected from all forms of precipitation. Additionally, Buyer is to provide a staging area of an appropriate size for installation contractors to work from and to store equipment overnight.

(17) **Installation Methods & Materials.** Installation is based on methods and specifications designed and intended by FSC to meet or exceed all national, state & local safety and installation codes and regulations. Design changes required by Buyer may result in additional charges.

(18) **Radio Frequency Interference.** FSC is not responsible for RF transmission and reception affected by system interference beyond its control.

(19) **Installation Site Approval.** Buyer must provide signed documentation to FSC, such as the "WARNING SITE SURVEY FORM" or a document with the equivalent information, that FSC is authorized to commence installation at the site designated by Buyer before FSC will commence installation. Once installation has started at an approved site, Buyer is responsible for all additional costs incurred by FSC for redeployment of resources if the work is stopped by Buyer or its agents, property owners, or as the result of any governmental authority or court order, or if it is determined that installation is not possible at the intended location, or the site is changed for any reason by the Buyer.

(20) **AC Power Hookup.** Buyer is responsible to coordinate and pay for all costs to bring proper AC power to the electrical service disconnect installed adjacent to the controller cabinet, unless these services are quoted by FSC. All indoor installations assume AC power is available within 10 feet of the installation location.

(21) **Permits & Easements.** FSC will obtain and pay for electrical and right-of-way work permits as necessary for installations. Buyer is responsible for obtaining and payment of all other required easements, permits, or other fees required for installation, unless specifically quoted.

(22) **Soil Conditions Clause.** In the event of poor site conditions including, but not limited to rock, cave-ins, high water levels, or inability of soil to provide stable installation to meet specifications, FSC will direct installation contractors to attempt pole installation for a maximum of 2 hours. Buyer approval will be sought when pole installation exceeds 2 hours and abandoned if FSC cannot obtain approval in a timely manner.

(23) **Contaminated Sites.** FSC is not responsible for cleanup and restoration of any installation sites or installer equipment where contaminated soil is encountered. FSC will not knowingly approve installation at any site containing contaminates. Buyer must inform FSC when known or suspected soil contaminates exist at any intended installation site.

(24) **Site Cleanup.** Basic installation site cleanup includes installation debris removal, general site cleanup, and general leveling of affected soil within 30' of the pole. Additional Site Restoration quotes are available.

(25) **Waste Disposal.** Buyer is responsible for providing disposal of all packing materials including shipping skids and containers.

(26) **Work Hours.** All installation quotes are based on the ability to work outdoors during daylight hours and indoors from 7 AM to 7 PM Monday through Saturday. Work restrictions or limitations imposed by Buyer or its agents may result in additional charges being assessed to Buyer for services.

(27) **Project Reporting.** Installation & Service Progress Reports will be provided on a regular basis, normally every week during active installation, unless pre-arranged otherwise by mutual agreement.

(28) **Safety Requirements & Compliance.** FSC requires that all subcontractors and their employees follow applicable laws and regulations pertaining to all work performed, equipment utilized and personal protective gear common to electrical and construction site work performed in the installation of FSC equipment. Additional safety compliance requirements by Buyer may result in additional charges assessed to Buyer for the time and expenses required to comply with the additional requirements.

(29) **Project Delays.** FSC shall not be liable in any regard for delivery or installation delays or any failure to perform its obligations under this Agreement resulting directly or indirectly from change order processing, acts or failure to act by Buyer, unresponsive inspectors, utility companies and any other causes beyond the direct control of FSC, including acts of God, weather, local disasters of any type, civil or military authority, fires, war, riot, delays in transportation, lack of or inability to obtain raw materials, components, labor, fuel or supplies, or other circumstances beyond FSC's reasonable control, whether similar or dissimilar to the foregoing.





# REQUEST FOR BOARD ACTION

---

**MEETING DATE:** August 20, 2024  
**DEPARTMENT:** Public Works  
**SUBJECT:** HMI SCADA Upgrades

## EXECUTIVE SUMMARY

---

Staff seeks board approval to waive competitive bidding and approve the proposal and addendum to the proposal with Concentric Integration, LLC ("Concentric") for the HMI SCADA Upgrades in the amount of \$163,750.00.

The Village currently uses Rockwell Automation's Factory Talk View SE SCADA software platform for remote monitoring and some control of the water distribution sites. The Factory Talk SE SCADA system was installed several years ago and has served the Village well; however, the Factory Talk SE SCADA system currently running is outdated and has limited support from the developer. Concentric would migrate the existing Factory Talk View SE to Inductive Automation's Ignition Perspective SCADA platform.

Also with switching SCADA platforms, Concentric would be redeveloping the Villages SCADA graphics using High-Performance Graphic Standards that emphasize situational awareness, displaying critical data strategically to allow staff to quickly analyze process data for more timely decision making. A graphics style guide will be developed to standardize the color scheme, font, and components used in this project and future ones to keep screens looking consistent.

Baxter & Woodman, the Village engineer, is the Village's trusted water production advisor. Concentric, a subsidiary of Baxter & Woodman, provides the technical support associated with the management of the water system, including upgrades such the HMI SCADA Upgrades. Concentric's familiarity and expertise with installation, setup, training and management of SCADA systems is critical. Staff recommends restricting access to the programming of the water system for the sake of the security. For these reasons, staff is requesting a waiver of the competitive bidding requirements to award this project to Concentric Integration, LLC.

## FINANCIAL IMPACT

---

The FY2024 Budget includes a total of \$180,000.00 for the HMI SCADA Upgrades. The project proposal of \$163,750.00 is \$16,250.00 under budget. There will be an additional cost of \$3,300 for annual support.

## ATTACHMENTS

---

1. Concentric Integration Proposal
2. Addendum to Project Proposal

## **RECOMMENDED MOTION**

---

Motion to waive competitive bidding and approve the project proposal and addendum to the project proposal, dated January 24, 2024, between Concentric Integration, LLC and the Village of Lake in the Hills for the HMI SCADA Upgrade, in the amount of \$163,750.00.



# Project Proposal

July 19, 2024

Mr. Kevin Rivera  
Water Superintendent  
Lake in the Hills, IL  
9010 Haligus Road  
Lake in the Hills, IL 60156

Subject: HMI SCADA Upgrades

Concentric Project Number: 2325629.00

Dear Mr. Rivera:

The Village of Lake in the Hills owns, operates, and maintains a water distribution system consisting of eight wells, one interzone transfer station, and four elevated storage tanks. The sites mentioned above are integrated into the Village's Supervisory Control and Data Acquisition (SCADA) system. SCADA has become a critical piece of software that provides a variety of functions, such as, allowing Village staff to monitor system status remotely and collecting historical data for trending in a central location.

Currently, the Village uses Rockwell Automation's FactoryTalk View SE SCADA software platform for remote monitoring and some control of the water distribution sites. The FactoryTalk SE SCADA system was installed several years ago and has served the Village well; however, the FactoryTalk SE SCADA system currently running is outdated and has limited support from the developer. As technology evolves, the Village has asked Concentric to evaluate its SCADA system and provide recommendations for improvements to better meet the Village's needs for monitoring and control.

Concentric Integration recommends that the Village migrate the existing FactoryTalk View SE to Inductive Automation's Ignition Perspective SCADA platform and add alarming capabilities to SCADA. Migrating the Village's SCADA platform would provide the following benefits:

1. Unlimited Platform – Unlimited tags (data points), screens, device connections, view clients, and designers.
2. Mobile-Friendly Graphic Design—View SCADA screens from a web browser or native mobile app. Graphics scale accordingly to screen size.
3. Integrated Architecture – In addition to data visualization, Ignition has alarming capabilities Eliminates the need for 3rd party software such as Win911.
4. Server-Centric Deployment – Client sessions are deployed from one location. Removes the need for a separate Remote Desktop Services environment and dedicated view nodes. Project updates are pushed out immediately to all clients.





5. Cross-Platform Compatibility – Ignition can run on any operating system: Windows, MacOS, iOS, Android, Linux.

In addition to switching SCADA platforms, Concentric Integration recommends redeveloping the Village's SCADA graphics using High-Performance Graphic Standards. High-performance graphics emphasize situational awareness, displaying critical data strategically to allow staff to quickly analyze process data for more timely decision-making. A graphics style guide will be developed to standardize the color scheme, font, and components used in this project and future ones to keep screens looking consistent.

Concentric Integration greatly appreciates the opportunity to modernize and improve the Village's SCADA system. The following is our Scope of Services:

## Scope of Services

---

### *Equipment*

Concentric will provide the following hardware and software:

1. Inductive Automation Ignition software licenses for the following modules:
  - a. Ignition Perspective with unlimited view clients
  - b. Tag Historian
  - c. Alarm Notification
  - d. Voice Notification
  - e. SMS Notification
2. One (1) year of BasicCare Support for the modules above
3. One (1) Microsoft 2022 SQL License with five (5) user CALS (Ignition Historian)
4. One (1) Yeastar S20 or similar VoIP PBX
5. One (1) Sierra Wireless RV50X cellular router with two (2) Paddle Antennas and Power Supply (to be used as a SMS Gateway)





**The Village is responsible to provide the following hardware:**

1. One (1) T-Mobile SIM card (provided by T-Mobile under direction of the Village) for the SMS Gateway
2. One (1) Virtual Machine with Windows Server 2022 and the following resources:
  - a. 4 Cores (3Ghz+)
  - b. 8GB RAM
  - c. 250GB HD
  - d. Dedicated NIC on SCADA VLAN
3. One (1) Virtual Machine with Windows Server 2022 and the following resources:
  - a. 4 Cores (3Ghz+)
  - b. 8GB RAM
  - c. 500GB HD
  - d. Dedicated NIC on SCADA VLAN

***Labor***

**Project Management**

1. Plan, schedule, and coordinate the activities required to complete the Project.
2. Coordinate an onsite kickoff meeting at Public Works prior to the start of work.
3. Coordinate with the Village's IT department as needed.
4. Provide bi-weekly project status updates via email and discuss the status with the Village's Project Manager as needed.
5. Conduct an onsite graphics standards discussion to review the proposed graphic design.
6. Conduct an onsite SCADA screen review with Village staff to review existing SCADA screens and determine if any can be consolidated or eliminated.
7. Conduct an onsite Alarming Workshop to review current alarms in Win911 and determine which alarms if any, can be consolidated or eliminated.
8. Manage a punch list upon the last task of the project.





- e. The Village's Project Manager will be responsible for providing punch-list items to Concentric's Project Manager.

#### SCADA Server and Networking Infrastructure

1. The Village will provide and provision the following virtual Windows Servers on a dedicated virtual host server within Village Hall:
  - a. SCADA Server (SCADA platform application)
  - b. SCADA Historian (Database for trending and analytics)
2. The Village to provide and configure a dedicated SCADA VLAN to segregate the SCADA network from other Village network traffic.
  - a. The Village will provide Concentric with IP addresses to use for the SCADA equipment.
  - b. Concentric will coordinate with Village IT to leverage the Village's existing VPN solution for remote SCADA access.
3. Upon completion of this project, the Village of Lake in the Hills will have full ownership of the SCADA server and data within. Concentric can provide a separate maintenance support contract to assist the Village in maintaining their SCADA system.

#### SCADA Server Software

1. Configure new virtual SCADA server with the Ignition SCADA software application:
  - a. Configure Ignition's Allen-Bradley device driver(s) to communicate and poll information from the Master Polling PLC.
  - b. Configure datapoints (tags) in Ignition to maintain existing monitoring and control functions provided within the existing FactoryTalk SCADA system.
2. Coordinate with the Village to create alarm pipelines within the Ignition alarm module to notify Village staff according to the Village's desired call-out roster.
  - a. Configure Ignition to connect to the new Yeastar VoIP PBX for phone-call alarm notifications. Village IT to provide a POTS line through existing Comcast service. The Village's existing Mitel VoIP system may be leveraged for voice notifications.
  - b. Configure Ignition to generate SMS text messages when an alarm condition occurs. Operators will have the capability to acknowledge the alarm(s) by sending an acknowledgment code back to Ignition via text message.





- c. Configure the Ignition platform to integrate with the existing Active Directory for SCADA user management, if possible. If the SCADA VLAN is unable to reach the Village's existing AD, a local SCADA identity provider will be created with Ignition for SCADA user management.

#### PLC Programming Modifications

1. Modify the existing MTU PLC to establish a "Heartbeat" between the Ignition SCADA application and the PLC. In the event the Ignition SCADA application becomes unresponsive, the backup alarm dialer will generate an alarm.
2. Modify the existing MTU PLC so that if an alarm within the Ignition SCADA application is unacknowledged after 15 minutes, the backup alarm dialer will generate an alarm.

#### SCADA Historian

1. Configure new virtual SCADA Historian using Microsoft SQL database:
  - a. Install and configure Microsoft SQL 2022 on the SCADA Historian VM. The Ignition SCADA software will automatically generate the appropriate databases within SQL to store historical data.
  - b. Install and configure Microsoft SQL database connector within Ignition.
2. Historize datapoints within Ignition to provide the same historical data logging configured within the existing historian.
3. Coordinate with the Village to setup a data retention policy for historical data. Historical data may be pruned after a designated amount of time to maximize SCADA historian storage space.

#### SCADA Graphic Development

1. Concentric will redevelop the SCADA graphics using High-Performance HMI graphic standards. High-performance graphics emphasize situational awareness, displaying critical data strategically to make quick decisions regarding the process. Below are some High-Performance HMI standards Concentric recommends implementing:
  - a. Analog values, such as flow rates, pressures, tank levels, etc., will be visualized graphically and numerically. Graphical depictions of analog process values allow users to glance at SCADA and visually see whether the value falls within an acceptable range. It also provides benefit to see when a value is about to go into a warning or alarm condition, enabling users to change the process before an alarm condition occurs.





- b. When values do fall outside the acceptable range, the graphics will alert users in three ways: a change of color, text stating the condition, and a visible warning or alarm symbol.
  - c. High-performance graphics omit using unnecessary animated graphics, pictures as backgrounds, and inconsistent color-coding that can distract users.
  - d. The color scheme within the graphics will limit the use of color. Color will be specifically used and be consistent in definition. The colors selected will also consider colorblindness.
  - e. Graphic displays will follow a four-tier hierarchy:
    - Level 1: Overview of the entire system with only critical KPIs shown.
    - Level 2: Process-specific overview with trends show past process behavior.
    - Level 3: Specific sub-process or site data displayed.
    - Level 4: Pop-window with capabilities to control the sub-process of the site.
2. The SCADA graphics developed within Ignition will scale/adjust depending on what device they are viewed on:
  - a. The desktop version will be accessible via web browser. Graphics will scale accordingly to fit various screen sizes.
  - b. The mobile version will be accessed via the Ignition Perspective mobile application and optimized for users on smaller devices.
  - c. Both desktop and mobile versions can be accessed remotely.
3. Users will also be assigned a security level, limiting them to certain SCADA functionality and/or specific graphics.
4. Provide visibility and control for the data points currently in the Village's existing SCADA system. The data points will be reformatted to adhere to the High-Performance graphics standards mentioned above in Ignition.
5. SCADA graphics will adhere to the agreed-upon styles and elements in the Graphics Standards Meeting. Graphics will undergo an internal review process before being presented to the Village. The Village will then have an opportunity to review the graphics and provide one round of comments for changes. Once the comments from the Village are implemented, the graphics will be published and considered final. Additional modifications to the graphics, after the initial round of comments, may be provided outside this contract on a T&M basis.

### Training

1. Provide up to eight (8) hours of training for Village Staff on using the new SCADA system.







### Documentation

1. Provide via USB flash drive or secure electronic file-share using Microsoft OneDrive, or similar electronic copies of the following:
  - a. An updated network diagram, detailing the new SCADA system.
  - b. Ignition SCADA gateway backup.
  - c. Updated MTU PLC Program.

### Fee

---

Our fee for the above scope is a lump sum of \$163,750.

This proposal is valid for 90 days from the date issued.

### Concentric Assumptions / Customer Responsibilities

---

1. Customer will assign an initial project manager at the project kickoff meeting.
2. Customer will provide site access for installation, programming, and startup during Customer's normal business hours. Work outside of the Customer's normal business hours can be agreed upon as needed, provided Concentric can secure the site(s) upon departure.
3. Customer understands that all existing equipment to remain is assumed to be in good working order. In the event that any other equipment does not perform as expected, Concentric will work with the Customer to repair it, as needed, under a separate contract.
4. Customer will dispose of/recycle any removed equipment.
5. Customer understands that software/materials purchased outside Concentric may require regular support, and it will coordinate directly with the manufacturer to identify support costs for future budgeting purposes.

### Annual Support

---

This project will add additional hardware and software to the Customer, some of which have support or maintenance associated with it. Concentric recommends that the Customer maintain any applicable support agreements once the initial support/warranty periods expire. On this project, we have included the following support agreements, which all begin approximately at the date the product is shipped (not necessarily the date it is onsite) and last for periods varying from one year to three years.





Following is the recommended support and estimated amounts for annual renewals (this is provided solely for budgetary purposes and will need to be quoted at the time of renewal):

Description	Annual Renewal
Inductive Automation BasicCare	\$3,300
<b>Total</b>	<b>\$3,300</b>

Manufacturer standard warranty on all other hardware

## Project Schedule

---

Concentric is available to begin work upon notice to proceed.

## Warranty

---

The warranty listed in the Standard Terms and Conditions (Paragraph 12.2):

- DOES apply
- DOES NOT apply

## 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 below.

**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 Terms and Conditions attached to this document (Exhibit A) are hereby incorporated into this Project Agreement. 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 proposal 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/RRO



CUSTOMER:  
LAKE IN THE HILLS, IL

ACCEPTED BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

P:\LITHV\2325629-HMI SCADA UPGRADES\\_PROMO\2325629-HMI SCADA UPGRADES-PROPOSAL.DOCX





## Exhibit A

---





## STANDARD TERMS AND CONDITIONS v10.2

### Lake in the Hills Version - Rev 7/11/2024

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. Except as otherwise specifically provided in the Proposal, Consultant may not utilize any subcontractor without the prior, written consent of the Customer.

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 "3<sup>rd</sup> Party Terms" document at [www.goconcentric.com/standard-terms](http://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 may provide Customer System maintenance and support services for an additional fee under a separate agreement executed between the Consultant and Customer.

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 Reserved.

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 "3<sup>rd</sup> Party Terms" document at [www.goconcentric.com/standard-terms](http://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 thirty (30) 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 10 (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 14, 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: \$10,000,000 per claim and aggregate

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

Professional Liability: \$5,000,000 per claim  
\$10,000,000 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. 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.

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 (3<sup>rd</sup>) 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.

ADDENDUM TO PROJECT PROPOSAL, DATED JANUARY 24, 2024,  
BETWEEN CONCENTRIC INTEGRATION, LLC AND THE VILLAGE OF LAKE IN THE HILLS

The following provisions are made part of the terms of agreement between the Village of Lake in the Hills (“Village”), and Concentric Integration, LLC (“Concentric”), in addition to what is stated in the “Project Proposal” documents referenced further as Concentric Project Numbers: 2325627.00 and 2325629.00. The provisions herein are intended to be cumulative and compatible with the terms contained in the “Project Proposal” documents, including any further referenced/incorporated terms such as “Standard Terms and Conditions v10.2” and “Third Party Materials Terms and Conditions” (“Proposals”). To the extent possible, the terms shall be read to give full effect to all documents. However, in the event any term(s) is considered incompatible, the Addendum shall supersede the Proposals, including any further referenced/incorporated terms:

1. Concentric is being engaged to perform certain installations and upgrades to the Village’s infrastructure, generally described as upgrades to a supervisory control and data acquisition (SCADA) system and radios.
2. Concentric understands and accepts that work on the project is subject to the Illinois Prevailing Wage Act and that Concentric has an affirmative obligation to substantiate compliance with the Act through the Illinois Department of Labor, including but not limited to submitting certified payroll and maintaining payroll records, as further described in and required by the Act.
3. Nothing in the parties’ agreement shall be construed to create any third-party rights or to create any liability or legal duty against any party to this Agreement which does not otherwise exist.
4. Any dispute arising out of or related to the Document and/or Addendum shall be heard exclusively in the McHenry County Circuit Courthouse with the laws of the State of Illinois to apply.
5. Concentric agrees to fully indemnify and hold the Village harmless from and against any claims, liabilities, and theories of damages, arising out of or relating to Concentric work, in accordance with the standard of performance set forth in paragraph 6 as provided in the Proposals and this Addendum, excepting only the negligent or tortious acts of the Village, including its employees and agents.
6. The parties agree that Concentric shall provide, install, and integrate all identified equipment in the proposals in a workmanlike manner consistent with the care and skill used by members of Concentric’s profession performing work under similar circumstances, that all such equipment functions and is operational for its intended purpose, excepting only that any Third Party equipment that is defective will be identified as defective by Concentric and such defective equipment shall be promptly replaced, with Concentric reasonably assisting the Village with identifying and replacing any such defective equipment.
7. The parties recognize that the Village is a public entity, subject to various laws and regulations pertaining to retention of records, release of records in response to Freedom of Information requests, confidentiality, change orders, and competitive bidding of contracts, and that nothing in the Proposals is intended to, nor shall it, require any additional duty by the Village, other than what is statutorily required, in addressing record retention, release of records, confidentiality, change orders, and/or bidding of additional or future equipment and/or service contracts, for the subject matter of the Proposals, including any access or providing of information related to competitive bidding.
8. To the fullest extent possible, in the event of a defect in the Project, the amount owed to Concentric pursuant to the Proposals shall be limited to the fair market value of any equipment received and utilized by the Village, in addition to the value of any labor and service further provided, up to the amounts indicated in the itemization of the Fees.
9. The Proposal and this Addendum may be executed in counterparts, and facsimile/electronic signatures are considered valid and fully enforceable proof of execution.

Michael D Klein

Concentric Integration, LLC

By: Michael D. Klein, PE

Its: President

Date: July 19, 2024

\_\_\_\_\_

Village of Lake in the Hills

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_



# REQUEST FOR BOARD ACTION

---

**MEETING DATE:** August 20, 2024  
**DEPARTMENT:** Public Works  
**SUBJECT:** Tower Control Radio Upgrades

## EXECUTIVE SUMMARY

---

Staff seeks board approval to waive competitive bidding and approve the proposal and addendum to the proposal with Concentric Integration, LLC ("Concentric") for the Tower Control Radio Upgrades in the amount of \$124,920.00.

The Village's radio telemetry and Programmable Logic Controllers ("PLCs") have served the Village well over 15 years; however, the radios are now considered legacy products and are being phased out by the manufacturer. These radios communicate within each Tower and Well House. Replacement parts are becoming very expensive and use an outdated serial communication protocol. The PLCs at each of the Village's Elevated Towers are also being phased out by the manufacturer. These devices are responsible for interpreting the Tower water levels and controlling the altitude valves accordingly to maintain the desired water level.

The cost of servicing older equipment or trying to obtain obsolete parts puts an additional burden on the Village and risks extended system downtime. The radios would be replaced with a current more cost-effective platform with industry standard, Ethernet/IP- based communications. Also, the PLCs would be replaced with the current Allen-Bradley 5069 Compact Logix Platform.

Baxter & Woodman, the Village engineer, is the Village's trusted water production advisor. Concentric, a subsidiary of Baxter & Woodman, provides the technical support associated with the management of the water system, including upgrades such as the Tower Control Radio Upgrade. Concentric's familiarity and expertise with installation, setup, training and management of SCADA systems is critical. Staff recommends restricting access to the programming of the water system for the sake of the security. For these reasons, staff is requesting a waiver of the competitive bidding requirements to award this project to Concentric Integration, LLC.

## FINANCIAL IMPACT

---

The FY2024 Budget includes \$140,000.00 for the HMI SCADA Upgrades. The contract amount of \$124,920.00 is \$15,080.00 under budget.

## ATTACHMENTS

---

1. Concentric Integration Proposal
2. Addendum to Project Proposal

## **RECOMMENDED MOTION**

---

Motion to waive competitive bidding and approve the project proposal and addendum to the project proposal, dated January 24, 2024, between Concentric Integration, LLC and the Village of Lake in the Hills for the Tower Control Radio Upgrade, in the amount of \$124,920.00.



## Project Proposal

July 19, 2024

Mr. Kevin Rivera  
Water Superintendent  
Village of Lake in the Hills  
9010 Haligus Road  
Lake in the Hills, IL 60156

Subject: Radio Upgrades

Concentric Project Number: 2325627.00

Dear Mr. Rivera:

The Village's radio telemetry system has served the Village well for over 15 years; however, the radios are now considered legacy products and are being phased out by the manufacturer. Replacement parts are becoming very expensive and use an antiquated serial communication protocol. Concentric Integration recommends replacing the radios with a current, more cost-effective platform with industry-standard, Ethernet/IP-based communications. The cost of servicing older equipment or trying to obtain obsolete parts puts an additional burden on the Village and risks extended system downtime.

In addition to the Village's aging radio telemetry system, the Programmable Logic Controller (PLCs) at each of the Village's Elevated Towers are now considered legacy products and are being phased out by the manufacturer. These devices are responsible for interpreting the tower water levels and controlling the altitude valves accordingly to maintain the desired water level. Replacement parts are becoming very expensive, and Concentric recommends replacing the existing PLC platform with the current Allen-Bradley 5069 CompactLogix platform.

The Village could elect to pursue a traditional design-bid-build project for these improvements; however, a project of this size would not likely bring the type of competition required to get competitive pricing. In addition, the cost of preparing a detailed design and the overhead of a general contractor may not be cost-advantageous given the relatively small scope of work required to upgrade the Village's radios and Tower PLCs. Concentric Integration has worked in partnership with the Village and has successfully implemented similar projects at other sites within the past four years. For these reasons, Concentric Integration recommends that the Village consider partnering with Concentric to complete the following work:

1. Replace existing radios.
2. Replace radio power supplies and antenna surge suppressors.
3. Replace existing PLC and related equipment with fully supported equipment by the manufacturer.
4. Remove legacy leased line communications equipment.
5. Modernize the PLC software.





6. Install a UPS failover relay for improved serviceability and reliability of the Tower SCADA panels.

Following is our detailed scope of services to complete the radio system and Tower control rehabilitations with the Village.

## Scope of Services

### Equipment

Concentric will provide the following equipment:

Equipment	Tower 1	Tower 2	Tower 4
Allen-Bradley 5069-L306ER PLC Controller	1	1	1
Allen-Bradley 5069-IQ16 24Vdc Digital Input Module	1	1	1
Allen-Bradley 5069-OX4I 4 Point VAC/VDC Isolated Relay Output Module	1	1	1
Allen-Bradley 5069-IY4 4 Point Analog Input Module	1	1	1
Allen-Bradley 5069-RTB18-SCREW Terminal Block	3	3	3
Allen-Bradley 5069-RTB64-SCREW Terminal Block	1	1	1
Allen-Bradley 1783-US5T 5 Port Unmanaged Network Switch	1	1	1
Allen-Bradley 1606-XLP95E 24Vdc, 95W Class 2 Power Supply	1	1	1
Allen-Bradley 1606-XLP50E 24Vdc, 50W Power Supply	1	1	1
Allen-Bradley 700-HK32A-4 120Vac Relay and Socket	3	4	0
Allen-Bradley 700-HK32Z24-4 24Vdc Relay and Socket	2	2	2
Allen-Bradley 700-HB33A1 120Vac Relay, Socket, Surge Suppressor	1	1	1
Citel DLA 24D3 Analog Surge Suppressor	1	1	1
Hoffman DAH2001A Electric Heater, 115Vac, 200W	1	1	1
Hoffman ATEMNC Thermal Switch	1	0	0

1. Quantity thirteen (13) GE MDS Orbit ECRU91NNNNNS1D1USUNNN unlicensed 900Mhz radio with DIN rail mounting kit. (Includes one spare)
2. Quantity twelve (12) GE MDS TSX-NFF Antenna Surge Suppressors
3. Quantity twelve (12) Allen-Bradley 1606-XLP30E 24Vdc, 30W Power supplies

Concentric will also provide any miscellaneous control panel components (Patch cables, wire, mounting hardware, etc.) as required for a complete installation.







## *Labor*

### Project Management

1. Plan, schedule, and coordinate the activities required to complete the Project.
2. Coordinate an onsite kickoff meeting at Public Works prior to the start of work.
3. Coordinate with the Village's IT department as needed.
4. Provide bi-weekly project status updates via email and discuss status with the Customer's Project Manager as needed.
5. Manage a punch list upon the last task of the project.
  - a. The Village will be responsible for providing punch-list items to Concentric's Project Manager.

## Radio Upgrades

### Network Design

1. Create a radio network IP address architecture for the Village's remote sites.
2. Update the Village's existing Visio Network Diagram to include the changes made within this project.

### SCADA Programming

1. Modify the existing polling PLC logic at Tower 3 to enable Ethernet/IP communications to the remote sites.
2. The radio at Tower 3 will serve as the master radio, and all other radios will communicate to it.
  - a. Configure the radios at Towers 1, 2, and 4 to act as repeater sites for other remote sites.
  - b. The remaining radios will be configured as remotes.

### Installation

1. Remove the existing radios, lightning arrestors, serial gateways, and radio power supplies at each site and provide to the Village for proper disposal.
2. Install new GE MDS Orbit radios and 24Vdc power supplies on DIN rail. Install new antenna lightning arrestors within the same location as the removed ones.





3. Subcontract Kreuger Tower, or other local, reputable antenna contractor, to perform antenna sweep tests, and verify the antennas and associated cabling are in good working order, at each site.
  - a. If the evaluation by Krueger Tower results in the recommendation of any major antenna repairs, such as replacing the entire antenna, relating cabling, or weatherproofing, such work will be performed outside this contract on a T&M basis, or as an addendum to this contract. The Village will be required to approve any additional fees.

#### Commissioning

1. Verify each radio successfully communicates with the master radio at Tower 3. Document RSSI (signal strength) values within the Field Device Checkout form.
2. Verify station status properly updates in SCADA.

#### Documentation

1. Provide via USB flash drive or secure electronic file-share using Microsoft OneDrive, or similar electronic copies of the following:
  - a. Updated Visio Network Diagram, detailing the SCADA network updates.
  - b. Radio configuration files.
  - c. Updated PLC Programs.

## Tower Controls Rehabilitation

#### Design

1. Provide construction control panel wiring diagrams for the Tower sites being modified, depicting the details of the new PLC equipment.

#### PLC Modernization

1. Replace the existing SLC PLC equipment with the new Allen-Bradley PLC equipment indicated above at the following sites:
  - a. Tower 1
  - b. Tower 2
  - c. Tower 4





2. Migrate the existing PLC programs for compatibility with the new PLC equipment. The existing functionality of the programs will remain but will be enhanced to include better tag naming conventions and Concentric's Add-On instructions.
3. Remove legacy leased line communications equipment.
4. Remove existing 24Vdc power supplies and replace them with the equipment indicated above.
5. Provide and install new unmanaged Ethernet switches within the existing SCADA panel.
6. Install UPS failover relays and terminate wiring to allow the SCADA panel to automatically switch over to utility power, bypassing the UPS circuitry, in the event the UPS fails or is removed for maintenance.
  - a. Terminate wiring between the UPS failover relay and spare PLC digital input to allow SCADA to monitor the status of the relay (In UPS or Utility Power).
7. Modify the existing MTU PLC program at Tower 3 to improve data messaging capabilities between the Master PLC and Remote Tower PLCs.
8. Develop PLC and SCADA Programming to generate a UPS Fail Alarm in the event of UPS failure.

#### Commissioning

1. Confirm successful PLC program migration and operation through testing of status and control signals. Document results using a Field Device Report checkout form.

#### Documentation

1. Provide via USB flash drive or secure electronic file-share using Microsoft OneDrive, or similar electronic copies of the following:
  - a. Updated Network Diagram.
  - b. Signed Field Device Test Reports.
  - c. Migrated PLC Programs.
  - d. As-built wiring diagrams detailing the completed installations.





## Fee

---

Our fee for the above scope is a lump sum of \$124,920.

This proposal is valid for 90 days from the date issued.

## Concentric Assumptions / Customer Responsibilities

---

1. The customer will assign an initial project manager at the project kickoff meeting.
2. The customer will provide site access for installation, programming, and startup during the Customer's normal business hours. Work outside of the Customer's normal business hours can be agreed upon as needed, provided Concentric can secure the site(s) upon departure.
3. Customer understands that all existing equipment to remain is assumed to be in good, working order. If any other equipment does not perform as expected, Concentric will work with the Customer to repair, as-needed, under a separate contract.
4. Customer will dispose of/recycle any removed equipment.

## Project Schedule

---

Concentric is available to begin work upon notice to proceed.

## Warranty

---

The warranty listed in the Standard Terms and Conditions (Paragraph 12.2):

- DOES apply
- DOES NOT apply

## 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 below.

**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 Terms and Conditions attached to this document (Exhibit A) are hereby incorporated into this Project Agreement. 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 proposal is acceptable, please sign one copy and return it to us. Feel free to contact me if you have any questions.

Sincerely,

CONCENTRIC INTEGRATION, LLC

A handwritten signature in black ink that reads "Michael D. Klein".

Michael D. Klein, PE  
President  
MDK/RRO



CUSTOMER:  
VILLAGE OF LAKE IN THE HILLS

ACCEPTED BY:

---

TITLE:

---

DATE:

---

P:\LITHV\2325627-RADIO UPGRADES\CONTRACTS\WORK\2325627-TOWERCONTROLSRADIOUPGRADES-PROPOSAL.DOCX





## Exhibit A

---





## STANDARD TERMS AND CONDITIONS v10.2

### Lake in the Hills Version - Rev 7/11/2024

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. Except as otherwise specifically provided in the Proposal, Consultant may not utilize any subcontractor without the prior, written consent of the Customer.

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 "3<sup>rd</sup> Party Terms" document at [www.goconcentric.com/standard-terms](http://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 may provide Customer System maintenance and support services for an additional fee under a separate agreement executed between the Consultant and Customer.

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 Reserved.

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 "3<sup>rd</sup> Party Terms" document at [www.goconcentric.com/standard-terms](http://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 thirty (30) 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 10 (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 14, 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: \$10,000,000 per claim and aggregate

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

Professional Liability: \$5,000,000 per claim  
\$10,000,000 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. 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.

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 (3<sup>rd</sup>) 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.

ADDENDUM TO PROJECT PROPOSAL, DATED JANUARY 24, 2024,  
BETWEEN CONCENTRIC INTEGRATION, LLC AND THE VILLAGE OF LAKE IN THE HILLS

The following provisions are made part of the terms of agreement between the Village of Lake in the Hills (“Village”), and Concentric Integration, LLC (“Concentric”), in addition to what is stated in the “Project Proposal” documents referenced further as Concentric Project Numbers: 2325627.00 and 2325629.00. The provisions herein are intended to be cumulative and compatible with the terms contained in the “Project Proposal” documents, including any further referenced/incorporated terms such as “Standard Terms and Conditions v10.2” and “Third Party Materials Terms and Conditions” (“Proposals”). To the extent possible, the terms shall be read to give full effect to all documents. However, in the event any term(s) is considered incompatible, the Addendum shall supersede the Proposals, including any further referenced/incorporated terms:

1. Concentric is being engaged to perform certain installations and upgrades to the Village’s infrastructure, generally described as upgrades to a supervisory control and data acquisition (SCADA) system and radios.
2. Concentric understands and accepts that work on the project is subject to the Illinois Prevailing Wage Act and that Concentric has an affirmative obligation to substantiate compliance with the Act through the Illinois Department of Labor, including but not limited to submitting certified payroll and maintaining payroll records, as further described in and required by the Act.
3. Nothing in the parties’ agreement shall be construed to create any third-party rights or to create any liability or legal duty against any party to this Agreement which does not otherwise exist.
4. Any dispute arising out of or related to the Document and/or Addendum shall be heard exclusively in the McHenry County Circuit Courthouse with the laws of the State of Illinois to apply.
5. Concentric agrees to fully indemnify and hold the Village harmless from and against any claims, liabilities, and theories of damages, arising out of or relating to Concentric work, in accordance with the standard of performance set forth in paragraph 6 as provided in the Proposals and this Addendum, excepting only the negligent or tortious acts of the Village, including its employees and agents.
6. The parties agree that Concentric shall provide, install, and integrate all identified equipment in the proposals in a workmanlike manner consistent with the care and skill used by members of Concentric’s profession performing work under similar circumstances, that all such equipment functions and is operational for its intended purpose, excepting only that any Third Party equipment that is defective will be identified as defective by Concentric and such defective equipment shall be promptly replaced, with Concentric reasonably assisting the Village with identifying and replacing any such defective equipment.
7. The parties recognize that the Village is a public entity, subject to various laws and regulations pertaining to retention of records, release of records in response to Freedom of Information requests, confidentiality, change orders, and competitive bidding of contracts, and that nothing in the Proposals is intended to, nor shall it, require any additional duty by the Village, other than what is statutorily required, in addressing record retention, release of records, confidentiality, change orders, and/or bidding of additional or future equipment and/or service contracts, for the subject matter of the Proposals, including any access or providing of information related to competitive bidding.
8. To the fullest extent possible, in the event of a defect in the Project, the amount owed to Concentric pursuant to the Proposals shall be limited to the fair market value of any equipment received and utilized by the Village, in addition to the value of any labor and service further provided, up to the amounts indicated in the itemization of the Fees.
9. The Proposal and this Addendum may be executed in counterparts, and facsimile/electronic signatures are considered valid and fully enforceable proof of execution.

Michael D Klein

Concentric Integration, LLC

By: Michael D. Klein, PE

Its: President

Date: July 19, 2024

\_\_\_\_\_

Village of Lake in the Hills

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_



# REQUEST FOR BOARD ACTION

---

**MEETING DATE:** August 20, 2024

**DEPARTMENT:** Public Works

**SUBJECT:** Reassignment of Ground Lease – Pyott Road Solar LLC

## EXECUTIVE SUMMARY

---

The Village received a Notice and Consent for the assignment of the ground lease related to the development of the solar energy project at the Lake in The Hills Airport (the "LITH Project"). The parties involved in this Notice and Consent are the Village of Lake in The Hills ("VLITH"), BAP Illini LLC ("Assignor"), and Pyott Road Solar LLC ("Assignee").

As detailed in the attached documents and pursuant to the provisions of the Ground Lease dated December 8, 2022, the Village of Lake in the Hills and BAP Illini LLC entered into an agreement for the development of the solar energy project. Since the initial execution of the Lease, the Assignor's ownership has changed, and it is now proposed that Pyott Road Solar LLC, a subsidiary of Cenergy Power Corporation, assumes all rights and obligations under the Lease through a lawful assignment process.

Staff is seeking Board approval of this assignment to facilitate the continued development of the solar energy project under new ownership.

## FINANCIAL IMPACT

---

The Airport Fund receives \$13,000.08 annually from the ground lease.

## ATTACHMENTS

---

1. Notice and Consent

## RECOMMENDED MOTION

---

Motion to approve the reassignment of the ground lease to Pyott Road Solar LLC, a subsidiary of Cenergy Power Corporation.



## NOTICE AND CONSENT

This Notice and Consent is entered into among the Village of Lake In The Hills, (“VLITH”), BAP Illini LLC, a limited liability company organized and existing under the laws of the State of California (“Assignor”), and Pyott Road Solar LLC, an Illinois limited liability company (“Assignee”).

### RECITALS

- A. VLITH and Assignor are party to that certain Ground Lease, dated the 8<sup>th</sup> day of December, 2022 (the “Lease” as may be amended) related to the development of a photovoltaic energy project located at or near the Lake In The Hills Airport (the “LITH Project”).
- B. At the time the Lease was entered into, Assignor was a wholly-owned subsidiary of BAP Power Corporation d.b.a. Cenergy Power (“Cenergy”) and the LITH Project was one of several photovoltaic projects owned by Assignor. The ownership interests of Assignor were subsequently sold by Cenergy to a third party with VLITH’s acknowledgement and consent. Assignee is a wholly-owned subsidiary of Cenergy and Cenergy desires to re-take indirect ownership of and resume its development of the LITH Project. Pursuant to the broader assignment of the assets of the LITH Project attached hereto as Exhibit A (the “General Assignment”), Assignor has specifically assigned (the “Lease Assignment”) all if its right, title and interest related to the Lease to Assignee, and Assignee has assumed all duties, liabilities and obligations related to the Lease.
- C. Section 14(a)(ii) of the Lease provides that “Tenant may assign this Lease and rights hereunder:…subject to Landlord’s approval and consent, such consent not to be unreasonably withheld, conditioned or delayed, to any other person or entity who assumes all of Tenant’s rights and obligations hereunder, provided however that the effectiveness of any such assignment shall be conditioned on the Tenant not being then in Default”.
- D. Terms used and not defined herein have the meanings set forth in the Lease.

### AGREEMENT

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto acknowledge and agree as follows:

1. Pursuant to the General Assignment, Assignor has assigned the Lease to Assignee and Assignee has agreed to the terms of the Lease and to assume the rights and obligations of Assignor thereunder.

2. VLITH hereby approves of and consents to the Assignment.
3. The parties hereto agree that the Tenant is not in Default under the Lease.
4. Upon all signatures below, Assignee shall be deemed the party to the Lease in lieu of the Assignor, and Assignor is no longer obligated under the Lease, notwithstanding any terms to the contrary therein.

IN WITNESS WHEREOF, the parties hereto executed this Agreement on the date last set forth below.

**BAP Illini LLC (Assignor)**



By: \_\_\_\_\_  
Print Name: Brendon Quinlivan  
Its: Chief Executive Officer

Date July 19, 2024



By: \_\_\_\_\_  
Print Name: Joshua Udler  
Its: Senior Director, Legal

Date July 19, 2024

**Pyott Road Solar LLC (Assignee)**



By: \_\_\_\_\_  
Print Name: William Pham  
Its: Manager

Date July 19, 2024

**The Village Lake In The Hills (“VLITH”)**

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Its: \_\_\_\_\_

Date \_\_\_\_\_

Exhibit A

## ASSIGNMENT and ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement (“**Assignment**”), dated as of June 20, 2024, is by and among Pyott Road Solar LLC, an Illinois limited liability company (“**Assignee**”), BAP Illini LLC, a California limited liability company (“**Assignor**”) and BAP Power Corporation, d/b/a Cenergy Power, a California corporation (“**Cenergy**”).

### RECITALS

A. Assignor owns 100% of the development rights, title, agreements and assets in the project (the “**Project**”) sized at about 1,377 kW DC/ 996 kW AC located on land owned by Village of Lake in the Hills, as more particularly described on Exhibit A hereto (the “**Project Assets**”) and is currently the Approved Vendor for the Project (Approved Vendor #2039).

B. Assignee is a wholly owned subsidiary of Cenergy (Approved Vendor #13).

C. For good and valuable consideration, Assignor has agreed to sell, assign, convey, deliver and transfer to Assignee free and clear of all liens, and Assignee has agreed to accept and assume, 100% of Assignor’s right, title and interest in and to the Project Assets and Assignor has agreed to transfer the role of Approved Vendor to Cenergy.

**NOW, THEREFORE**, for and in consideration of the foregoing recitals, which are incorporated herein, and of the premises and mutual covenants and undertakings contained in this Assignment, the adequacy and sufficiency of which are hereby acknowledged, and intending to be legally bound, the Parties hereby agree as follows:

1. **Assignment.** Assignor hereby assigns, conveys, delivers and transfers to Assignee all of Assignor’s right, title and interest in and to the Project and the Project Assets free and clear of all liens as well as its right and interest to serve as Approved Vendor for the Project

2. **Acceptance by Assignee and Cenergy.** Assignee hereby purchases, acquires, accepts and assumes the Project and the Project Assets, and assumes all of the Assignor’s duties, obligations and liabilities arising with respect to the Project and the Project Assets, and Cenergy (Approved Vendor #13) hereby accepts and assumes all of Assignor’s right and interest to serve as Approved Vendor for the Project.


3. **Further Assurances.** On and after the date hereof, if either Party reasonably determines or is reasonably advised that any further instruments or actions are necessary or desirable to carry out the terms of this Assignment, the other party shall execute and deliver all such instruments and perform all such actions reasonably necessary and proper to carry out the terms of this Assignment.

6. **Miscellaneous.** This Assignment and all of the provisions hereof shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. This Assignment shall not confer any rights, benefits or remedies to any other Person not a Party hereto. The Assignment shall be governed by the laws of the State of Illinois without reference to conflicts of laws. This Assignment may not be amended except by an instrument in writing signed by all of the Parties hereto. This Assignment may be executed by facsimile or PDF signature in counterparts, each of which shall be considered an original but which together shall be deemed one and the same instrument.


[Signature Page Follows]


**IN WITNESS WHEREOF**, the parties hereto set forth their hands effective as of the date first written above,

Pyott Road Solar LLC  
as Assignee


By:   
\_\_\_\_\_  
Name: William Pham  
Title: Manager

BAP Illini LLC – As Assignor and Former Approved Vendor

By:   
\_\_\_\_\_  
Name: Brendon Quinlivan  
Title: CEO

By:   
\_\_\_\_\_  
Name: Joshua Udler  
Title: Senior Director Legal

BAP Power Corporation d/b/a Cenergy Power  
as New Approved Vendor

By:   
\_\_\_\_\_  
Name: William Pham  
Title: CEO

## **Exhibit A**

- Ground Lease, dated as of December 8, 2022, by and between the Village of Lake in the Hills and BAP Illini LLC.
- Standard Agreement for Interconnection of Distributed Generation Facilities, dated August 5, 2022, by and between BAP Illini LLC and Commonwealth Edison Company (Project Number: 21-17401).
- Letter from Community Services Director of the Village of Lake in the Hills, dated January 18, 2019, to LITH CS LLC confirming the solar project is a permitted use and not further zoning action is required, as assigned from LITH CS LLC to BAP Illini LLC pursuant to that certain Assignment Agreement, dated January 1, 2022, by and between LITH CS LLC and BAP Illini LLC.
- Informational Response Letter from Illinois Department of Natural Resources to Barrett Energy Resources Group, dated May 13, 2022, confirming that no historic properties are affected (SHPO LOG #011041422).
- Illinois Department of Natural Resources (dba EcoCAT) Report, dated March 4, 2022, to BAP Illini LLC stating that protected resources may be in the vicinity of the project location.
- Illinois Department of Natural Resources (dba EcoCAT) Consultation Letter, dated March 11, 2022, to BAP Illini LLC stating that the Illinois Natural Heritage Database shows that protected resources may be in the vicinity of the project location.
- Amended and Restated Lease Option Agreement, dated January 27, 2022, by and between Lake in the Hills and Lith CS LLC.
- Email from Michael Peranich, C.M., Airport Manager, at Village of Lake in the Hills, dated September 12, 2022, acknowledging the assignment of development rights to BAP Illini LLC, that the lease is in final stages of negotiation and that project is a permitted use.
- Assignment Agreement, dated January 1 2022, by and between Lith CS LLC and BAP Illini LLC.
- Interconnection System Impact Study, dated April 13, 2022, for to BAP Illini LLC prepared by Trevor Blackburn.
- ComEd Distributed Generator Interconnection Facility Study Report, to LITH CS LLC May 27,2022, prepared by ComEd (an Exelon Company), as assigned from LITH CS LLC to BAP Illini LLC pursuant to that certain Assignment Agreement, dated January 1, 2022, by and between LITH CS LLC and BAP Illini LLC.
- Phase 1 Environmental Site Assessment, dated April 27, 2022, prepared by Professional Service Industries, Inc. for BAP Illini LLC.
- Illinois Department of Transportation Letter Re: Aeronautical Study 2018-AGL-10877- NRA, dated March 13, 2019.
- BAP Illini LLC, Lake in the Hills Airport, Wetlands Delineation Report, dated June 2022, prepared by Baxter & Woodman Natural Resources, LLC.
- All other permits, contracts, approvals, program rights and obligations, studies, reports, drawings, bonds, interconnection items and other materials held by Assignor related to the development, construction, operation and maintenance of the Project.