REQUEST FOR AGENDA PLACEMENT FORM
Submission Deadline - Tuesday, 12:00 PM before Court Dates

SUBMITTED BY: Dan Milam   **TODAY'S DATE: 08/31/2018**

DEPARTMENT: Information Technology

SIGNATURE OF DEPARTMENT HEAD: Dan Milam

REQUESTED AGENDA DATE: 10 Sep 2018

SPECIFIC AGENDA WORDING:

Consideration of agreement with VetPro software for Veterans Services.

PERSON(S) TO PRESENT ITEM:
     Dan Milam

SUPPORT MATERIAL: (Must enclose supporting documentation)

TIME: 10   **ACTION ITEM: XX**
                                        WORKSHOP:
(Anticipated number of minutes needed to discuss item) **CONSENT:** _____
                                        EXECUTIVE:

STAFF NOTICE:

COUNTY ATTORNEY: IT DEPARTMENT: _____
AUDITOR: _____   PURCHASING DEPARTMENT:
PERSONNEL: PUBLIC WORKS: _____
BUDGET COORDINATOR: _____   OTHER:

***********This Section to be completed by County Judge's Office***********

ASSIGNED AGENDA DATE: _____

REQUEST RECEIVED BY COUNTY JUDGE'S OFFICE _____

COURT MEMBER APPROVAL _____ Date_____

Quote

Panoramic Software Inc.

To: Dan Milam
Johnson County Information Technology
2 North Mill Street, Suite 201
Cleburne, TX 76033
(817) 556-6366

Salesperson	Job	Shipping Method	Shipping Terms	Delivery Date	Payment Terms	Due Date
Jay Joyce	FUL-NY	N/A	N/A	TBD	Net 30	TBD

Qty	Item #	Description	Unit Price	Discount	Line Total
1.00		Initial Setup	$ 2,995.00	$2,995	$
4.00		VetPro National User	1,000.00		4,000.00

Total Discount $	2,995.00
Subtotal $	4,000.00
Sales Tax	
Total $	4,000.00

Make all checks payable to Panoramic Software Inc.

Thank you for your business!
32932 Pacific Coast Highway #14-482, Dana Point, CA, (877) 558-8526, E-mail billing@panosoft.com

JOHNSON COUNTY CONTRACT TERMS
ADDENDUM – PANORAMIC SOFTWARE CORPORATION -- 2018

The Johnson County Commissioners Court Finds, and the Parties Agree, as Follows:

1.1

This **Addendum** is part of an Agreement between **Johnson County, Texas,** a political subdivision of the State of Texas, (hereinafter referred to as "**COUNTY**"), and **Panoramic Software Corporation** ("PANOSOFT") hereunder (collectively, the **"Parties"** or each individually a **"Party").**

2.1

This Agreement will be governed by and construed according to the laws of the **State of Texas.** Venue for any action or claim arising out of the Agreement must be in the state district courts in Johnson County, Texas or the federal district courts in Dallas County, Texas. Any provision stating that County agrees to waive any right to trial by jury is hereby deleted.

2.2

Limitations for the right to bring an action, regardless of form, shall be governed by the laws of the State of Texas, Texas Civil Practice and Remedies Code §16.070, as amended, and any provision to the contrary is hereby deleted.

2.3

Under Texas law, a contract with a governmental entity that contains a claim against future revenues is void; therefore, any term which provides for such a claim is hereby deleted. Johnson County will, upon request of a party to the contract, certify the funds available to fulfill the terms of this Agreement.

2.4

The Parties agree that under the Constitution and laws of the State of Texas, Johnson County cannot enter into an agreement whereby Johnson County agrees to indemnify or hold harmless any other party; therefore, all references of any kind to Johnson County indemnifying and holding harmless any individuals or entities for any reason whatsoever are hereby deleted.

Article XI, Section 7(a) of the Texas constitution provides in relevant part:

... But no debt for any purpose shall ever be incurred in any manner by any city or county unless provision is made, at the time of creating the same, for levying and collecting a sufficient tax to pay the interest thereon and provide at least two per cent (2%) as a sinking fund, except as provided by Subsection (b) ...

This provision is interpreted with respect to contractual obligations of Texas county and city government entities to prohibit such government entities from entering into an indemnity agreement and to nullify such agreement provisions.

2.5
The Parties agree and understand that County is a political subdivision of the State of Texas, and therefore has certain governmental immunity, sovereign immunity and limitations on liability, and that County's general liability and vehicle insurance coverage is with the Texas Association of Counties Risk Pool and said "insurance coverage" is limited to the statutory maximum limits of the Texas Tort Claims Act; therefore, any provisions to the contrary are hereby deleted. The Parties agree and understand that County does not waive any of its common law, statutory or constitutional defenses to which it may be entitled.

2.6
The Parties agree and understand that County will not agree to waive any rights and remedies available to County under the Uniform Commercial Code ("UCC"); therefore, any provision to the contrary is hereby deleted.

2.7
The Parties agree and understand that County will not agree to be responsible for any sales tax, use tax, or any other taxes, fees, fines or penalties that may be imposed, levied or assessed by any federal, state or local government or agency which relates to the Agreement, the equipment or its use; therefore, any provision to the contrary is hereby deleted.

2.8
The Parties agree and understand that County will provide statutory workers compensation for its employees; however, County does not agree to include a waiver of subrogation, and therefore any provisions to the contrary are hereby deleted.

2.9
Pursuant to Texas Government Code Section 2251.021 and this Agreement, a payment by a governmental entity under a contract is overdue on the 31st day after the later of:
    a.   the date the governmental entity receives the goods under the contract;
    b.   the date the performance of the service under the contract is completed; or
    c.   the date the governmental entity receives an invoice for the goods or service.

Pursuant to Texas Government Code Section 2251.021 and this Agreement, a payment begins to accrue interest on the date the payment becomes overdue. The rate of interest that accrues on an overdue payment is the rate in effect on September 1 of the fiscal year in which the payment becomes overdue. The rate in effect on September 1 is equal to the sum of: (1) one percent; and (2) the prime rate as published in the Wall Street Journal on the first day of July of the preceding fiscal year that does not fall on a Saturday or Sunday. Interest on an overdue payment stops accruing on the date the governmental entity or vendor mailed or electronically transmits the payment. Therefore, all provisions to the contrary are hereby deleted.

2.10

No officer, member or employee of County, and no member of its governing body and no other public officials of the governing body of the locality or localities in which the project is situated or being carried out who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of this project shall participate in any decision relating to this Agreement which affects his/her personal interest, have any personal or pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof.

2.11

To the extent, if any, that any provision in this Agreement is in conflict with Texas Government Code §552.001 *et seq.*, as amended (the "Public Information Act"), the same shall be of no force and effect. Furthermore, it is expressly understood and agreed that Johnson County, its officers and employees may request advice, decisions and opinions of the Attorney General of the State of Texas in regard to the application of the Public Information Act. In the event of a request for documents or materials pursuant to the Texas Public Information Act (Texas Government Code Chapter 552) or similar law pertaining to documents or information County reasonably believes that PANOSOFT might lawfully seek to claim as confidential, then County will forward the request to PANOSOFT. It shall be the obligation of PANOSOFT to prepare and submit to the Texas Attorney General's Office any claim and supporting brief or materials necessary to assert a claim that the documents or materials may be withheld pursuant to Texas Government Code Chapter 552 or other applicable law. County will cooperate with PANOSOFT in making such submission to the Texas Attorney General's Office. PANOSOFT acknowledges and understands that contracts and agreements with a political subdivision of the State of Texas are public information and are not confidential.

2.12

Services provided under the Agreement shall be provided in accordance with all applicable state and federal laws.

2.13

Under the Constitution and laws of the State of Texas, public property is exempt from forced sales and liens may not attach thereto.

2.14

It is understood and agreed that Johnson County will not be subject to arbitration; therefore, any paragraph or provision requiring arbitration, is hereby deleted.

2.15

Johnson County shall be responsible for the acts or failure to act of its employees, agents or servants, provided; however, its responsibility shall be subject to the terms, provisions and limitations of the Constitution and laws of the State of Texas, particularly the Texas Tort Claims Act.

2.16

If the Agreement provides for the continuation of this Agreement from year to year, then continuation is subject to current funds available for the Agreement, the allocation of funds to meet the terms of this Agreement, and subject to the approval of the Johnson County Commissioners Court. However, this Agreement need not be specifically identified in the annual budget or budget process. Utilization of the equipment or services provided by PANOSOFT pursuant to the terms of this Agreement by County will constitute the County's action and intent to continue this Agreement barring a specific written notice to the contrary. Notwithstanding the foregoing, in no event shall this Agreement continue for a **period exceeding 60 months** from the date of execution of this Addendum without additional specific consideration and approval by the Commissioners Court of Johnson County, Texas.

2.17

PANOSOFT certifies that pursuant to Section 231.006 of the Texas Family Code that the individual or business entity named in this contract is not ineligible to receive the specified payment(s) and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate. PANOSOFT states that it is not ineligible to receive State or Federal funds due to child support arrearages

2.18

PANOSOFT verifies that it does not boycott Israel and will not boycott Israel during the term of this contract. The term "boycott Israel" is as defined by Texas Government Code Section 808.001, effective September 1, 2017. PANOSOFT further verifies that it is not engaged in business with Iran, Sudan, or any foreign terrorist organization. The term "foreign terrorist organization" means an organization designated as foreign terrorist organization by the United States Secretary of State as authorized by 8 U.S.C. Section 1189.

2.19

Notwithstanding any other provisions contained in the contract documents, any amendment to the terms of the contract must be specifically approved by the Commissioners Court of Johnson County and signed by the Johnson County Judge.
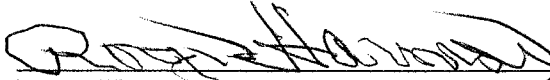
2.20

Notwithstanding any other provision in this Addendum or the associated documents, Contractor is being contracted to provide software and information technology and services to maintain and make available for use by Johnson County and the public documents, data, content and records. Said documents, data, content and records are and shall be the exclusive property of Johnson County, Texas or the State of Texas or a political subdivision thereof.
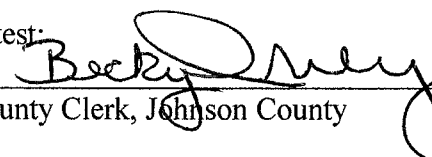
2.21
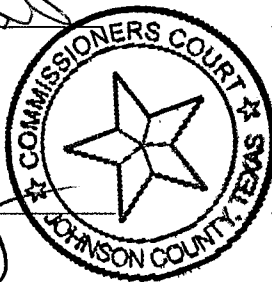
In the event of any conflict between the terms and provisions of this Addendum and the terms and provisions of those contractual provisions tendered to Johnson County in the Agreement, this Addendum shall control and amend the contractual provisions of the Agreement and any provision to the contrary is hereby deleted. *THE TERMS OF THIS ADDENDUM SHALL BE FULLY OPERATIVE AND HAVE PRIORITY OVER ALL OTHER DOCUMENTS AND TERMS AND ANY TERM TO THE CONTRARY IN THE LICENSE AGREEMENT OR OTHER DOCUMENTS PUT FORTH BY PANOSOFT IS HEREBY DELETED.* _____ *(Initials of PANOSOFT Representative);* _____ *(Initials of Johnson County Judge).*

APPROVED AS TO FORM AND CONTENT:

JOHNSON COUNTY:

_____   _09/10/18_
Roger Harmon   Date
As Johnson County Judge

Attest:
_____   _09/10/18_
County Clerk, Johnson County   Date

PANORAMIC SOFTWARE CORPORATION (PANOSOFT):

Jeff von Waldburg
Digitally signed by Jeff von Waldburg
DN: cn=Jeff von Waldburg, o=Panoramic Software
Inc., ou, email=jeff@panosoft.com, c=US
Date: 2018.08.23 10:50:46 -07'00'   _8/23/2018_
_____   Date
Authorized Representative of **Panoramic Software Corporation**

Printed Name: __Jeff von Waldburg__   Title: __President & CEO__

Adndm Panosoft VetPro 07272018
JOHNSON COUNTY, TEXAS

SOFTWARE AS A SERVICE (SaaS) LICENSE AGREEMENT

BETWEEN

PANORAMIC SOFTWARE CORPORATION

AND

JOHNSON COUNTY VETERAN SERVICES

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Rev. 6-19-18

Panoramic Software, Inc.

SOFTWARE as a Service (SaaS) LICENSE AGREEMENT

This SOFTWARE as a SERVICE LICENSE AGREEMENT (the "Agreement") is made and entered into as of January 15, 2019, by and **between the licensor PANORAMIC SOFTWARE CORPORATION**, a California corporation ("**PANOSOFT**"), and the subscriber **Johnson County Veteran Services ("Customer")**. For purposes of this Agreement, PANOSOFT and Customer each will be referred to individually as a "Party" and together as the "Parties".

RECITALS

A. PANOSOFT has developed and owns all rights in and to the computer software and documentation referred to herein as the "Application" and "System".

B. Customer wishes to acquire from PANOSOFT, and PANOSOFT is willing to grant to Customer, certain rights with respect to the System and Application, on the terms and conditions set forth herein.

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

1 CERTAIN DEFINITIONS

1.1 Application. As used herein, the term "Application"" shall mean the computer application software known to PANOSOFT as "VetPro", and all coding, (object code and source code), tapes, discs, modules, and similar materials comprising such software.

1.2 System. As used herein, the term "System" shall mean the PANOSOFT Application subscribed to by Customer hereunder. Reference to the System shall include any component thereof. All modifications and enhancements to the System shall be deemed to be part of the System as defined herein and shall be subject to all of the terms and conditions set forth herein

1.3 License. As used herein, the term "License" shall have the meaning assigned to such term in Section 2.1.

1.4 Access. Access to the System will be provided to Customer via the Internet by PANOSOFT with the sole purpose and intention of Customer performing services as required for Customer's stated business. Customer is solely responsible for any and all data entered and in turn provided to local, state and federal agencies as well as any other individual or entity.

1.5 Authorized Users. As used herein, the term "Authorized Users" shall mean Customer's employees and independent contractors working for Customer in the ordinary course of Customers existing business who: (1) agree to be bound by the terms of this Agreement; and (ii) are specifically authorized by Customer to access the Service. Panosoft, in it's sole discretion, reserves the right to deny and/or suspend access to the System, Site, and/or Application to any of Customer's Authorized Users.

1.6 Display Devices. As used herein, the term "Display Devices" shall mean any display device used to access and display the System.

1.7   Fees. As used herein, the term "Fees" shall mean the fees payable pursuant to Section 5 hereof.

1.8   Content. As used herein, the term "Content" means all visual, written or audible communications, files, data documents, videos, recordings, or any other material displayed, posted, uploaded, stored, exchanged or transmitted by or through Customer's use of the System, services or Site.

1.9   Site. As used herein, the term "Site" means a website, app, or online space related to the System, Application, or services.

1.10 Submission Data. As used herein, the term "Submission Data" means certain technical data and related usage information that may be collected by certain services related to the System or submitted by Customer to the System. For clarity Submission Data excludes Content but may include references to Content (e.g., an error submission report may reference that the Authorized User was attempting to upload a text file).

1.11 Personal Information. As used herein, the term "Personal Information" means any information that can be used to identify an individual as described in Panosoft's Privacy Statement, which is incorporated by reference herein and can be accessed on Panosoft's website.

1.12 Customer. As used herein, the term "Customer" shall mean the entity contracting with PANOSOFT to provide the License that is the subject of this Agreement.

2   GRANT OF LICENSE

2.1   Grant. PANOSOFT hereby grants the Customer identified on the Order Form attached hereto, a limited, non-exclusive and non-transferable license, without right of sublicense, during the Term to access, via Customer's existing and continuing Internet Service Provider ("ISP"), and display on Subscriber's Display Devices within the United States, the System, and to permit Authorized Users to use the System, subject to the terms and conditions of this Agreement (the "License"). All rights in the Service not expressly granted hereunder are reserved to PANOSOFT.

2.2   Scope. The License granted herein shall consist solely of: (i) the limited, non-exclusive, non-transferable right of Customer to access the PANOSOFT System via the internet to provide services solely in connection with Customer's existing business; (ii) the limited, non-exclusive, non-transferable right of Customer to copy the customer data solely for backup purposes; and (iii) the right to have Authorized Users receive and use the online documentation provided for and stored in the System and/or Application. The License granted herein shall not entitle Customer to access the PANOSOFT System other than in connection with Customer's existing business; or (c) to permit any person or entity other than Customer and its employees to access the System; or (d) to copy or access the Customer data in any manner or in any form other than solely for backup purposes; or (e) to modify or enhance the System in any respect; or (f) to transfer or distribute any right to the Application or System to any other person or entity. Nothing in this Agreement shall obligate PANOSOFT to continue providing access to any System beyond the date when Customer ceases providing such System to customers generally.

2.3   Ownership. Customer acknowledges and agrees that, as between PANOSOFT and Customer,

title and full ownership of all rights in and to the Application and System and all other materials provided to Customer hereunder shall remain with PANOSOFT. Customer further acknowledges and agrees that the Application and System, and all ideas and expressions contained therein, are proprietary information and trade secrets of PANOSOFT.

2.4   Restrictions on Use. Customer shall not edit, alter, abridge or otherwise change, in any manner, any and all content not exclusively entered into the System by Customer, including, without limitation, all copyright and proprietary rights notices. Customer may not, and may not permit other to: (i) reverse engineer, decompile, decode, decrypt, disassemble, or in any way derive source code from, the software, Application, or System; (ii) modify, translate, adapt, alter, or create derivative works from the System; (iii) copy (other than for back-up copy purposes), distribute, publicly display, transmit, sell, rent, lease, or otherwise exploit the System; or (iv) distribute, sublicense, rent, lease, loan, or grant access to the System to any third party.

3   TERM & TERMINATION

3.1   Duration. The License granted herein shall be effective as of the Activation Date (defined in Section 4.1) and shall remain in effect perpetually unless terminated as provided in Section 3.2.

3.2   Termination. Customer may at any time terminate the License granted herein if PANOSOFT has breached a material provision of this Agreement and has failed to cure such breach within sixty (60) days after receiving written notice thereof. Customer upon ninety (90) days written notice may terminate the License granted herein in the event of a change in the nature, scope, or requirements of Customer's program or operations. PANOSOFT may at any time terminate the License granted herein if Customer has breached a material provision of this Agreement (which shall include without limitation Sections 5, 7, and 8) and has failed to cure such breach within sixty (60) days after receiving written notice thereof.

3.3   Events upon Termination. Upon any termination of the License granted herein: (i) Customer shall immediately cease any and all use of System. Notwithstanding the preceding sentence, if Customer has terminated this Agreement in accordance with Section 3.2 and Customer has paid to PANOSOFT the full amount of the fee provided in Section 5 and all other amounts then owing to PANOSOFT under Section 5, then Customer may continue to use the System for the time period paid, subject to the provisions of Sections 2, 7, 8, 9, and 10. Customer shall not be entitled to a refund of the Annual License Fee in the event of Termination, all Compensation paid prior to the Activation Date, the anniversary of the Activation Date, or during the operation of the License shall be fully guaranteed and not subject to refund in whole or in part.

4   ACTIVATION, TRAINING and SUPPORT

4.1   Activation. PANOSOFT shall have the System ready for Customer access in the manner and on the schedule set forth in Schedule A attached hereto. The date on which PANOSOFT has the system available to Customer for data entry and access shall be referred to herein as the "Activation Date".

4.2   Training. PANOSOFT shall provide to Customer the training services relating to the System described in Schedule A attached hereto.

4.3   <u>Support Services</u>. PANOSOFT will provide to **Customer** the following types of services under this Agreement on all week-days, Monday through Friday, from 8:00 to 5:00 Pacific Standard Time, excluding holidays.

    a.   <u>Email Support</u>. PANOSOFT staff will be available address support request submitted via email to support@panosoft.com

    b.   <u>System Updates</u>. System Updates will be provided to fix application software errors or improve security for the System. Such updates may include changes necessary to meet federal, state, and county mandated requirements. All software enhancements will be provided at the discretion of PANOSOFT.

    c.   <u>Error Correction</u>. An error is defined as any aspect of the software performance which does not conform substantially to the specifications developed during the implementation project. Customer identified errors will be corrected and brought into conformance with the user documentation.

5   <u>COMPENSATION</u>

5.1   <u>Annual License Fee</u>. As compensation for the License granted herein, Customer shall pay to PANOSOFT a fee in accordance with the schedule set forth in <u>Schedule B</u> attached hereto.

5.2   <u>Other Compensation</u>

    5.2.1   <u>Fee for Additional Services</u>. If PANOSOFT provides services requested in writing by Customer which are in addition to the services specified in <u>Section 4</u>, Customer shall as compensation for such additional services, pay to PANOSOFT a fee based on PANOSOFT's current prevailing rate for such services or per the terms of a separate contract agreement for specific services rendered.

5.3   <u>General</u>

    5.3.1   <u>Invoices</u>. PANOSOFT shall invoice Customer monthly for all sums which Customer owes PANOSOFT hereunder, and Customer shall pay each invoice within thirty (30) days after receipt thereof.

    5.3.2   <u>Taxes</u>. Customer shall be responsible for payment of any and all taxes or other governmental charges or fees attributable to the License granted herein.

6   <u>WARRANTY & WARRANTY DISCLAIMER</u>

6.1   <u>General Warranty</u>. PANOSOFT warrants to Customer that PANOSOFT has full right and authority to grant to Customer the License herein and that Customer's use of the System in accordance with the License herein shall not infringe any United States copyright or patent.

6.2   <u>Performance</u>. Panosoft warrants that the Services will materially comply with its published specifications. If Panosoft breaches this warranty, Panosoft will (at Panosoft's option) repair or replace the System within a reasonable time period or refund the fees for the period in which the

System did not materially conform to its specifications. This is Customer's only remedy for breach of the warranty above and cannot be used with other relief mechanisms (e.g., You cannot claim a breach of warranty and collect any SLA credits or the like for the same event). In order to receive this remedy Customer must promptly notify Panosoft of a breach of this warranty.

6.3 **DISCLAIMER**. Customer acknowledges and agrees that the services, Application, and System, the contents therein, and any accompanying documentation (i) are provided, on as "AS IS", "AS AVAILABLE" basis and PANOSOFT does not make any and hereby specifically disclaims any representations, endorsement, guarantees, or warranties, express or implied, including, without limitation, any of merchantability, fitness for a particular purpose, non-infringement or title and (ii) make no warranty or representation regarding the services, any information, materials, goods or services obtained through the services or the sites, or that the services will meet any of Customers requirements, or be uninterrupted, timely, secure or error free.

6.4 Sole and Exclusive Remedy. If Customer believes the Application or System does not conform to the above warranties, Customer shall notify PANOSOFT in writing during the first three (3) months after the Activation Date. PANOSOFT will use commercially reasonable efforts to repair or replace the software medium or bring the Licensed Programs into substantial conformance with the applicable specification, either remedy within thirty (30) days of the customers' written notice, at no additional cost to the Customer. These exclusions apply regardless of the theory of liability, or whether related to Customer's use or inability to use the System, Site, Application, services, or otherwise. These exclusions apply even if either party has been advised of the possibility of such damages. However, the above exclusions will not apply to Customer's liability for a material breach by Customer, it's users, or clients of Customer, of Panosoft's intellectual or proprietary rights. To the extent allowed by law, the maximum liability of Panosoft (which includes, collectively, its Affiliates, officers, directors, employees, agents, suppliers and licensors) to Customer shall not exceed the Annual License Fees paid by Customer to Panosoft during the 12 months before the last event that gave rise to Customer's claim. This limitation of liability applies whether the claims are contract, tort (including negligence), or otherwise. This limitation of liability for the System and any and all services related thereto is in the aggregate and not per incident. Except for Customer's breach of Panosoft's intellectual or proprietary rights, neither party may bring a claim under this Agreement more than 18 months after the event that creates the action or claim.

7 CONFIDENTIALITY; COPYRIGHT PROTECTION; USE RESTRICTIONS; SYSTEM REQUIREMENTS; SECURITY

7.1 Customer's Obligations.

7.1.1 Confidential Information. Customer acknowledges that, by virtue of the License granted herein, it will have access to certain proprietary information and trade secrets of PANOSOFT, including without limitation proprietary information and trade secrets relating to the System (collectively, the "Confidential Matters"). Customer agrees that the Confidential Matters, and all information comprising or relating to the Confidential Matters, shall be deemed confidential and proprietary to PANOSOFT, shall be held in trust by Customer, and shall be safeguarded by Customer to the same extent that Customer safeguards confidential matters relating to its own operation which in no event shall be less than the safeguards that a reasonably prudent person or business would exercise under similar circumstances. To these ends, Customer agrees to take

such steps as may be necessary to ensure that neither the Confidential Matters, nor any information comprising or relating to the Confidential Matters, are used by Customer or any of its employees, agents, or representatives in any manner or for any purpose other than as provided herein or are made available by Customer or any of its employees, agents, or representatives to any other person or entity, without the prior written consent of PANOSOFT. Such steps shall include, without limitation, the execution by Customer's employees, agents and representatives having access to the Confidential Matters of binding agreements to maintain confidentiality in accordance with this provision.

7.1.2   Use Restrictions; Security. For the avoidance of doubt, Customer further agrees that the System and Application specifications, including without limitation the editorial coding and metadata contained therein, are the property of PANOSOFT or PANOSOFT's licensors. The works and databases including the content of the System and Application are protected by applicable copyright laws. Customer agrees that only authorized Users shall be permitted to access the System.

7.1.3   Customer System Responsibilities. Customer is responsible for ensuring that all display devices, intended to use the most current version of the PANOSOFT System and Application, utilize the most up to date computer operating systems and internet browsers recommended by PANOSOF. PANOSOFT will provide assistance to Customer at an additional charge should Customer wish to engage PANOSOFT's services for optimizing Customer's display devices to run the PANOSOFT System and Application.

7.1.4   Exceptions. Customer's obligations pursuant to Section 7.1 shall not apply to: (i) information which is in the public domain, other than as a result of any breach of this Agreement; or (ii) information which Customer is obligated to disclose pursuant to the law or lawful order of any court or government instrumentality in the United States, but only to the extent required by such order.

7.2   Panosoft's Obligations.

7.2.1   Confidential Information. PANOSOFT acknowledges that, by virtue of the Customer/developer relationship established herein, it will have access to certain confidential information relating to the Customer's clients and activities. PANOSOFT agrees that all information relating to the activities and the clients of Customer shall be deemed confidential and proprietary to Customer, shall be held in trust by PANOSOFT, and shall be safeguarded by PANOSOFT to the same extent that PANOSOFT safeguards confidential matters relating to its own clients and activities which in no event shall be less than the safeguards that a reasonably prudent person or business would exercise under similar circumstances. To these ends, PANOSOFT agrees to take such steps as may be necessary to ensure that no information comprising or relating to the clients or activities of Customer are used by PANOSOFT or any of its employees, agents, or representatives in any manner or for any purpose other than as provided herein or are made available by PANOSOFT or any of its employees, agents, or representatives to any other person or entity, without the prior written consent of Customer. Such steps shall include without limitation the execution by PANOSOFT's employees, agents and representatives having access to the Customer's confidential information of binding agreements which impose on such persons the same obligations which are imposed on PANOSOFT under this section.

7.2.2   Customer Data Protection and Data Privacy. PANOSOFT may collect, use and process Content and Submission Data only in accordance with PANOSOFT's Privacy Statement (which is incorporated into this Agreement by reference) and to the extent reasonably required to provide the services related to the Application and System. PANOSOFT will also comply with all applicable data privacy laws in the performance of the services. As a part of that compliance, PANOSOFT will use at least industry standard technical, procedural and physical means to protect against unauthorized access, use or disclosure of Personal Information. Unless a Customer explicitly states otherwise in writing, PANOSOFT may transfer, copy, backup and store Customer Content and Submission Data in the United States as a part of the services provided herein. PANOSOFT will obtain appropriate agreements with any affiliates, subcontractors and agents consistent with this Agreement and Panosoft's Privacy Statement. Additional information about PANOSOFT's privacy practices may be in any applicable documentation.

7.2.3   Consent. Customer is responsible for obtaining consent from Customer's clients and/or users to this collection, use, processing and transfer of Content and Submission Data.

7.2.4   Exceptions. PANOSOFT's obligations pursuant to Section 7.2 shall not apply to: (i) information which is in the public domain, other than as a result of any breach of this Agreement; or (ii) information which PANOSOFT is obligated to disclose pursuant to the lawful order of any court or government instrumentality in the United States, but only to the extent required by such order.

8   LIABILITY

8.1   Indemnification by PANOSOFT. PANOSOFT shall indemnify and hold harmless Customer, and its directors, officers, and employees from and against any and all liability, losses, damages, and expenses (including without limitation reasonable attorney's fees and costs) incurred by Customer, or its directors, officers, or employees which arise out of or relate to PANOSOFT's breach of any provision hereof.

8.2   Indemnification by Customer. Customer shall indemnify and hold harmless PANOSOFT, and its directors, officers, and employees from and against any and all liability, losses, damages, and expenses (including without limitation reasonable attorney's fees and costs) incurred by PANOSOFT, or its directors, officers, or employees which arise out of or relate to Customer's breach of any provision hereof but also including Customer's failure to safeguard and control access to the System or Application by any Authorized User or third party to any and all sensitive and/or confidential information or content that Customer relating to Customer's clients and activities.

8.3   Limitations on Liability. Notwithstanding the provisions of Sections 8.1 and 8.2, the liability of the parties and the remedies of the parties shall be limited as follows:

8.3.1   Uncontrollable Events. Neither party shall bear any liability arising out of events beyond the control of such party, including without limitation acts of God, acts of a public enemy, fires, floods, storms, earthquakes, riots, strikes, lock outs, wars, restraints of government, court orders, power shortages or outages, equipment or communications malfunctions, nonperformance by any third parties, or other events which cannot be controlled or prevented with reasonable diligence by such party.

8.3.2 <u>Damages.</u> Neither party shall bear any liability for the following:
(i) any special, consequential, incidental, exemplary, or indirect damages;
(ii) any loss of anticipated income or profits, loss of goodwill, or other loss or damages
(iii) any loss or corruption of data;
(iv) procurement of substitute goods and/or services; or
(v) interruption to business or wasted administrative time.

8.3.3 <u>Value of Contract.</u> In no event shall the aggregate liability of PANOSOFT to Customer or Customer to PANOSOFT (regardless of the form, whether in contract or tort) exceed the amount of the Annual License Fees paid by Customer to PANOSOFT pursuant to Section 5.1.

8.3.4 <u>Passage of Time.</u> In no event shall a cause of action be asserted by Customer against PANOSOFT or PANOSOFT against Customer which arises out of or relates to any event, condition, breach, or claim occurring more than one (1) year prior to the filing of such cause of action.

8.4 <u>Insurance.</u> Without limiting PANOSOFT's indemnification of the Customer, PANOSOFT shall provide and maintain at its own expense during the term of this Agreement the following programs of insurance covering its operations hereunder. Such insurance shall be provided through insurer(s) satisfactory to Customer and certificates evidencing such insurance, along with significant endorsements, shall be delivered to Customer on or before the effective date of this Agreement, and shall stipulate that the Customer is to be given at least thirty (30) days written notice in advance of any modification or cancellation of any policy of insurance.

8.4.1 <u>General and Auto Liability.</u> Insurance shall include but not be limited to, comprehensive general and automobile liability with a combined single limit of not less than $ 1,000,000 per occurrence. Such insurance shall be primary and not contributing with any other insurance maintained by Customer.

8.4.2 <u>Workers' Compensation.</u> A program of Workers' Compensation Insurance in an amount and form to meet all applicable requirements of the Labor Code of the State of California, and which specifically covers all persons providing services by or on behalf of PANOSOFT and all risks to such persons under this Agreement.

9 <u>AUDITS AND INSPECTIONS</u>

9.1 <u>Audit & Inspection Rights.</u> For the purpose of verifying compliance with this Agreement, PANOSOFT (and PANOSOFT'S authorized representatives) shall have the right, either remotely via any lawful means available to PANOSOFT or during normal business hours upon reasonable advance notice and without material disruption to Customer's business, to audit and inspect from time to time Customer's offices and records relevant to the System and to observe the use made of the System and the manner in which each Display Device accesses the System. If PANOSOFT's records pursuant to this Section or otherwise indicate that (i) more Users are accessing the System than Customer has paid for, or (ii) the System is being accessed by more Users that Customer has been billed for, Customer shall pay PANOSOFT the shortfall in Fees retrospectively to the date of the applicable increase.

10 CONTENT.

10.1   Ownership of Content. Panosoft makes no claim to Customer's Marks and Content and Panosoft will not sell Customer's Content to third parties.

10.2   Responsibility for the Content and Services. Customer is solely responsible for Customer's and Customer's Users' Content and Customer and Customer's Authorized Users' use of the System, Application, and services related thereto. Unless explicitly provided in a service description, PANOSOFT is not liable to Customer, Customer's Authorized Users, Customer's clients, or any individual or entity that Customer allows to access the System for any loss or damages arising from any Content. We do not endorse and have no control over what Customer's users submit to a Site. We cannot guarantee the accuracy of any Content provided by Customer or by other users.

10.3   License. Customer grants PANOSOFT a world-wide, royalty-free, sublicensable license to use, modify, reproduce and distribute the Content, only as reasonably required to provide the services subject to this Agreement (e.g., PANOSOFT may encrypt Customer's Content which involves use, reproduction and modification of Customer's Content). Customer warrants that Customer has sufficient, lawful non-infringing rights to the Content and to grant the license contained in this Section.

10.4   Violation. Unless a service description explicitly states otherwise, PANOSOFT does not monitor Customer's Content, Sites, or Use of the System. Customer will comply with the uses of the System set forth herein or in any applicable documentation or as otherwise specified in the applicable service description. PANOSOFT may investigate any complaints and violations or suspected violations of this Agreement regarding the Content or violations of the acceptable uses that comes to Panosoft's attention. If Panosoft reasonably determines there is a breach of this Agreement regarding the Content or a violation of any laws or use restrictions, PANOSOFT may take action without liability to remedy the violation (e.g., refuse to post or remove violating Content, or restricting, suspending, or terminating Customer or Customer's user's access to a Site, System, or services). PANOSOFT will make commercially reasonable efforts to notify Customer before taking such actions so that Customer can remedy the issue. However, PANOSOFT reserves the right to act immediately if it reasonably believes that allowing such Content or use of the System or services subject to this Agreement would expose Panosoft to civil, regulatory or criminal liability. Customer agrees to indemnify, defend and hold PANOSOFT harmless from any and all third-party claims, liability, damages and/or costs (including, but not limited to, attorneys' fees) arising from Customer, Customer's users', or an unlawful or unapproved access to the System or Application via Customer's account in violation of any and all use restrictions.

11 GENERAL PROVISIONS

11.1 Compliance with Laws. Each party shall, in performing its obligations hereunder, comply with all laws, rules, regulations and governmental orders applicable to such party.

11.2 Amendments. This agreement may be amended or supplemented from time to time, but only by a written instrument executed by Customer and PANOSOFT. As used herein, the term "Agreement" shall include any future amendments or supplements made hereto.

11.3 Construction. The terms "Section" or "Sections" used herein shall refer to the section or

sections of this Agreement. The titles and subtitles used herein are not a part of this Agreement, are included solely for convenient reference to the Sections hereof, and have no bearing on the terms and conditions hereof. The singular used herein shall include the plural, and the plural used herein shall include the singular.

11.4 Recitals and Schedules. The Recitals to this Agreement and the Schedules attached to this Agreement shall be considered part of the Agreement and are incorporated herein by this reference.

11.5 Survival & Severability. If and to the extent that any court, arbitrator or tribunal of competent jurisdiction holds any of the terms, provisions or conditions or parts thereof of this Agreement or the application hereof to any circumstances, to be invalid or to be unenforceable in a final non-appealable order, the remainder of this Agreement and the application of such terms, provisions or conditions or parts thereof to circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each of the other terms, provisions and conditions of this Agreement shall be valid and enforceable to the fullest extent of the law. Sections 5, 6,7, 8, 9, and 10 shall survive and termination of this Agreement and the License granted herein.

11.6 Relation between the Parties. This Agreement shall not be construed to constitute either party as the agent or legal representative of the other for any purpose whatsoever. Neither party is granted any express or implied right or authority by the other party to assume or create any obligation or responsibility on behalf of or in the name of the other party, or to bind the other party in any manner or thing whatsoever.

11.7 Assignment. Neither this Agreement, the License granted herein nor any other right or obligation hereunder shall be assigned, delegated or otherwise transferred by either party, without the prior written consent of the other party. Notwithstanding the preceding sentence, PANOSOFT may assign, delegate, or otherwise transfer this Agreement, the License granted herein, and PANOSOFT's rights and obligations hereunder to any affiliate of PANOSOFT or to any successor of PANOSOFT's business or any part thereof, without the prior written consent of Customer.

11.8 Successors. Subject to the restrictions in Section 11.7, this Agreement shall bind and inure to benefit of the respective assigns, successors, representatives and affiliates of the parties.

11.9 Waiver. The failure of either party to insist upon strict performance of any provision of this Agreement when and as called for or due, or to exercise any right provided for in this Agreement, shall not be deemed a waiver or relinquishment for the future of any such provision or right, and no waiver of any provision or right shall affect the right of the waiving party to enforce or exercise any other provision or right in this Agreement.

11.10 Certain Remedies. The parties acknowledge and agree that any breach by Customer of Section 7 of this Agreement would cause irreparable damage to PANOSOFT, the exact amount of which would be impossible to ascertain, and for that reason, PANOSOFT shall be entitled to injunctive relief in the event of any actual or threatened breach of Section 7. Such relief shall be in addition to any remedies to which PANOSOFT may be entitled under law or otherwise.

11.11 Governing Law. Any and all matters of dispute between the parties to this Agreement, whether arising from the Agreement itself or from alleged extra-contractual dealings, interactions, or facts prior to or subsequent to the formation of the Agreement, including, without limitation, fraud,

misrepresentation, negligence, or any other alleged tort or violation of the contract ("Dispute"), shall be governed by, construed, and enforced in accordance with the laws of the State of California, U.S.A., regardless of the legal theory upon which such matter is asserted.

11.12 Notices. Any notice, payment or other communication required or permitted under this Agreement shall be in writing and shall be deemed to be properly given either: (i) upon personal delivery; or (ii) two (2) calendar days after being sent by facsimile, e-mail, telex, or telegram, or five (5) calendar days after being deposited in the mail (registered or certified first class, postage prepaid), addressed to the parties at their addresses as set forth in Schedule A attached hereto, or to such other addresses as the parties shall furnish by written notice.

11.13 Enforcement. If either party shall bring an action of any nature against the other party by reason of the breach of any provision of this Agreement, or otherwise arising out of this Agreement, whether for declaratory or other relief, the prevailing party in such action shall be entitled to such party's reasonable expenses relating to such action, including its costs of suit and attorneys' fees.

11.14 Entire Agreement. The parties acknowledge that each has read this Agreement, understands it, and agrees to be bound by its terms. The parties further agree that this Agreement is the complete and exclusive statement of the agreement between the parties relating to the subject matter contained herein, and supersedes all prior or contemporaneous proposals, understandings, representations, conditions, warranties, covenants and other communications between the parties, whether oral or written, relating to such subject matter.

11.15 Venue. For any action against any party by reason of breach of this agreement is in the County of Orange, CA.

11.16 Arbitration. All Disputes shall be submitted to final and binding arbitration. The arbitration shall be initiate and conducted according to the rules of the American Arbitration Association in effect at the time the request for arbitration is made (the "**Arbitration Rules**"). The arbitration shall be conducted in Orange County, California before a single neutral arbitrator appointed in accordance with the Arbitration Rules. The arbitrator shall follow California law in adjudicating the Dispute. The parties waive the right to seek punitive damages and the arbitrator shall have no authority to award such punitive damages. The arbitrator will provide a detailed written statement of decision, which will be part of the arbitration award and admissible in any judicial proceeding to confirm, correct or vacate the award. Judgment upon the award may be entered in any court of competent jurisdiction. The parties shall be responsible for payment of their own attorneys' fees in connection with any proceedings hereunder

The Signature page follows this page

SIGNATURE PAGE

Please acknowledge your agreement to be bound by the terms and conditions of this Agreement by signing in the space provided below.
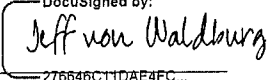
Customer: Johnson County Veteran Services   **Panoramic Software, Corporation**

By: _____

Print Name: Roger Harmon

Title: County Judge

Date: _09/10/18_

By: _____
    DocuSigned by:
    Jeff von Waldburg
    276646C11DAE4FC...

Print Name: Jeff von Waldburg

Title: President

Date: 7/20/2018 12:09:33 PM PDT

SCHEDULE A

<u>Description of System Activation and Training</u>
(Pursuant to <u>Section 4.1</u> of the
Software License Agreement)

SCHEDULE B

Fee and Payment Schedule

I. <u>ANNUAL LICENSE FEE PER AUTHORIZED USER</u>. PANOSOFT shall charge, and Customer agrees to pay, the rate of $1,000 per Authorized User requesting access to the Application and System (the "Annual License Fee"). The Annual License Fee shall provide Customer with access to the Application and System for twelve (12) calendar months and shall automatically renew annually on the anniversary of the Activation Date unless Customer provides proper notice of termination as referenced in Section 3. These charges are due and payable in advance of the beginning of any services that may be subject to this Agreement.

II. <u>DATA CONVERSION</u>. PANOSOFT shall charge Customer $5,495 for each attempt to analyze and extract Customer's data from Customer's third-party legacy software system. PANOSOFT will make a reasonable effort to convert Customer's third-party legacy data to a form capable of being imported into PANOSOFT's VetPro system, however, the completeness and accuracy of the final conversion of Customer's third-party legacy data will be dependent upon the preexisting quality and availability of Customer's third-party legacy data prior to Conversion. PANOSOFT shall not be responsible for the loss of any of Customer's legacy data during the Conversion process.

III. <u>ADDITIONAL TRAINING</u>. Additional training by PANOSOFT is available to Customer upon request. Rates will vary depending on the level of training and specific circumstances applicable to Customer's needs and location.

IV. <u>Travel</u>. Travel costs will be included in any quote for Additional Training provided by PANOSOFT.

V. <u>Custom Programming</u>. Charges for custom programming will be provided on an hourly basis at the rate of $200.00 per hour after the initial deployment. For any given request, PANOSOFT will provide an estimate of the total programming charges in advance of beginning work and shall update Customer periodically during the buildout. In the event of a cost overrun, or a projected overrun, PANOSOFT will provide Customer with a revised estimate of the cost for additional work but in no event shall Customer be responsible for charges in excess of the greatest approved estimate.

VI. <u>Taxes</u>. All costs associated with this Agreement are exclusive of any taxes legally imposed on the licensing, deliver, and use of the System. Customer shall pay, or reimburse PANOSOFT, for any such taxes, and PANOSOFT may add such taxes to the invoices submitted to Customer by PANOSOFT.

VII. <u>Changes in Annual License Fee</u>. After the initial twelve (12) month period, PANOSOFT reserves the right to change the pricing for the Annual License Fee upon thirty (30) days written notice

Panoramic Software, Inc.