

NOV 08 2021

Approved

REQUEST FOR AGENDA PLACEMENT FORM

Submission Deadline - Tuesday, 12:00 PM before Court Dates

SUBMITTED BY: Ralph McBroom
TODAY'S DATE: November 2, 2021

DEPARTMENT: Purchasing

SIGNATURE OF DEPARTMENT HEAD:

REQUESTED AGENDA DATE: November 8, 2021

SPECIFIC AGENDA WORDING: Consideration and approval of CorreTek Cloud Hosting Service Agreement and the Johnson County Contract Terms and Addendum with Kalleo Technologys for the Johnson County Sheriff's Office Jail Medical Management and Record Keeping.

PERSON(S) TO PRESENT ITEM: Ralph McBroom C.P.M.

SUPPORT MATERIAL: (See attached)

TIME: 5 min

(Anticipated number of minutes needed to discuss item)

ACTION ITEM: X
WORKSHOP
CONSENT:
EXECUTIVE:

STAFF NOTICE:

COUNTY ATTORNEY:
AUDITOR:
PERSONNEL:
BUDGET COORDINATOR:

IT DEPARTMENT:
PURCHASING DEPARTMENT:
PUBLIC WORKS:
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 _____

CorrecTek Hosting Service Agreement

This Agreement is made and executed on 09/24/2021, by and between **KALLEO TECHNOLOGIES, LLC**, hereinafter referred to as "Kalleo," and Johnson County Jail, hereinafter referred to as "Client."

WITNESSETH:

WHEREAS, Client is engaged in the business of providing healthcare services at a correctional facility, which services include the use of a software application developed by CorrecTek, Inc. for processing and storing electronic medical records; and

WHEREAS, Kalleo provides hosting and infrastructure for the CorrecTek Inc software application, and in relation thereto, offers 3rd party software licensing (for example Microsoft licensing) that provides end users with remote access to that application; and

WHEREAS, Client wishes to retain Kalleo to provide its correctional facility staff with access to the CorrecTek application through Kalleo's hosting and infrastructure.

NOW THEREFORE, for good and valuable consideration, the receipt of which is acknowledged by all parties, the parties do covenant and agree as follows:

1. DEFINITIONS

"Access Device" means any computer, Windows terminal, tablet pc, mobile phone, or other computing device that accesses Kalleo's System.

"Agreement" means this Kalleo Hosting Agreement.

"Client Information" means information that the Client inputs into Kalleo's System for use in the CorrecTek System.

"Confidential Information" means sensitive or proprietary information of a party that is held on a confidential basis. Confidential Information shall include (i) Client Information, trade secrets and other information that Client designates as confidential, and (ii) Kalleo's server configurations, software configurations, proprietary information, proprietary technology, proprietary software, audit reports, information regarding product development, trade secrets, manuals, proposals or memoranda, and other information that Kalleo designates as confidential. Confidential Information shall not include any information that is or becomes generally available to a party or the public through independent means.

"CorrecTek System" means the software application developed and marketed by CorrecTek, Inc. for processing and storing electronic medical records. The CorrecTek System includes the CorrecTek EMR and the CorrecTek e-MAR.

"Effective Date" means the date of this Agreement as written above.

"Help Desk Support Schedule" means (i) providing e-mail support from Monday through Friday 8AM-5PM CST (daylight savings is observed) excluding US Holidays, (ii) providing telephone support 24 hours per day, 365 days per year, (iii) responding to sales and billing issues from Monday through Friday 8AM-5PM CST (daylight savings is observed) excluding US Holidays, and (iv) monitoring the System and responding to System emergencies on a 24 hour basis.

for providing support or training for that system.

2.5 System Maintenance: Kalleo shall perform regularly scheduled maintenance on its System on Wednesday nights, from 10PM until 2AM on Thursday mornings, USA Central time (GMT -5/6). Kalleo shall provide Client with reasonable advance notice of its scheduled maintenance, and shall advise Client of the expected duration of the maintenance window, and the impact of the work to be performed. Kalleo shall utilize its best efforts to perform its maintenance no more than once a month; provided, however, Kalleo shall have the right to schedule and perform maintenance whenever and as often as it deems necessary to ensure system security, reliability and integrity. It is understood and agreed that Kalleo shall not be responsible for any losses that Client may incur as a result of Kalleo's maintenance.

2.6 Supplemental Services: Upon Client's request, Kalleo may provide Client with various supplemental services as agreed by Kalleo. Supplemental services shall include special projects, certain migrations, professional services, exclusive hosting, extended care, training and scripting. All supplemental services will be provided under a separate written agreement that describes the supplemental services to be performed, and Kalleo's charges for those services. All supplemental services shall be provided by Kalleo on a mutually agreed upon schedule.

2.7 Force Majeure Event: In the event Kalleo or any of its third party service providers are unable to provide Client with any Service to be provided under this Agreement as a result of Client's acts or omissions, or events or circumstances that are beyond Kalleo's reasonable control including act of God, fire, explosion, flood, epidemic, power failure, governmental actions, war or threat of war, acts of terrorism, national emergency, riot, civil disturbance, sabotage, labor disputes and strikes, Kalleo shall have the right to be relieved from providing such Service. Kalleo shall use all commercially reasonable efforts to recommence performance of its obligations under this Agreement as soon as reasonably possible.

2.8 Change in Services and Charges: Kalleo shall have the right, at its sole option, to revise Kalleo's services and charges at the end of each Term upon ninety (90) days written notice to Client. Kalleo shall provide such notice by sending a schedule of Kalleo's revised terms to Client's authorized point of contact. Client shall have sixty (60) days upon notice of changes to services or charges to accept the changes. In the event Client objects to Kalleo's revised terms, Client shall have the right to terminate this Agreement upon thirty (30) days written notice. In the event Client fails to exercise that right, Client shall be deemed to have accepted Kalleo's revised terms, and shall become legally bound to same.

3. TERM

3.1 Term: The term of this Agreement shall commence on the Effective Date, and shall continue for twelve (12) months. This Agreement shall automatically renew for subsequent twelve (12) month terms at the end of each term unless either Party provides written notice of its intent not to renew. In the event Kalleo intends not to renew this Agreement Kalleo must provide Client with ninety (90) days written notice. Client shall have the right to terminate this Agreement upon thirty (30) day written notice at any time.

3.2 Immediate Termination. Kalleo shall have the right to terminate Client's access and use of the System at any time upon the occurrence of any of the following events: (i) Client, or any of its employees or agents, has utilized Kalleo's System or services on an excessive basis; (ii) Client, or any of its employees or agents, has utilized Kalleo's System or services for an unauthorized purpose, or for purposes of resale or for the unauthorized use by third parties; (iii) Client, or any of its employees or agents, has been abusive towards a Kalleo officer or employee, or another Kalleo customer; or (iv) Client has failed to pay Kalleo for any supplemental charge within thirty (30) days of invoice. Kalleo shall also have the right to terminate this Agreement in the event Client has failed to pay Kalleo for any charge due under this Agreement within thirty (30) days of receipt of invoice. This section 3.2 Immediate Termination shall be subject to the terms of section 3.4 Breach Notification.

3.3 Concurrent Access. Unless stipulated otherwise in Addendum "A" each Access Device may only have one connection to the CorrecTek System at a time. Users may not have multiple instances of CorrecTek running on the same Access Device at the same time.

3.4 Breach Notification. If either party breaches any provision of this Agreement and if such breach is not cured within thirty (30) days after receiving written notice from the other party specifying such breach in reasonable detail, the non-

and expenses (including attorney fees) that arise out of or are related to the disclosure or misuse of such information except according to the terms of the Business Associate Agreement signed between Kalleo and Client.

6. CONFIDENTIALTY AND NON-SOLICITATION COVENANTS

6.1 Use of Confidential Information: Kalleo and Client agree to hold each other's Confidential Information on a confidential basis, and not to disclose such information to any third party, or to otherwise use such information for their benefit, or for the benefit of another party. Each party shall use the same degree of care to protect a party's Confidential Information that it uses to protect its own Confidential Information from unauthorized disclosures, but in no event shall either party use less than a commercially reasonable degree of care. Each party shall promptly notify the other party of any unauthorized use or disclosure of a party's Confidential Information, and shall use their best efforts to regain possession of the disclosed Confidential Information, and to prevent any further unauthorized use or disclosure of same.

6.2 Protection of Confidential Information: All Confidential Information of a party shall remain the property of that party. Upon request of a party, the other party shall promptly deliver to the requesting party all of the requesting party's Confidential Information, including any tangible media that contains such Confidential Information.

6.3 Nonsolicitation: During the term of this Agreement, and for a period of 24 months following the termination of this Agreement, neither Client nor Kalleo shall directly or indirectly hire, solicit, or otherwise induce an employee, consultant or contractor of the other party to terminate their relationship with that party.

6.4 Enforcement: The parties expressly acknowledge that a breach of any of the covenants made hereunder will cause the other party irreparable harm and injury which cannot be reasonably or adequately compensated by damages. By reason of same, the parties expressly agree that an aggrieved party shall be entitled to injunctive and other equitable relief to enforce the covenants made under this Section. This section shall be subject to the Laws of the state of Texas and the official opinions of the Attorney General of the state of Texas.

7. NETWORK SOFTWARE

7.1 Use of Network Software: Kalleo shall provide Client with access to and use of the Network Software that is part of Kalleo's System. Client shall not have any title or intellectual property rights in or to such software. Client shall use the software solely in connection with its use of Kalleo's System as defined under this Agreement. Client shall not () copy any software; (ii) remove, modify, or obscure any copyright, trademark or other proprietary rights notices that appear on any software; or (iii) reverse engineer, decompile or disassemble any software.

7.2 Consent of Third Party Providers: Clients' access to and use of the Network Software shall be subject to and governed by the terms and conditions under Kalleo's license with its third party providers, specifically including Kalleo's license with Microsoft. Client agrees to accept and be bound by Microsoft's terms and conditions that are defined in Addendum "B" to this Agreement. In addition thereto, Client shall obtain all other consents and licenses that are required for Client's use of the Network Software, and to execute any EULA's or other documents that are required for same. Upon request, Client shall provide Kalleo with reasonable proof that Client has obtained all required consents and licenses.

8. REPRESENTATIONS AND COVENANTS

8.1 Kalleo Representations and Covenants: Kalleo represents and covenants that (i) Kalleo has received all necessary permits, licenses, approvals, grants and charters of whatsoever kind necessary to carry out the business in which Kalleo is engaged; and (ii) Kalleo has complied and shall continue to comply with all laws, regulations, orders and statutes which may be applicable to Kalleo whether local, state, federal or foreign.

8.2 Client's Representations and Covenants: Client represents and covenants that (i) Client has received all necessary permits, licenses, approvals, grants and charters of whatsoever kind necessary to carry out the business in which Client is engaged; and (ii) Client has complied and shall continue to comply with all laws, regulations, orders and statutes which may be applicable to Client whether local, state, federal or foreign.

9. INDEMNITY.

9.1 Indemnity: Client shall indemnify and save Kalleo harmless of and from any claim, liability, obligation, cost, expense, damage or loss whatsoever (including reasonable attorneys' fees) arising out of, under, or pursuant to Client's use of Kalleo's System or services, and/or the use of the System or services by its employees and agents. This indemnity

PROVIDERS SHALL NOT BE LIABLE TO CLIENT FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES INCLUDING BUT NOT LIMITED TO LOSS OF BUSINESS, REVENUE, PROFITS OR INVESTMENT, AND LOSSES RELATING TO FAILURES OF TELECOMMUNICATIONS, THE INTERNET, ELECTRONIC COMMUNICATIONS, CORRUPTION, SECURITY, LOSS OR THEFT OF DATA, VIRUSES AND SPYWARE. CLIENT FURTHER UNDERSTANDS AND AGREES THAT THIS AGREEMENT SETS FORTH THE ENTIRE LIABILITY OF KALLEO AND ITS PROVIDERS UNDER THIS AGREEMENT, AND THAT CLIENT RELEASES KALLEO AND ITS PROVIDERS FROM ALL OTHER LIABILITY THAT MAY BE AVAILABLE UNDER LAW. IF, NOTWITHSTANDING THE DISCALIMERS AND EXCLUSIONS PROVIDED UNDER THIS AGREEMENT, KALLEO SHOULD BE HELD LIABLE FOR ANY OF CLIENTS' LOSSES OR DAMAGES, IT IS AGREED AND UNDERSTOOD THAT KALLEO'S CUMULATIVE LIABILITY SHALL NOT EXCEED THE TOTAL AMOUNT OF CHARGES THAT CLIENT HAS PAID TO KALLEO DURING THE LAST SIX (6) MONTHS UNDER THIS AGREEMENT.

10.5 RELEASE: BY AGREEING TO THESE TERMS, CLIENT AFFIRMATIVELY RELEASES KALLEO, AND ITS EMPLOYEES AND PROVIDERS, FROM ANY AND ALL LIABILITY, LOSS OR DAMAGES THAT CLIENT MAY SUFFER AS A RESULT OF ANY DEFECT OR DEFICIENCY IN KALLEO'S SYSTEM OR SERVICES, OR ANY ACT OR OMISSION COMMITTED BY KALLEO, OR ITS EMPLOYEES OR PROVIDERS, EXCEPTING, HOWEVER, ANY ACT OR OMISSION THAT CONSTITUTES GROSS NEGLIGENCE OR WILFUL MISCONDUCT.

11. MISCELLANEOUS PROVISIONS

11.1. Notices: Unless specifically noted otherwise, all notices required to be given to a party hereunder shall be sent by documented means to that party at the following address:

CLIENT:
Johnson County Jail
Attention: Captain David Blankenship
1800 Ridgemar Dr
Cleburne, TX 76031
Phone: (817) 556-6024
Fax No.:
E-Mail: dblankenship@johnsoncountytexas.org

KALLEO:
Kalleo Technologies, LLC
Attention: Dana Edwards
401 Kentucky Ave.
Paducah, KY 42001
Phone: (207) 908-4136 ext 113
Fax No.: (207) 448-5499
E-Mail: dedwards@kalleo.net

11.2. Entire Agreement: This Agreement contains the entire agreement of the parties with respect to the subject matter hereof, and all prior discussions, agreements, and understandings of every kind between the parties are merged herein.

11.3. Assignment: Client may not assign this Agreement, of any of Client's rights and obligations under this Agreement, without Kalleo's prior written consent.

11.4. Severability: If any provision is held invalid, the remaining provisions of the Agreement shall remain in full effect.

11.5. Disputes: This Agreement shall be governed in accordance with the laws of the state of Texas. Any unresolved dispute shall be brought exclusively in the state court located in Johnson County, Texas or federal court located in Houston, Texas. By execution of the Agreement, each of the parties consent to the exclusive jurisdiction of such

ADDENDUM "B"

END USER LICENSE TERMS

TERMS AND CONDITIONS REGARDING USE OF MICROSOFT SOFTWARE

This document governs the use of Microsoft software, which may include associated software, media, printed materials, and "online" or electronic documentation (individually and collectively, "Products") provided by Kalleo Technologies LLC (hereinafter referred to as "Customer"). Customer does not own the Products and the use thereof is subject to certain rights and limitations of which Customer must inform you. Your right to use the Products is subject to the terms of your agreement with Customer, and to your understanding of, compliance with, and consent to the following terms and conditions, which Customer does not have authority to vary, alter, or amend.

1. DEFINITIONS.

"Client Software" means software that is installed on a Device that allows the Device to access or utilize the Products.

"Device" means each of a computer, workstation, terminal, handheld PC, pager, telephone, personal digital assistant, "smart phone," server or any other hardware where software can be installed that would allow End User to interact with the product.

"End User" means an individual or legal entity that obtains Software Services directly from Customer, or indirectly through a Software Services Reseller.

"Redistribution Software" means the software described in Paragraph 4 ("Use of Redistribution Software") below.

"Software Services" means services that Customer provides to you that make available, display, run, access, or otherwise interact, directly or indirectly, with the Products. Customer must provide these services from data center(s) through the Internet, a telephone network or a private network, on a rental, subscription or services basis, whether or not Customer receives a fee. Software Services exclude any services involving installation of a Product directly on any End User device to permit an End User to interact with the Product.

- 2. OWNERSHIP OF PRODUCTS.** The Products are licensed to Customer from an affiliate of the Microsoft Corporation (collectively "Microsoft"). Microsoft Products are protected by copyright and other intellectual property rights. Products and other Product elements including but not limited to any images, photographs, animations, video, audio, music, text and "applets" incorporated into the Products are owned by Microsoft or its suppliers. You may not remove, modify or obscure any copyright trademark or other proprietary rights notices that are contained in or on the Products. The Products are protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. Your possession, access, or use of the Products does not transfer any ownership of the Products or any intellectual property rights to you.
- 3. USE OF CLIENT SOFTWARE.** You may use the Client Software installed on your Devices only in accordance with your agreement with Customer and the terms under this document, and only in connection with the Software Services, provided to you by Customer. The terms of this document permanently and irrevocably supersede the terms of any Microsoft End User License

issued by U.S. and other governments. For additional information, see <http://www.microsoft.com/exporting/>.

- 13. LIABILITY FOR BREACH.** In addition to any liability you may have to Customer, you agree that you will also be legally responsible directly to Microsoft for any breach of these terms and conditions.
- 14. INFORMATION DISCLOSURE.** You must permit Customer to disclose any information requested by Microsoft under the Customer's Agreement. Microsoft will be an intended third party beneficiary of your agreement with Customer, with the right to enforce provisions of your agreement with Customer and to verify your compliance.

JOHNSON COUNTY CONTRACT TERMS
ADDENDUM – KALLEO TECHNOLOGIES LLC

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 referred to as “**CUSTOMER**” in certain documents) and **KALLEO TECHNOLOGIES LLC** also known as “**KALLEO**”. The term “**COMPANY**” or “**CONTRACTOR**” may be used herein to refer to **KALLEO, INC.**

Johnson County, Kalleo or both, as may be applicable, may be collectively identified as the “**Parties**” or each individually a “**Party**”). This Addendum is part of the Agreement with **Kalleo** and is intended to modify (as set forth in this Addendum) all documents, including any put forth by **Kalleo**. **This Addendum modifies the *Quote and CorrecTek Hosting Service Agreement* and any other document proffered to Johnson County by Kalleo or their agents and other documents defining or composing the Agreement between Johnson County, Texas and Kalleo.**

1.2

Johnson County, Texas, a political subdivision of the State of Texas is the contacting entity contracting with **Kalleo**, regardless of the names such as “**Johnson County Jail**” or similar names that may appear in documents put forth by **Kalleo** in the *Quote and CorrecTek Hosting Service Agreement* or other documents.

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.

4.4

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.

5.1

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.

6.1

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.

6.2

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 COMPANY might lawfully seek to claim as confidential, then County will forward the request to COMPANY. It shall be the obligation of COMPANY 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 COMPANY in making such submission to the Texas Attorney General's Office. **COMPANY acknowledges and understands that contracts,**

7.3

COMPANY 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. COMPANY 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.

7.4

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.

7.5

Notwithstanding any other provision in this Addendum or the associated documents, to the extent COMPANY is being contracted to provide information technology and services or to maintain and make available information for use by Johnson County and the public, including documents, data, content and records then 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.

7.6

At any time following the expiration of 180 DAYS from the execution of the contract, COUNTY may terminate the contract at its discretion, without penalty of any kind, by giving COMPANY 90 days written notice of such termination. Upon the expiration or termination of this contract, Johnson County shall be allowed a reasonable time to retrieve Johnson County data from KALLEO equipment or hosting service.

8.1

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 OTHER DOCUMENTS PUT FORTH BY COMPANY IS HEREBY DELETED.*