

## **AGENDA PLACEMENT FORM**

(Submission Deadline – Monday, 5:00 PM before Regular Court Meetings)

**Date:** 12/11/2024

**Meeting Date:** 12/20/2024

**Submitted By:** Dan Milam

**Department:** Information Technology

**Signature of Elected Official/Department Head:**

*Dan Milam*

<b>Court Decision:</b> <small>This section to be completed by County Judge's Office</small>
 <div style="color: red; font-weight: bold; margin-top: 10px;">12-20-2024</div>

**Description:**

Consideration to approve Dark Trace email security.

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(May attach additional sheets if necessary)

**Person to Present:** Dan Milam

(Presenter must be present for the item unless the item is on the Consent Agenda)

**Supporting Documentation:** (check one)      ☒ PUBLIC      ☐ CONFIDENTIAL

(PUBLIC documentation may be made available to the public prior to the Meeting)

**Estimated Length of Presentation:** 1 minutes

**Session Requested:** (check one)

☐ Action Item    ☒ Consent    ☐ Workshop    ☐ Executive    ☐ Other \_\_\_\_\_

**Check All Departments That Have Been Notified:**

☐ County Attorney      ☒ IT      ☐ Purchasing      ☐ Auditor  
☐ Personnel      ☐ Public Works      ☐ Facilities Management

Other Department/Official (list) \_\_\_\_\_

**Please List All External Persons Who Need a Copy of Signed Documents  
In Your Submission Email**

Approved in CC on 9/11/2023

**PALMIQ INC**  
20130 Lakeview Center Plaza, Suite: 400  
ASHBURN, VA 20147  
(703) 336-9700  
sales@palmiq.com

Quote

5819456000025314013

<b>Bill To</b> <b>Chris Holt</b> P.O. Box 1986, Cleburne, TX, US, 76033	<b>Ship To</b> <b>Chris Holt</b> P.O. Box 1986, Cleburne, TX, US, 76033	<b>Stage</b> <b>Valid Till</b> <b>Potentials</b> <b>Sales Person</b> <b>Amount</b>	Delivered Dec 25, 2024 Johnson County, TX (Darktrace) Nathalia Campos \$ 134,359.50
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Item & Description	Extended Price	Qty	Amount
<b>Darktrace Advance Email Security</b> (DEO365) Darktrace/Email/O365 Term: 36 Months (JAN.1.2025 - DEC.31.2027)	\$ 162.86	825	\$ 134,359.50
<b>Training</b> (Sv/Tr(E)) eLearning Training (Sv/Tr(PO)) Public Online Training	\$ 0.00	1	\$ 0.00

Total Amounts	
1st Year Payment:	\$ 44,786.50
2nd Year Payment:	\$ 44,786.50
3rd Year Payment:	\$ 44,786.50
Grand Total	\$ 134,359.50

Contract #: **DIR – TSO – 4288 TX DIR (VENDOR ID 823696540)**

DUNS #:08-1081735

Federal ID #:82-3796540 CAGE Code:87GJ9

FOB:Destination

Terms: Net 30 (On ApprovedCredit) PALMIQ acceptsVISA/MC/AMEX

Ship Via: FedexGround/UPS

UNLESS OTHERWISE INDICATED IN THE PRODUCT DESCRIPTION OR THE MANUFACTURER'S COMMERCIAL SUPPLIER AGREEMENT, ANY QUOTED TERM LICENSES ARE NOT ELIGIBLE FOR CONVERSION TO PERPETUAL LICENSES AT ANY TIME.

THIS QUOTE IS SUBJECT TO THE TERMS AND CONDITIONS AT [www.palmiq.com/terms](http://www.palmiq.com/terms). CUSTOMER IS DIRECTED TO INCORPORATE (BY REFERENCE) THIS QUOTE IN ANY RESULTING TASK/DELIVERY ORDER OR AWARD. THE TERMS OF THE AFOREMENTIONED CONTRACT ARE THE ONLY CONTROLLING TERMS AND ANY TERMS OR CONDITIONS CONTAINED IN AN ORDER, AWARD OR OTHER INSTRUMENT OF BUYER, WHICH ARE IN ADDITION TO OR INCONSISTENT WITH ANY OF THE TERMS OR CONDITIONS CONTAINED IN THOSE REFERENCED HEREIN, SHALL NOT BE BINDING ON PALMIQ OR ITS MANUFACTURERS AND SHALL NOT APPLY UNLESS SPECIFICALLY AGREED TO IN WRITING BY PALMIQ.

**PLEASE REMIT PAYMENT TO:**

Mail: PALMIQ INC

20130 Lakeview Center Plaza

Suite 400

ASHBURN, VA 20147

Customer orders subject to applicable sales tax.

Documentation to be submitted to validate Invoice for payment:

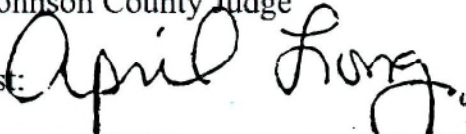
- a. Authorized Services shall be invoiced with a corresponding time report for the period of performance identifying names, days, and hours worked.
- b. Authorized reimbursable expenses shall be invoiced with a detailed expense report, documented by copies of supporting receipts.
- c. Authorized Education or Trainings shall be invoiced with a Report identifying date and name of class completed, and where applicable the name of attendees.

**APPROVED AS TO FORM AND CONTENT:**

**JOHNSON COUNTY:**

  
\_\_\_\_\_  
Christopher Boedeker

As Johnson County Judge

Attest:   
\_\_\_\_\_  
County Clerk, Johnson County



12-20-24  
Date

12-20-24  
Date

**COMPANY: PALMIQ, INC.**

  
\_\_\_\_\_  
Authorized Representative of Company

12/04/24  
Date

Printed Name: Regina Chambati

Title: Director of Operations



## **TERMS AND CONDITIONS**

# **SALES AND SERVICE PROJECTS**

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### **PLEASE READ THESE TERMS AND CONDITIONS VERY CAREFULLY**

THE TERMS AND CONDITIONS OF PRODUCT SALES AND SERVICE PROJECTS ARE LIMITED TO THOSE CONTAINED HEREIN. ANY ADDITIONAL OR DIFFERENT TERMS OR CONDITIONS IN ANY FORM DELIVERED BY YOU ("CUSTOMER") ARE HEREBY DEEMED TO BE MATERIAL ALTERATIONS AND NOTICE OF OBJECTION TO THEM AND REJECTION OF THEM IS HEREBY GIVEN.

BY ACCEPTING DELIVERY OF THE PRODUCTS OR BY ENGAGING THE PALMIQ AFFILIATE IDENTIFIED ON THE INVOICE, STATEMENT OF WORK OR OTHER PALMIQ DOCUMENTATION ("SELLER") TO PROVIDE PRODUCT OR PERFORM OR PROCURE ANY SERVICES, CUSTOMER AGREES TO BE BOUND BY AND ACCEPTS THESE TERMS AND CONDITIONS UNLESS CUSTOMER AND SELLER HAVE SIGNED A SEPARATE AGREEMENT, IN WHICH CASE THE SEPARATE AGREEMENT WILL GOVERN.

ANY GENERAL DESCRIPTION OF THE TYPES OF PRODUCTS OR SERVICES AND RESULTS THEREOF POSTED ON ANY SELLER WEBSITE OR MOBILE APPLICATION DO NOT CONSTITUTE PART OF THE AGREEMENT BETWEEN SELLER AND CUSTOMER.

### **Important Information About These Terms and Conditions**

These Terms and Conditions constitute a binding contract between Customer and Seller and are referred to herein as either "Terms and Conditions" or this "Agreement". Customer accepts these Terms and Conditions by making



a purchase from or placing an order with Seller or shopping on any Seller Website or Mobile Application (each, a "Site") or otherwise requesting products (the "Products") or engaging Seller to perform or procure any Services (as this and all capitalized terms are defined herein). These Terms and Conditions are subject to change without prior notice, except that the Terms and Conditions posted on a Site at the time Customer places an order or signs a Statement of Work will govern the order in question, unless otherwise agreed in writing by Seller and Customer.

Customer consents to receiving electronic records, which may be provided via a Web browser or e-mail application connected to the Internet; individual consumers may withdraw consent to receiving electronic records or have the record provided in non-electronic form by contacting Seller. In addition, Internet connectivity requires access services from an Internet access provider. Contact your local access provider for details. Electronic signatures (or copies of signatures sent via electronic means) are the equivalent of written and signed documents.

Customer may issue a purchase order for administrative purposes only. Additional or different terms and conditions contained in any such purchase order will be null and void. No course of prior dealings between the parties and no usage of trade will be relevant to determine the meaning of these Terms and Conditions or any purchase order or invoice, or any document in electronic or written form that is signed and delivered by each of the parties for the performance of Services other than Third Party Services (each, a "Statement of Work"). This Agreement contains the entire understanding of the parties with respect to the matters contained herein and supersedes and replaces in its entirety any and all prior communications and contemporaneous agreements and understandings, whether oral, written, electronic or implied, if any, between the parties with respect to the subject matter hereof.

## **Governing Law**

THESE TERMS AND CONDITIONS, ANY STATEMENTS OF WORK, THE SERVICES HEREUNDER AND ANY SALE OF PRODUCTS HEREUNDER WILL BE GOVERNED BY THE LAWS OF THE STATE OF VIRGINIA, WITHOUT REGARD TO CONFLICTS OF LAWS RULES. ANY ARBITRATION, ENFORCEMENT OF AN ARBITRATION OR LITIGATION WILL BE BROUGHT EXCLUSIVELY IN LOUDOUN COUNTY, VIRGINIA, AND CUSTOMER CONSENTS TO THE JURISDICTION OF THE FEDERAL AND STATE COURTS LOCATED THEREIN, SUBMITS TO THE JURISDICTION THEREOF AND WAIVES THE RIGHT TO





CHANGE VENUE. CUSTOMER FURTHER CONSENTS TO THE EXERCISE OF PERSONAL JURISDICTION BY ANY SUCH COURT WITH RESPECT TO ANY SUCH PROCEEDING. Except in the case of nonpayment, neither party may institute any action in any form arising out of these Terms and Conditions more than one (1) year after the cause of action has arisen. The rights and remedies provided Seller under these Terms and Conditions are cumulative, are in addition to, and do not limit or prejudice any other right or remedy available at law or in equity.

## **Title; Risk of Loss**

If Customer provides Seller with Customer's carrier account number or selects a carrier other than a carrier that regularly ships for Seller, title to Products and risk of loss or damage during shipment pass from Seller to Customer upon delivery to the carrier (F.O.B. Origin, freight collect). For all other shipments, title to Products and risk of loss or damage during shipment pass from Seller to Customer upon delivery to the specified destination (F.O.B. Destination, freight prepaid and added). Notwithstanding the foregoing, title to software will remain with the applicable licensor(s), and Customer's rights therein are contained in the license agreement between such licensor(s) and Customer.

## **Services**

Customers may order services (collectively, "Services") from or through Seller from time to time. Certain Services may be provided by third parties, including, but not limited to, extended warranty service by manufacturers, and are sold by Seller as distributor or sales agent ("Third Party Services").

In the case of Third Party Services, Customer shall consider the third party to be the contracting party and the third party shall be the party responsible for providing the services to the Customer and Customer will look solely to the third party for any loss, claims or damages arising from or related to the provision of such Third Party Services. Customer and Customer's Affiliates (defined below) hereby release Seller and Seller's Affiliates (defined below) from any and all claims arising from or relating to the purchase or provision of any such Third Parties Services. Any amounts, including, but not limited to, taxes, associated with Third Party Services which may be collected by Seller will be collected solely in the capacity as an independent sales agent. "Affiliate" means, with respect to a party, an entity that controls, is controlled by, or is under common control with such party.



Where Services are ordered in a Statement of Work, each Statement of Work hereby incorporates these Terms and Conditions and constitutes a separate agreement with respect to the Services performed. Seller, or any of its Affiliates on behalf of Seller, may execute a Statement of Work. In the event of an addition to or a conflict between any term or condition of the Statement of Work and these Terms and Conditions, these Terms and Conditions will control, except as expressly amended in the applicable Statement of Work by specific reference to this Agreement. Each such amendment will be applicable only with respect to such Statement of Work and not to future Statements of Work. Changes to the scope of the Services described in a Statement of Work will be made only in a writing executed by authorized representatives of both parties. Seller will have no obligation to commence work in connection with any such change, unless and until the change is agreed upon in that writing executed by both parties. All such changes to the scope of the Services will be governed by these Terms and Conditions and the applicable Statement of Work. Each Statement of Work may be signed in separate counterparts each of which shall be deemed an original and all of which together will be deemed to be one original.

## Cooperation

In addition to any specific Customer duties set forth in any applicable Statement of Work, Customer agrees to cooperate with Seller in connection with performance of the Services by providing: (i) timely responses to Seller's inquiries and requests for approvals and authorizations, (ii) access to any information or materials reasonably requested by Seller which are necessary or useful as determined by Seller in connection with providing the Services, including, but not limited to, physical and computer access to Customer's computer systems, and (iii) all Required Consents necessary for Seller to provide the Services. "Required Consents" means consents or approvals required to give Seller, its Affiliates, and its and their subcontractors the right or license to access, use and modify all data and third party products. Customer acknowledges and agrees that the Services are dependent upon the completeness and accuracy of information provided by Customer and the knowledge and cooperation of the agents, employees or subcontractors ("Personnel") engaged or appointed by Customer who are selected by Customer to work with Seller.

Seller will follow all reasonable Customer security rules and procedures, as communicated in writing by Customer to Seller from time to time.

## Access



Seller may perform the Services at Customer's place of business, at Seller's own facilities or such other locations as Seller and Customer deem appropriate. When the Services are performed at Customer's premises, Seller will attempt to perform such Services within Customer's normal business hours unless otherwise jointly agreed to by the parties. Customer will also provide Seller access to Customer's staff and any other Customer resources (and when the Services are provided at another location designated by Customer, the staff and resources at such location) that Seller determines are useful or necessary for Seller to provide the Services. When the Services are provided on Customer's premises or at another location designated by Customer, Customer agrees to maintain adequate insurance coverage to protect Seller and Customer's premises and to indemnify and hold Seller and its Affiliates, and its and their agents and employees harmless from any loss, cost, damage or expense (including, but not limited to, attorneys' fees and expenses) arising out of any product liability, death, personal injury or property damage or destruction occurring at such location in connection with the performance of the Services, other than solely as a result of Seller's gross negligence or willful misconduct.

## Payment

Orders are not binding upon Seller until accepted by Seller. Customer agrees to pay the total purchase price for the Products plus shipping (to the extent shipping is not prepaid by Customer), including shipping charges that are billed to Seller as a result of using Customer's carrier account number. Terms of payment are within Seller's sole discretion. In connection with Services being performed pursuant to a Statement of Work, Customer will pay for the Services in the amounts and in accordance with any payment schedule set forth in the applicable Statement of Work. If no payment schedule is provided, Customer will pay for the Services as invoiced by Seller. Invoices are due and payable within the time period specified on the invoice, measured from the date of invoice, subject to continuing credit approval by Seller. Seller, or any of its Affiliates on behalf of Seller may issue an invoice to Customer. Seller may invoice Customer separately for partial shipments, and Seller may invoice Customer for all of the Services described in a Statement of Work or any portion thereof. Customer agrees to pay interest on all past-due sums at the lower of one and one-half percent (1.5%) per month or the highest rate allowed by law. Customer will pay for, and will indemnify and hold Seller and its Affiliates harmless from, any applicable sales, use, transaction, excise or similar taxes and any federal, state or local fees or charges (including, but not limited to, environmental or similar fees), imposed on, in respect of or otherwise associated with any Statement of Work, the Products or the Services. Customer must claim any





exemption from such taxes, fees or charges at the time of purchase and provide Seller with the necessary supporting documentation. In the event of a payment default, Customer will be responsible for all of Seller's costs of collection, including, but not limited to, court costs, filing fees and attorneys' fees. In addition, if payments are not received as described above, Seller reserves the right to suspend Services until payment is received. Customer hereby grants to Seller a security interest in the Products to secure payment in full. Customer authorizes Seller to file a financing statement reflecting such security interest. Except as otherwise specified on an applicable Statement of Work, Customer will reimburse Seller for all reasonable out-of-pocket expenses incurred by Seller in connection with the performance of the Services, including, but not limited to, travel and living expenses.

### **Convenience Fees:**

Convenience Fees are charged for payment methods initiated through online or phone for each non-recurring transaction. **3%** convenience fee is applied to all Credit Card, Debit Card & PayPal transactions. These fees are charged for providing the convenience of different payment options to customers.

## **Export Sales**

If this transaction involves an export of items (including, but not limited to, commodities, software or technology) subject to the Export Administration Regulations, such items were exported from the United States by Seller in accordance with the Export Administration Regulations. Customer agrees that it will not divert, use, export or re-export such items contrary to United States law. Customer expressly acknowledges and agrees that it will not export, re-export, or provide such items to any entity or person within any country that is subject to United States economic sanctions imposing comprehensive embargoes without obtaining prior authorization from the United States Government. The list of such countries subject to United States economic sanctions or embargoes may change from time to time but currently includes Cuba, Iran, Sudan and Syria. Customer also expressly acknowledges and agrees that it will not export, re-export, or provide such items to entities and persons that are ineligible under United States law to receive such items, including but not limited to, any person or entity on the United States Treasury Department's list of Specially Designated Nationals or on the United States Commerce Department's Denied Persons List, Entity List or Unverified List. In addition, manufacturers' warranties for exported Products may vary or may be null and void for Products exported outside the United States.



## Warranties

Customer understands that Seller is not the manufacturer of the Products purchased by Customer hereunder and the only warranties offered are those of the manufacturer, not Seller or its Affiliates. In purchasing the Products, Customer is relying on the manufacturer's specifications only and is not relying on any statements, specifications, photographs or other illustrations representing the Products that may be provided by Seller or its Affiliates.

SELLER AND ITS AFFILIATES HEREBY EXPRESSLY DISCLAIM ALL WARRANTIES EITHER EXPRESS OR IMPLIED, RELATED TO PRODUCTS, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF TITLE, ACCURACY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WARRANTY OF NONINFRINGEMENT, OR ANY WARRANTY RELATING TO THIRD PARTY SERVICES. THE DISCLAIMER CONTAINED IN THIS PARAGRAPH DOES NOT AFFECT THE TERMS OF ANY MANUFACTURER'S WARRANTY. Customer expressly waives any claim that it may have against Seller or its Affiliates based on any product liability or infringement or alleged infringement of any patent, copyright, trade secret or other intellectual property rights (each a "Claim") with respect to any Product and also waives any right to indemnification from Seller or its Affiliates against any such Claim made against Customer by a third party. Customer acknowledges that no employee of Seller or its Affiliates is authorized to make any representation or warranty on behalf of Seller or any of its Affiliates that is not in this Agreement.

Seller makes no warranties to the Customer and the Customer hereby acknowledges that Seller makes no warranties in regard to the applicability of all laws and regulations affecting, without limitation the manufacture, performance, sale, packaging and labelling of the Products which are in force within the Customer's territory.

Customer further acknowledges and agrees that Seller makes no representations, warranties or assurances that the Products are designed for or suitable for use in any high-risk environment, including but not limited to aircraft or automobile safety devices or navigation, life support systems or medical devices, nuclear facilities, or weapon systems, and Customer agrees to indemnify Seller in connection with any such use of the Products. Customer further agrees to review and comply with the manufacturer's disclaimers and restrictions regarding the use of the Products in high risk environments.

Seller warrants that the Services will be performed in a good and workmanlike manner. Customer's sole and exclusive remedy and Seller's entire liability with respect to this warranty will be, at the sole option of Seller, to either (a) use its reasonable commercial efforts to reperform or cause to be reperformed any Services not in substantial compliance with this warranty or (b) refund amounts paid by Customer related to the portion of the Services not in substantial compliance; provided, in each case, Customer notifies Seller in writing within five (5) business days after performance of the applicable Services. EXCEPT AS SET FORTH HEREIN OR IN ANY STATEMENT OF WORK THAT EXPRESSLY AMENDS SELLER'S WARRANTY, AND SUBJECT TO APPLICABLE LAW, SELLER MAKES NO OTHER, AND EXPRESSLY DISCLAIMS ALL OTHER, REPRESENTATIONS, WARRANTIES, CONDITIONS OR COVENANTS, EITHER EXPRESS OR IMPLIED (INCLUDING WITHOUT LIMITATION, ANY EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, DURABILITY, TITLE, ACCURACY OR NON-INFRINGEMENT) ARISING OUT OF OR RELATED TO THE PERFORMANCE OR NON-PERFORMANCE OF THE SERVICES, INCLUDING BUT NOT LIMITED TO ANY WARRANTY RELATING TO THIRD PARTY SERVICES, ANY WARRANTY WITH RESPECT TO THE PERFORMANCE OF ANY HARDWARE OR SOFTWARE USED IN PERFORMING SERVICES AND ANY WARRANTY CONCERNING THE RESULTS TO BE OBTAINED FROM THE SERVICES. THIS DISCLAIMER AND EXCLUSION SHALL APPLY EVEN IF THE EXPRESS WARRANTY AND LIMITED REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE. CUSTOMER ACKNOWLEDGES THAT NO REPRESENTATIVE OF SELLER OR OF ITS AFFILIATES IS AUTHORIZED TO MAKE ANY REPRESENTATION OR WARRANTY ON BEHALF OF SELLER OR ANY OF ITS AFFILIATES THAT IS NOT IN THIS AGREEMENT OR IN A STATEMENT OF WORK EXPRESSLY AMENDING SELLER'S WARRANTY.

Customer shall be solely responsible for daily back-up and other protection of its data and software against loss, damage or corruption. Customer shall be solely responsible for reconstructing data (including but not limited to data located on disk files and memories) and software that may be lost, damaged or corrupted during the performance of Services. SELLER, ITS AFFILIATES, AND ITS AND THEIR SUPPLIERS, SUBCONTRACTORS AND AGENTS ARE HEREBY RELEASED AND SHALL CONTINUE TO BE RELEASED FROM ALL LIABILITY IN CONNECTION WITH THE LOSS, DAMAGE OR CORRUPTION OF DATA AND SOFTWARE, AND CUSTOMER ASSUMES ALL RISK OF LOSS, DAMAGE OR CORRUPTION OF DATA AND SOFTWARE IN ANY WAY RELATED TO OR RESULTING FROM THE SERVICES.



Seller will not be responsible for and no liability shall result to Seller or any of its Affiliates for any delays in delivery or in performance which result from any circumstances beyond Seller's reasonable control, including, but not limited to, Product unavailability, carrier delays, delays due to fire, severe weather conditions, failure of power, labor problems, acts of war, terrorism, embargo, acts of God or acts or laws of any government or agency. Any shipping dates or completion dates provided by Seller or any purported deadlines contained in a Statement of Work or any other document are estimates only.

## Pricing Information; Availability Disclaimer

Seller reserves the right to make adjustments to pricing, Products and Service offerings for reasons including, but not limited to, changing market conditions, Product discontinuation, Product unavailability, manufacturer price changes, supplier price changes and errors in advertisements. All orders are subject to Product availability and the availability of Personnel to perform the Services. Therefore, Seller cannot guarantee that it will be able to fulfill Customer's orders. If Services are being performed on a time and materials basis, any estimates provided by Seller are for planning purposes only.

## Credits

Any credit issued by Seller to Customer for any reason must be used within two (2) years from the date that the credit was issued and may only be used for future purchases of Products and/or Services. Any credit or portion thereof not used within the two (2) year period will automatically expire.

## Limitation of Liability

**UNDER NO CIRCUMSTANCES AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY SET FORTH HEREIN, WILL SELLER, ITS AFFILIATES OR ITS OR THEIR SUPPLIERS, SUBCONTRACTORS OR AGENTS BE LIABLE FOR: (A) ANY INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES INCLUDING BUT NOT LIMITED TO, LOSS OF PROFITS, BUSINESS, REVENUES OR SAVINGS, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITIES OF SUCH DAMAGES OR IF SUCH DAMAGES ARE OTHERWISE FORESEEABLE, IN EACH CASE, WHETHER A CLAIM FOR ANY SUCH LIABILITY IS PREMISED UPON BREACH OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY OF LIABILITY; (B) ANY CLAIMS, DEMANDS OR ACTIONS**





**AGAINST CUSTOMER BY ANY THIRD PARTY; (C) ANY LOSS OR CLAIM ARISING OUT OF OR IN CONNECTION WITH CUSTOMER'S IMPLEMENTATION OF ANY CONCLUSIONS OR RECOMMENDATIONS BY SELLER OR ITS AFFILIATES BASED ON, RESULTING FROM, ARISING OUT OF OR OTHERWISE RELATED TO THE PRODUCTS OR SERVICES; OR (D) ANY UNAVAILABILITY OF THE PRODUCT FOR USE OR ANY LOST, DAMAGED OR CORRUPTED DATA OR SOFTWARE. IN THE EVENT OF ANY LIABILITY INCURRED BY SELLER OR ANY OF ITS AFFILIATES, THE ENTIRE LIABILITY OF SELLER AND ITS AFFILIATES FOR DAMAGES FROM ANY CAUSE WHATSOEVER WILL NOT EXCEED THE LESSER OF: (A) THE DOLLAR AMOUNT PAID BY CUSTOMER FOR THE PRODUCT(S) GIVING RISE TO THE CLAIM OR THE SPECIFIC SERVICES GIVING RISE TO THE CLAIM; OR (B) \$50,000.00.**

## Limited License

Customer's sole rights to the work product, materials and other deliverables to be provided or created (individually or jointly) in connection with the Services, including but not limited to, all inventions, discoveries, methods, processes, formulae, ideas, concepts, techniques, know-how, data, designs, models, prototypes, works of authorship, computer programs, proprietary tools, methods of analysis and other information (whether or not capable of protection by patent, copyright, trade secret, confidentiality, or other proprietary rights) or discovered in the course of performance of this Agreement that are embodied in such work or materials ("Work Product") will be, upon payment in full, a non-transferable, non-exclusive, royalty-free license to use such Work Products solely for Customer's internal use. Customer will have no ownership or other property rights thereto and Customer shall have no right to use any such Work Product for any other purpose whatsoever. Customer acknowledges that Sellers may incorporate intellectual property created by third parties into the Work Product ("Third Party Intellectual Property"). Customer agrees that its right to use the Work Product containing Third Party Intellectual Property may be subject to the rights of third parties and limited by agreements with such third parties.

## Confidential Information

Each party anticipates that it may be necessary to provide access to information of a confidential nature of such party, the Affiliates or a third party (hereinafter referred to as "Confidential Information") to the other party in the performance of this Agreement and any Statement of Work. "Confidential Information" means any information or data in oral, electronic or written form which the receiving party knows or has reason to know is

proprietary or confidential and which is disclosed by a party in connection with this Agreement or which the receiving party may have access to in connection with this Agreement, including but not limited to the terms and conditions of each Statement of Work. Confidential Information will not include information which: (a) becomes known to the public through no act of the receiving party; (b) was known to the receiving party, or becomes known to the receiving party from a third party having the right to disclose it and having no obligation of confidentiality to the disclosing party with respect to the applicable information; or (c) is independently developed by agents, employees or subcontractors of the receiving party who have not had access to such information. To the extent practicable, Confidential Information should be clearly identified or labeled as such by the disclosing party at the time of disclosure or as promptly thereafter as possible, however, failure to so identify or label such Confidential Information will not be evidence that such information is not confidential or protectable.

Each party agrees to hold the other party's Confidential Information confidential for a period of three (3) years following the date of disclosure and to do so in a manner at least as protective as it holds its own Confidential Information of like kind but to use no less than a reasonable degree of care. Disclosures of the other party's Confidential Information will be restricted (i) to those individuals who are participating in the performance of this Agreement or the applicable Statement of Work and need to know such Confidential Information for purposes of providing or receiving the Products or Services or otherwise in connection with this Agreement or the applicable Statement of Work, or (ii) to its business, legal and financial advisors, each on a confidential basis. Each party agrees not to use any Confidential Information of the other party for any purpose other than the business purposes contemplated by this Agreement and the applicable Statement of Work. Upon the written request of a party, the other party will either return or certify the destruction of the Confidential Information of the other party.

If a receiving party is required by law, rule or regulation, or requested in any judicial or administrative proceeding or by any governmental or regulatory authority, to disclose Confidential Information of the other party, the receiving party will give the disclosing party prompt notice of such request so that the disclosing party may seek an appropriate protective order or similar protective measure and will use reasonable efforts to obtain confidential treatment of the Confidential Information so disclosed.

## **Return Privileges**



PALMIQ allows Customer returns based on the policies of the original product manufacturer. Software is not returnable if the packaging has been opened. If software was distributed electronically, it is not returnable if the licenses were downloaded. For additional information see PALMIQ's full Product Return Policy at the following link: <https://www.palmiq.com/terms/returns>. Customers should contact PALMIQ Customer Relations at (703) 336-9700 or e-mail [returns@palmiq.com](mailto:returns@palmiq.com) to initiate a return or for additional information. Customers must notify PALMIQ Customer Relations of any damaged Products within fifteen (15) days of receipt.

## Termination

Either party may terminate performance of a Service or a Statement of Work for cause if the other party fails to cure a material default in the time period specified herein. Any material default must be specifically identified in a written notice of termination. After written notice, the notified party will, subject to the provision of warranties herein, have thirty (30) days to remedy its performance except that it will only have ten (10) days to remedy any monetary default. Failure to remedy any material default within the applicable time period provided for herein will give cause for immediate termination, unless such default is incapable of being cured within the time period in which case the defaulting party will not be in breach (except for Customer's payment obligations) if it used its reasonable efforts to cure the default. In the event of any termination of the Services or a Statement of Work, Customer will pay Seller for all Services performed and expenses incurred up to and including the date of termination plus any termination fee if one is set forth in the applicable Statement of Work. In such event Customer will also pay Seller for any out-of-pocket demobilization or other direct costs resulting from termination. Upon termination, all rights and obligations of the parties under this Agreement will automatically terminate except for any right of action occurring prior to termination, payment obligations and obligations that expressly or by implication are intended to survive termination (including, but not limited to, limitation of liability, indemnity, confidentiality, or licensing of Work Product and this survival provision).

## Provisions Related to Custom Imaging

If in connection with the provision of Products or Services, Customer desires to have Seller provide installation of custom software images, Customer will be required to execute an Installation Indemnity Agreement, a form of which is provided at If in connection with the provision of Products or Services, Customer desires to have Seller provide installation of custom software



images, Customer will be required to execute an Installation Indemnity Agreement, a form of which is provided at <http://www.palmiq.com/terms/installation-indemnity>

## Arbitration

Any claim, dispute, or controversy (whether in contract, tort or otherwise, whether preexisting, present or future, and including, but not limited to, statutory, common law, intentional tort and equitable claims) arising from or relating to the Products, the Services, the interpretation or application of these Terms and Conditions or any Statement of Work or the breach, termination or validity thereof, the relationships which result from these Terms and Conditions or any Statement of Work (including, to the full extent permitted by applicable law, relationships with third parties who are not signatories hereto), or Seller's or any of its Affiliates' advertising or marketing (collectively, a "Claim") WILL BE RESOLVED, UPON THE ELECTION OF ANY OF SELLER, CUSTOMER OR THE THIRD PARTIES INVOLVED, EXCLUSIVELY AND FINALLY BY BINDING ARBITRATION. If arbitration is chosen, it will be conducted pursuant to the Rules of the American Arbitration Association. If arbitration is chosen by any party with respect to a Claim, neither Seller nor Customer will have the right to litigate that Claim in court or to have a jury trial on that Claim or to engage in pre-arbitration discovery, except as provided for in the applicable arbitration rules or by agreement of the parties involved. **Further, Customer will not have the right to participate as a representative or member of any class of claimants pertaining to any Claim.** Notwithstanding any choice of law provision included in these Terms and Conditions, this arbitration agreement is subject to the Federal Arbitration Act (9 U.S.C. §§ 1-16). The arbitration will take place exclusively in Sterling, Virginia. Any court having jurisdiction may enter judgment on the award rendered by the arbitrator(s). Each party involved will bear its own cost of any legal representation, discovery or research required to complete arbitration. The existence or results of any arbitration will be treated as confidential. **Notwithstanding anything to the contrary contained herein, all matters pertaining to the collection of amounts due to Seller arising out of the Products or Services will be exclusively litigated in court rather than through arbitration.**

## Miscellaneous

Seller may assign or subcontract all or any portion of its rights or obligations with respect to the sale of Products or the performance of Services or assign the right to receive payments, without Customer's consent. Customer may





not assign these Terms and Conditions, or any of its rights or obligations herein without the prior written consent of Seller. Subject to the restrictions in assignment contained herein, these Terms and Conditions will be binding on and inure to the benefit of the parties hereto and their successors and assigns. No provision of this Agreement or any Statement of Work will be deemed waived, amended or modified by either party unless such waiver, amendment or modification is in writing and signed by both parties. The relationship between Seller and Customer is that of independent contractors and not that of employer/employee, partnership or joint venture. If any term or condition of this Agreement or a Statement of Work is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or conditions hereof or thereof or the whole of this Agreement or the applicable Statement of Work. Notices provided under this Agreement will be given in writing and deemed received upon the earlier of actual receipt or three (3) days after mailing if mailed postage prepaid by regular mail or airmail or one (1) day after such notice is sent by courier or facsimile transmission. Any delay or failure by either party to exercise any right or remedy will not constitute a waiver of that party to thereafter enforce such rights.



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**JOHNSON COUNTY CONTRACT TERMS  
ADDENDUM TO PALMIQ, INC. AGREEMENT**

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**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**” or “**JOHNSON COUNTY**” or “**CUSTOMER**” and **PALMIQ, INC.** **PALMIQ, INC.** may be referred to herein as “**PALMIQ**” or “**COMPANY**”.

**1.2**

**JOHNSON COUNTY and PALMIQ as applicable**, may be collectively identified as the “**Parties**” or each individually a “**Party**”. **This Addendum is part of the Agreement with PALMIQ and is intended to modify (as set forth in this Addendum) all documents, including the Quotes and the Terms and Conditions put forth by PALMIQ. This Addendum modifies (as set forth in this Addendum) any other document proffered to COUNTY by PALMIQ or their agents and other documents defining the Agreement between JOHNSON COUNTY, TEXAS and PALMIQ.**

**1.3**

The Parties recognize that PALMIQ is also subject to provisions of Texas Department of Information Resources contract DIR – TSO – 4288.

**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 Division of the Northern District of Texas.**

**2.2**

**Any provision stating that County agrees to waive any right to trial by jury is hereby deleted.**

**2.3**

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.

#### 2.4

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.

#### 3.1

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.

#### 3.2

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.

#### 4.1

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.

#### 4.2

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.

#### 4.3

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 CUSTOMER which relates to the Agreement, the

equipment or its use; therefore, 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 31<sup>st</sup> 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 2251.025 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.

#### 5.2

Texas Local Government Code Section 113.064. Approval of Claims by County Auditor, provides:

**“(a) In a county that has the office of county auditor, each claim, bill, and account against the county must be filed in sufficient time for the auditor to examine and approve it before the meeting of the commissioners court. A claim, bill, or account may not be allowed or paid until it has been examined and approved by the auditor....”**

Texas law requires that all disbursements of County funds be approved by the County Auditor and the Commissioners Court prior to such disbursement. JOHNSON COUNTY can and will make due disbursements following the approval of the disbursement by Commissioners Court (following the COUNTY’S receipt and review of a proper invoice through the proper COUNTY department responsible for the purchase of the goods or services). JOHNSON COUNTY cannot and does not authorize any entity to directly access County funds. PALMIQ understands that the JOHNSON COUNTY Commissioners Court normally meets on the second and fourth Monday of each month or the day following such Monday if the Monday is a County holiday. PALMIQ further understands that invoices must be received by the COUNTY **not less than fourteen (14)**



**days prior** to the Commissioners Court meeting in order for a payment to be reviewed by the necessary departments and offices and placed on the “bill run” for the Commissioners Court.

### **5.3**

JOHNSON COUNTY does not authorize PALMIQ or any entity to initiate debit entries to JOHNSON COUNTY’S account at any financial institution. Any provision in any document authorizing an entity to access COUNTY funds or financial accounts electronically or otherwise and to make withdrawals or transfers of such funds is hereby deleted and is of no effect and the Agreement shall be deemed modified to comport with payment procedure prescribed by Texas law for Texas counties.

### **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 or purchase 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 or purchase 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 **PALMIQ** might lawfully seek to claim as confidential, then COUNTY will forward the request to **PALMIQ**. It shall be the obligation of **PALMIQ** 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 **PALMIQ** in making such submission to the Texas Attorney General’s Office. **PALMIQ acknowledges and understands that contracts, agreements, payment and revenue of a political subdivision of the State of Texas are public information and are not confidential.**

### **6.3**

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

### **6.4**

Under the Constitution and laws of the State of Texas, public property is exempt from

forced sales and liens may not attach thereto.

**6.5**

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

**6.6**

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.

**7.1**

**PALMIQ** certifies that pursuant to Section 231.006 of the Texas Family Code (regarding unpaid child support) 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. **PALMIQ** hereby certifies that it is not ineligible to receive State or Federal funds due to child support arrearages

**7.2**

**PALMIQ** 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. **PALMIQ** 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.

**7.3**

**PALMIQ** verifies that it complies with Texas Government Code Chapter 2274 and further verifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and, will not discriminate during the term of the contract against a firearm entity or firearm trade association.

**7.4**

**PALMIQ** verifies that it complies with Texas Government Code Chapter 2274 and further verifies that it:

- (1) does not boycott energy companies; and
- (2) will not boycott energy companies during the term of the contract.

In this provision:

- (1) “Boycott energy company” has the meaning assigned by Section 809.001.

(2) “Company” has the meaning assigned by Section 809.001, except that the term does not include a sole proprietorship.

(3) “Governmental entity” has the meaning assigned by Section 2251.001.

#### 7.5

**At any time following the expiration of 365 DAYS from the execution of the contract, COUNTY may terminate the contract at its discretion, without charges for unutilized term, or penalty of any kind, by giving COMPANY 90 days written notice of such termination. This provision shall not be deemed to conflict with any other provision allowing JOHNSON COUNTY to terminate the contract upon a shorter or lesser notice.**

#### 7.6

**PALMIQ** certifies by signature of its authorized representative on this document that it does and will so long as this Agreement is in effect comply fully with Section 889 of the National Defense Authorization Act for Fiscal Year 2019 (NDAA FY19) and Section 5949 of the National Defense Authorization Act for Fiscal Year 2023 ([NDAA FY23](#)) and with any additional existing and future “China Tech Prohibitions” promulgated or enacted by the United States Government.

#### 8.1

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 or the COUNTY employee or official to whom authority has been explicitly delegated by the Commissioners Court.

#### 8.2

Notwithstanding any other provision in this Addendum or the associated documents, to the extent **PALMIQ** 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.

#### 8.3

NOT APPLICABLE TO THIS TRANSACTION

#### 8.4

**At the termination of this Agreement, to the extent PALMIQ possesses or controls access to JOHNSON COUNTY data, upon request by COUNTY, PALMIQ must copy the**

data to a storage medium in common use at the time or as agreed to by the Information Technology Department of JOHNSON COUNTY and deliver such medium and data to JOHNSON COUNTY INFORMATION TECHNOLOGY DEPARTMENT. PALMIQ recognizes such data is data of the State of Texas or a political subdivision thereof and must be maintained according to the laws of the State of Texas governing the retention and storage of such data. Destruction of such data contrary to law and contrary to the rules promulgated by the Texas State Library and Archives Commission may be subject to criminal prosecution and civil liability.

#### **8.5**

All provisions of the agreement are modified such that in no event would JOHNSON COUNTY have less than 120 days from notice of termination of the Agreement to secure any data or records in a useable and readable format. JOHNSON COUNTY'S securing of such data or records is intended to be done and will be allowed to be accomplished in a common and economically efficient method extant at the time of extracting, copying and securing such data and records.

#### **8.6**

The parties agree Johnson County is NOT bound and shall not be bound to or liable for any condition, duty, obligation or requirement that is set forth only by reference to additional Documents that are not part of the physical document approved by the Commissioners Court and made part of the minutes of the Johnson County Commissioners Court. Provisions which COMPANY seeks to make terms of the contract or agreement by references to links or websites for contract terms are rejected by JOHNSON COUNTY and CANNOT and WILL NOT be enforced against JOHNSON COUNTY.

#### **8.7**

JOHNSON COUNTY is not subject to any provision that may be changed without notice or that may be changed without specific overt consideration and approval by the Commissioners Court of Johnson County acting on that change, modification or amendment to the contract or its terms occurring after the date of the execution of this Addendum.

#### **8.8**

Notwithstanding any provision set forth in the Terms and Conditions or any other document put forth by PALMIQ, JOHNSON COUNTY does not waive any rights or remedies available to a Texas political subdivision pursuant to Texas law. This provision supersedes any contrary provision.

#### **8.9**

PALMIQ will not factor its receivables (from JOHNSON COUNTY) to any company or entity without the permission of the Johnson County Commissioners Court.

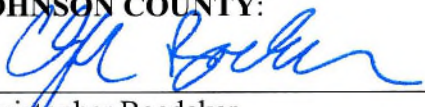
#### **9.1**



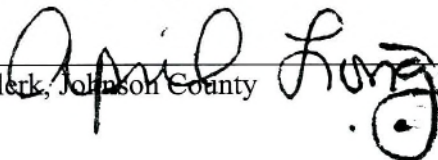
In the event of any conflict between the terms and provisions of this Addendum and the terms and provisions of those contractual provisions tendered to JOHNSON COUNTY in the Agreement, this Addendum shall control and amend the contractual provisions of the Agreement and any provision to the contrary is hereby deleted. ***THE TERMS OF THIS JOHNSON COUNTY CONTRACT TERMS ADDENDUM SHALL BE FULLY OPERATIVE AND HAVE PRIORITY OVER ALL OTHER DOCUMENTS AND TERMS AND ANY TERM TO THE CONTRARY IN OTHER DOCUMENT(S) PUT FORTH BY PALMIQ IS HEREBY DELETED.***

APPROVED AS TO FORM AND CONTENT:

JOHNSON COUNTY:

  
\_\_\_\_\_  
Christopher Boedeker  
As Johnson County Judge

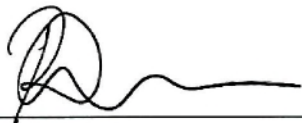
12-20-24  
Date

Attest:   
\_\_\_\_\_  
County Clerk, Johnson County



12-20-24  
Date

PALMIQ:

  
\_\_\_\_\_  
Regina Chambati

12/04/2024  
Date

PALMIQ