

Resolution # 12-1

WHEREAS, County policies and procedures require both the assigned oversight committee and the County Board to approve all requests to procure goods and/or services costing \$30,000 or more; and,

WHEREAS, the Department of Sangamon County ETSD wishes to procure goods and/or services from Word Systems for the purpose of Upgrade for the Nice Recording System in the amount of approximately \$98,567.00; and

WHEREAS, this purchase will allow Word Systems to provide the upgrade to the recording system; and

WHEREAS, as documented by the approval of this resolution, the ETSD Committee has approved the Sangamon County ETSD Department's request to procure the items specified and the committee recommends that the County Board approve procurement of the same, and;

NOW, THEREFORE, BE IT RESOLVED that the Sangamon County Board, in session this 10th day of March, 2020, approves the procurement of the goods and/or services detailed above. The Elected Official/Department Head is authorized to sign required documents to execute the provision of this procurement.

\_\_\_\_\_  
Chairman, Sangamon County Board

ATTEST:

\_\_\_\_\_  
County Clerk

Attachment: Purchase Order form

**FILED** **RECEIVED**  
2660  
FEB 24 2020

FEB 24 2020

*Don / Key*

Andy Goleman  
SANGAMON COUNTY AUDITOR

Approved by the the ETSD \_\_\_\_\_ Committee

Feb. 19, \_\_\_\_\_, 2020

Joseph M. Powell, Chairman \_\_\_\_\_, Member

ML, Member \_\_\_\_\_, Member

A. J. Lewis, Member \_\_\_\_\_, Member

D. J. [Signature], Member \_\_\_\_\_, Member

A. L. [Signature], Member \_\_\_\_\_, Member

[Signature], Member \_\_\_\_\_, Member

C. R. Coen, Member

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WORD SYSTEMS, INC.

## Technical Services Agreement

This is an agreement (hereafter referred to as the "Agreement") between Word Systems, Inc. (hereafter referred to as "WSI") and the Customer Sangamon County (dba Telephone Systems Department) (hereafter referred to as "Customer"). The initial term of this Agreement shall be from the Start Date referenced below, through the last day of the 12<sup>th</sup> the full calendar month after the Start Date (the "Term" or "Initial Term").

This Agreement is for the items listed on the WSI "Sales Invoice" referenced herein, or the list of attached SN's provided on Attachment A (hereinafter such items collectively referred to as the "Equipment" and "Software" or the "System") and covers the service, support, training, periodic 'minor', or 'patch' software upgrades, parts, and labor for the System during the entire Term of this Agreement.

|                              |                       |
|------------------------------|-----------------------|
| Start Date:                  | <u>March 11, 2020</u> |
| Initial Term of Agreement:   | <u>March 11, 2020</u> |
| Amount due for Initial Term: | <u>\$96,567</u>       |
| Annual Amount Due:           | <u>\$96,567</u>       |

No refunds shall be given if Customer cancels or terminates this Agreement during the Term. This Agreement shall automatically renew for a one year Term after each prior Term unless either party provides the other party with written notice at least 90 days prior to the end of the current Term. The fee for a one year renewal of this Agreement will automatically be invoiced sixty (60) days prior to the end of each Term for the upcoming successive year at WSI's then current annual rates.

The rates herein may be increased upon renewal of the Term and as otherwise set forth in this Agreement considering factors that include, but are not limited to, inflation, fuel costs, availability of parts, software, history of support calls and parts used during previous Term. Payment in full is required on or before the first day of each Term.

### ARTICLE I

#### TECHNICAL SERVICES

- A. **SERVICES:** WSI will provide to Customer support as follows:
- 1) Support for Software and Equipment purchased hereunder. WSI may provide error correction on software by means of a "temporary fix," in which case it will continue to use reasonable efforts to pursue a permanent solution.
  - 2) Repairs will be performed and replacement parts will be furnished, if available, at no charge. The returned defective and/or worn parts WSI replaces become the property of WSI. WSI reserves the right to replace or exchange any defective piece of Equipment with another if WSI determines there is a need to do so, regardless of age or serial number.

- 3) Installation of Equipment, or any Software revisions to basic Equipment, that is required by the manufacturer to correct a problem. It must be determined to be essential and be needed to keep the Equipment running. This would be considered a 'minor' or 'patch' software upgrade. This does not include a 'major' software upgrade that includes extra features and enhancements that are sold to increase performance or functionality unless Software Assurance has been purchased and outlined.
- 4) Training will be performed remotely between 8 am and 5 pm, Monday through Friday, EST, excluding holidays, unless other arrangements have been agreed upon in writing prior to the Start Date.
- 5) Annual health check will be performed within 90 days of customer request. All Systems covered under the Agreement will be audited for proper hardware and software functionality and reviewed for applicable updates. Critical system files will be backed up, and site documents updated. Audit will be performed remotely unless onsite is required, as determined by WSI.
- 6) Technical consultation to support design of expansion and upgrade planning.
- 7) Services are to be performed Monday – Friday 8AM – 5PM EST, unless the service is deemed to be for a 'down' system or a high severity call that greatly effects the site.
- 8) In the event of replacement parts or equipment during the course of this agreement, the new items will have a 90 day warranty, or will be covered for the duration of the TSA agreement, whichever is longer in duration.
- 9) Access to available knowledge resources i.e., technical documents, bulletins, webinars, user guides and User Group contact information.

**B. ADDITIONAL CHARGES:** Additional Charges, if any, will be assessed per this Agreement as shown below:

- 1) WSI will charge for time and materials for performing any services connected with relocation of equipment and expansions of equipment (30 days prior approval required). WSI will charge time and materials rates for all repairs and software support needed to repair computer virus contamination of the WSI supplied computer system. WSI will charge for installation of any system expansions. The Customer agrees not to load any software on the WSI supplied computer without the prior written permission from WSI. WSI will charge for any installation of system expansions, software enhancements, software and related modifications or additional attachments and accessories that the Customer requests but would not normally be essential to keeping the equipment operational with its then current functionality.
- 2) Additional onsite training, beyond initial training provided with purchase, will be invoiced at WSI standard hourly rate.
- 3) WSI will charge for any parts or equipment that must be replaced due to cause other than normal wear and tear. Damages caused by accident, abuse, acts of god, operator errors, etc. are chargeable
- 4) New additional equipment or software purchases will result in adjustment of technical services agreement charges. Customer will be invoiced for support premiums related to such additions. The invoice will be pro-rated to coincide with the remaining Term of this Agreement
- 5) WSI shall not have any obligations with respect to problems due to any modification of the Equipment or Software by anyone other than WSI, the improper combination of Equipment or Software with other products not provided by WSI, or the use of the Software or Equipment in an unreasonable manner. Any services that WSI agrees to perform due to the foregoing shall be charged at WSI's then current rates.
- 6) WSI shall not have any obligations with respect to problems due to Customer's failure to install standard software updates or comply with the manufacturers' recommended operating environment or specifications, or due to changes in Customer's own network or hardware. Any services that WSI agrees to perform due to the foregoing shall be charged at WSI's then current rates.
- 7) WSI shall use commercially reasonable efforts to provide the agreed upon technical services. If an identical part or Equipment is not commercially reasonably available when there is a need for replacement, then WSI may use a

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compatible, alternate part or equipment. However, should WSI determine that a part or certain equipment of Customer is not commercially reasonably available for repair or replacement of an identical or compatible, alternate part or equipment, due to its age, technology advances in conjunction with Customer's other equipment, services, or compatibility with Customer's systems, then Customer shall be required to purchase a replacement part or equipment in order for WSI to complete the technical services pursuant to this Agreement.

- C. EXCLUSIONS:** WSI does not provide:
- 1) Electrical work, cabling, drilling or carpentry;
  - 2) Technical support of equipment not provided by WSI;
  - 3) Loaner equipment. Consult account manager for spare/redundant systems;
  - 4) Additional equipment or upgrades to existing equipment or operating systems, software or other tools or utilities or networks or components that may be required in connection with a manufacturer's 'major' software upgrade, unless Software Assurance has been purchased and outlined.
  - 5) Support in resolving network, workstation, database, environmental or other errors not directly related to the Software and Equipment listed in this Agreement;
  - 6) Technical support of systems that have non-standard configurations that have not been certified by 3rd party providers are specifically excluded from the Agreement unless otherwise agreed in writing by WSI and included in this Agreement;
  - 7) Any hardware, software or systems supplied to the Customer by a third party, unless specifically included in this Agreement.
  - 8) Parts are covered for any system with an installation date of less than 5 years. After 5 years, the system is considered at an age for replacement and parts are no longer covered under this agreement.
  - 9) Management of anti-virus or other security applications (see WSI for approved 3rd party applications).

**WARRANTY EXCLUSION:** WSI is providing technical services in lieu of any warranties from manufacturer. To the fullest extent permitted by law, the services herein and the Software and Equipment are provided on an "as is" basis. WSI does not warrant that the Equipment and Software will operate uninterrupted or error free or that all defects will be corrected or that they will meet customer's requirements or will operate in combinations with other equipment, software, or data not provided by WSI. **WSI DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE SOFTWARE, EQUIPMENT, AND SYSTEM. WSI DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WORKMANLIKE EFFORTS, NON-INFRINGEMENT OR WARRANTIES ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USAGE OF TRADE.** In lieu of such warranties, WSI shall provide all of the services stated herein throughout the term.

**ARTICLE II**  
**GENERAL TERMS AND CONDITIONS**

**A. WSI RESERVES** the right to modify or delete any term or condition of this Agreement by giving a 30-day prior notice to Customer, in which case Customer may terminate this Agreement by giving WSI written notice of its intent to terminate within 30 days of its receipt of notice from WSI regarding the change, in which case WSI will provide a pro-rata refund of pre-paid Technical Services Fees for the remainder of the Term.

**B. LIABILITY DISCLAIMERS:** WSI shall not be liable or held responsible for any delay in or failure or defect of performance under this Agreement, or be liable for any other consequence, damage, injury, or loss, caused by or resulting from any act, event, occurrence, or cause beyond the reasonable control of WSI, including (without limitation) acts of God, war, fires, hurricanes, explosions, floods, strikes, major mechanical breakdown, system malfunctions, interruption of utility services, acts of any unit of government or agency thereof, work stoppage, breakdown, virus contamination, theft, loss of data, lack of available parts from the manufacturer, loss caused by power failures, loss caused by lack of Customer equipment or software backups, or work done due to lack of proper training of Customer's personnel. Customer is expected to insure the Equipment, Software, and System and to backup all data, voice and video files and to protect the computer from incoming virus damage. Service calls that are caused by any of the foregoing exclusions shall be invoiced at the currently published time and materials rates.

**To the fullest extent permitted by law:**

- 1) WSI and its officers, directors, employees, shareholders, agents and representatives shall not be liable to customer or any other party for incidental, special, exemplary or consequential damages (including, without limitation, loss of anticipated profits, loss of data, and loss of goodwill) arising out of or related to this Agreement or the goods and services provided, even if advised in advance of the possibility.
- 2) Except with respect to damages caused by WSI's willful misconduct, WSI's liability (including attorneys' fees) to customer or any third party arising out of or related to this Agreement and the goods and services provided shall, for any and all causes and claims, regardless of the form of action, whether based on contract, tort, negligence, strict liability, indemnification or otherwise, in the aggregate not exceed the price paid by Customer for the particular goods or services involved prior to such claim's accrual under which such damages arose.

**C. CUSTOMER RESPONSIBILITY:** It is the responsibility of the Customer to have trained personnel operating the Equipment who have basic PC knowledge. Additional training is available from WSI for an additional charge as new people are hired to run the Equipment. The Customer shall make the Equipment available to the service department representative as soon as a representative arrives on-site and agrees to allow the WSI technical services representative access to the Equipment, immediately upon arrival. Any delays will be charged for at our regularly published service rates. Access will be given to him/her for as long as it takes to repair and adequately test the Equipment.

**D. FORCE MAJEURE:** If either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of inclement weather, strikes, lockouts, labor troubles, inability to procure material, failure of power, restrictive governmental laws or regulations, riots, insurrection, war or other reason of a like nature not the fault of the party delayed in performing work or doing acts required under this Agreement, the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. Notwithstanding the foregoing, the provisions of this section shall at no time operate to excuse Customer from any obligations for payment when due, and all amounts shall be paid by Customer to WSI when due.

**E. GOVERNING LAW; VENUE:** This Agreement and any matters and disputes related thereto shall be governed by and construed in accordance with the laws of the State of Indiana without regard to the choice of law principles thereof. Any cause of action arising hereunder may only be brought in a federal or state court located in Sangamon County, Illinois. Each party expressly agrees that Sangamon County shall be deemed to be a county of preferred venue and each such party waives any entitlement each might otherwise have to a transfer of venue out of Sangamon County under any preferred venue requirements or any other venue rules or laws which may be applicable. The parties hereby submit to the exclusive jurisdiction, those courts.

**F. SEVERABILITY:** In the event that any of the provisions of this Agreement is held to be invalid or unenforceable in whole or in part by a court of competent jurisdiction, those provisions to the extent enforceable and all other provisions will nevertheless continue to be valid and enforceable as though the invalid or unenforceable provisions had not been included in this Agreement, and this Agreement shall be construed by adding a valid provision which effectuates the intent of the invalid provision as nearly as lawfully possible.

**G. EXECUTION AND DELIVERY:** Each of the persons who has signed this Agreement represents and warrants that he Or she has been duly authorized to sign this Agreement by all necessary action on the part of the entity on whose behalf he or she has signed this Agreement. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and part of one and the same Agreement. Delivery of an executed copy of this Agreement by facsimile transmission or email shall constitute effective and binding execution and delivery thereof and the signatures thereon shall be deemed to be original signatures for all purposes.

**H. SOFTWARE RELEASE LANGUAGE:** A release is the distribution of the final version of an application. A software release may be either public or private and generally constitutes the initial generation of a new or upgraded application. A release is preceded by the distribution of alpha and then beta versions of the software. Major Release means a new release of Software supported by Supplier that adds features and functionality improving overall Product performance, efficiency and/or usability, and designated by Supplier as a replacement for a Product. Minor Release, or point release, or dot release, is an update to existing software. A minor release is normally intended to fix bugs or so small changes or cleanups to software. Patch releases are intended for very small changes or bug fixes that do not disrupt the actual software functionality. Version schematic is as follows X.Y.Z (5.4.3) relates to major minor patch.

IN WITNESS WHEREOF, THE PARTIES HAVE EXECUTED THIS AGREEMENT ON THE DATES SHOWN BELOW. THE UNDERSIGNED PARTIES AGREE THAT THEY HAVE READ AND THAT THEY UNDERSTAND THE TERMS AND CONDITIONS OF EACH PROVISION

**WORD SYSTEMS, INC.**

**CUSTOMER**

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

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

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

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



Technical Services Agreement

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Start Date: \_\_\_\_\_
Initial Term of Agreement: \_\_\_\_\_
Amount due for Initial Term: \$98,567
Annual Amount Due: \_\_\_\_\_

No refunds shall be given if Customer cancels or terminates this Agreement during the Term. This Agreement shall automatically renew for a one year Term after each prior Term unless either party provides the other party with written notice at least 90 days prior to the end of the current Term.

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ARTICLE I TECHNICAL SERVICES

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8) In the event of replacement parts or equipment during the course of this agreement, the new items will have a 90 day warranty, or will be covered for the duration of the TSA agreement, whichever is longer in duration.
9) Access to available knowledge resources i.e., technical documents, bulletins, webinars, user guides and User Group contact information.

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repair or replacement of an identical or compatible, alternate part or equipment, due to its age, technology advances in conjunction with Customer's other equipment, services, or compatibility with Customer's systems, then Customer shall be required to purchase a replacement part or equipment in order for WSI to complete the technical services pursuant to this Agreement.

**C. EXCLUSIONS** WSI does not provide:

- 1) Electrical work, cabling, drilling or carpentry;
- 2) Technical support of equipment not provided by WSI;
- 3) Loaner equipment. Consult account manager for spare/redundant systems;
- 4) Additional equipment or upgrades to existing equipment or operating systems, software or other tools or utilities or networks or components that may be required in connection with a manufacturer's 'major' software upgrade, unless Software Assurance has been purchased and outlined.
- 5) Support in resolving network, workstation, database, environmental or other errors not directly related to the Software and Equipment listed in this Agreement;
- 6) Technical support of systems that have non-standard configurations that have not been certified by 3rd party providers are specifically excluded from the Agreement unless otherwise agreed in writing by WSI and included in this Agreement;
- 7) Any hardware, software or systems supplied to the Customer by a third party, unless specifically included in this Agreement.
- 8) Parts are covered for any system with an installation date of less than 5 years. After 5 years, the system is considered at an age for replacement and parts are no longer covered under this agreement.
- 9) Management of anti-virus or other security applications (see WSI for approved 3rd party applications).

**Warranty Exclusion:** WSI is providing technical services in lieu of any warranties from manufacturer. To the fullest extent permitted by law, the services herein and the Software and Equipment are provided on an "as is" basis. WSI does not warrant that the Equipment and Software will operate uninterrupted or error free or that all defects will be corrected or that they will meet customer's requirements or will operate in combinations with other equipment, software, or data not provided by WSI. **WSI DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE SOFTWARE, EQUIPMENT, AND SYSTEM. WSI DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WORKMANLIKE EFFORTS, NON-INFRINGEMENT OR WARRANTIES ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USAGE OF TRADE. In lieu of such warranties, WSI shall provide all of the services stated herein throughout the term.**

**ARTICLE II**

**GENERAL TERMS AND CONDITIONS**

**A. WSI RESERVES** the right to modify or delete any term or condition of this Agreement by giving a 30-day prior notice to Customer, in which case Customer may terminate this Agreement by giving WSI written notice of its intent to terminate within 30 days of its receipt of notice from WSI regarding the change, in which case WSI will provide a pro-rata refund of pre-paid Technical Services Fees for the remainder of the Term.

**B. LIABILITY DISCLAIMERS** WSI shall not be liable or held responsible for any delay in or failure or defect of performance under this Agreement, or be liable for any other consequence, damage, injury, or loss, caused by or resulting from any act, event, occurrence, or cause beyond the reasonable control of WSI, including (without limitation) acts of God, war, fires, hurricanes, explosions, floods, strikes, major mechanical breakdown, system malfunctions, interruption of utility services, acts of any unit of government or agency thereof, work stoppage, breakdown, virus contamination, theft, loss of data, lack of available parts from the manufacturer, loss caused by power failures, loss caused by lack of Customer equipment or software backups, or work done due to lack of proper training of Customer's personnel. Customer is expected to insure the Equipment, Software, and System and to backup all data, voice and video files and to protect the

computer from incoming virus damage. Service calls that are caused by any of the foregoing exclusions shall be invoiced at the currently published time and materials rates.

**To the fullest extent permitted by law:**

- 1) WSI and its officers, directors, employees, shareholders, agents and representatives shall not be liable to customer or any other party for incidental, special, exemplary or consequential damages (including, without limitation, loss of anticipated profits, loss of data, and loss of goodwill) arising out of or related to this Agreement or the goods and services provided, even if advised in advance of the possibility.
- 2) Except with respect to damages caused by WSI's willful misconduct, WSI's liability (including attorneys' fees) to customer or any third party arising out of or related to this Agreement and the goods and services provided shall, for any and all causes and claims, regardless of the form of action, whether based on contract, tort, negligence, strict liability, indemnification or otherwise, in the aggregate not exceed the price paid by Customer for the particular goods or services involved prior to such claim's accrual under which such damages arose.

**C. CUSTOMER RESPONSIBILITY** It is the responsibility of the Customer to have trained personnel operating the Equipment who have basic PC knowledge. Additional training is available from WSI for an additional charge as new people are hired to run the Equipment. The Customer shall make the Equipment available to the service department representative as soon as a representative arrives on-site and agrees to allow the WSI technical services representative access to the Equipment, immediately upon arrival. Any delays will be charged for at our regularly published service rates. Access will be given to him/her for as long as it takes to repair and adequately test the Equipment.

**D. FORCE MAJEURE** If either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of inclement weather, strikes, lockouts, labor troubles, inability to procure material, failure of power, restrictive governmental laws or regulations, riots, insurrection, war or other reason of a like nature not the fault of the party delayed in performing work or doing acts required under this Agreement, the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. Notwithstanding the foregoing, the provisions of this section shall at no time operate to excuse Customer from any obligations for payment when due, and all amounts shall be paid by Customer to WSI when due.

**E. GOVERNING LAW; VENUE** This Agreement and any matters and disputes related thereto shall be governed by and construed in accordance with the laws of the State of Indiana without regard to the choice of law principles thereof. Any cause of action arising hereunder may only be brought in a federal or state court located in Marion County, Indiana. Each party expressly agrees that Marion County shall be deemed to be a county of preferred venue and each such party waives any entitlement each might otherwise have to a transfer of venue out of Marion County under any preferred venue requirements of Indiana Trial Rule 75 or any other venue rules or laws which may be applicable. The parties hereby submit to the exclusive jurisdiction of the Indiana courts.

**F. SEVERABILITY** In the event that any of the provisions of this Agreement is held to be invalid or unenforceable in whole or in part by a court of competent jurisdiction, those provisions to the extent enforceable and all other provisions will nevertheless continue to be valid and enforceable as though the invalid or unenforceable provisions had not been included in this Agreement, and this Agreement shall be construed by adding a valid provision which effectuates the intent of the invalid provision as nearly as lawfully possible.

**G. EXECUTION AND DELIVERY** Each of the persons who has signed this Agreement represents and warrants that he or she has been duly authorized to sign this Agreement by all necessary action on the part of the entity on whose behalf he or she has signed this Agreement. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and part of one and the same Agreement. Delivery of an executed copy of this Agreement by facsimile transmission or email shall constitute

effective and binding execution and delivery thereof and the signatures thereon shall be deemed to be original signatures for all purposes.

**H. Software Release Language** A **release** is the distribution of the final version of an application. A **software release** may be either public or private and generally constitutes the initial generation of a new or upgraded application. A **release** is preceded by the distribution of alpha and then beta versions of the software. **Major Release** means a new **release of Software** supported by Supplier that adds features and functionality improving overall Product performance, efficiency and/or usability, and designated by Supplier as a replacement for a Product. **Minor Release**, or point release, or dot release, is an update to existing software. A minor release is normally intended to fix bugs or so small changes or cleanups to software. **Patch releases** are intended for very small changes or bug fixes that do not disrupt the actual software functionality. Version schematic is as follows X.Y.Z (5.4.3) relates to major.minor.patch.

IN WITNESS WHEREOF, THE PARTIES HAVE EXECUTED THIS AGREEMENT ON THE DATES SHOWN BELOW. THE UNDERSIGNED PARTIES AGREE THAT THEY HAVE READ AND THAT THEY UNDERSTAND THE TERMS AND CONDITIONS OF EACH PROVISION

OF THIS AGREEMENT AND BY THEIR SIGNATURES ACKNOWLEDGE THAT THEY ARE BOUND TO KNOW THE CONTENTS OF THIS AGREEMENT AND TO PERFORM AS REQUIRED HEREBY.

Word Systems, Inc.

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Customer

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_



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Word Systems, Inc

9045 River Road, Indianapolis, IN 46240

Ph: 1800.425.7627