

REPORT TO CITY COUNCIL

Approved by:

Department Director

Council Meeting of: August 21, 2019

Agenda Number: B-8

City Manager

SUBJECT:

Consideration of a Resolution of the City Council of the City of Madera, Approving an Annual Master Subscription and Service Agreement between the City of Madera and eCivis for Cost Allocation Software in the amount of \$2,499.00 and Authorizing the City Manager to Execute the Agreement

RECOMMENDATION:

Staff recommends the City Council (Council) adopt the Resolution Approving an Annual Master Subscription and Service Agreement between the City of Madera and eCivis for Cost Allocation Software and Authorizing the City Manager to Execute the Agreement.

SUMMARY:

This Master Subscription and Service Agreement is for eCivis Allocate by CostTree, a cloud-based cost allocation platform that the City of Madera (City) uses to allocate certain costs as part of the budget process. The annual subscription is \$2,499.00 and includes access to the online application for one subscriber.

DISCUSSION:

A cost allocation plan is an accounting report that calculates and spreads agency-wide indirect costs to departments and funds that receive a service from other departments. Most of the General Fund departments provide support services to other departments. As part of the budgeting process, these costs are allocated to the departments being supported based on an allocation method reflective of the type of service provided. As an example, the City Clerk's office provides support for all agency wide departments. The allocation basis for the City Clerks' department is the average number of Council Reports per year that are presented by each department. This information is entered into the software program and the resulting calculation for each department is used to prepare the cost allocation budget.

Calculating the cost of these services can be complex and time consuming. eCivis Allocate offers a cloud-based software program designed for use by government agencies that streamlines the allocation process to provide justification, transparency and hard data. The software allows staff to quickly upload the structure, budget and allocation basis of each department and produces a cost allocation plan based on current Federal regulations. Knowing the true cost of service is critical to justifying cost reimbursements and making better managerial decisions. The software application provides staff support, training and interpretation services as well as input validation and error check reports.

FINANCIAL IMPACT:

The financial impact to the General Fund will be \$2,499.00 for an annual subscription. The expenditure has been included in the FY 2019/2020 adopted budget.

CONSISTENCY WITH THE VISION MADERA 2025 PLAN:

Approval of this item is consistent with Strategy 115 of the Vision Plan - Economic Resource Provision: Ensure sufficient economic resources to provide adequate City services and prepare for future growth.

ALTERNATIVES:

As an alternative to adopting this resolution, the City Council may:

- Choose not to adopt and direct staff to find another resource for the service although this decision may result in higher overall implementation costs due to staff needing to learn new software.
- Direct staff to return to manually calculating a cost allocation plan although this decision would lead to increased training costs and greater opportunity for error.

ATTACHMENTS:

- Resolution
- Master Subscription and Service Agreement between the City of Madera and eCivis

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA, CALIFORNIA, APPROVING AN ANNUAL MASTER SUBSCRIPTION AND SERVICE AGREEMENT BETWEEN THE CITY OF MADERA AND ECIVIS FOR COST ALLOCATION SOFTWARE IN THE AMOUNT OF \$2,499.00 AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT

WHEREAS, the City of Madera (the "City") is in need of software to plan and calculate a cost allocation plan; and

WHEREAS, eCIVIS has agreed to provide the necessary software and support to allow the City to plan and generate a cost allocation plan; and

WHEREAS, the price proposed for the license to access the eCIVIS Allocate software is found to be fair and reasonable;

NOW THEREFORE, THE COUNCIL OF THE CITY OF MADERA does hereby resolve, find and order as follows:

1. The above recitals are true and correct.
2. A copy of the Master Subscription and Service Agreement is attached as Exhibit A.
3. The City Manager is authorized to execute the Agreement and any and all documents necessary to effectuate the Agreement on behalf of the City.
4. This resolution is effective immediately upon adoption

Exhibit A



ECIVIS MASTER SUBSCRIPTION AND SERVICE AGREEMENT

Date 7/16/2019
 Contract No. 11570

This Agreement is made by and between:

eCivis, Inc., a Delaware corporation ("eCivis")
 418 N. Fair Oaks Ave. #301
 Pasadena, CA 91103
 Fax: (626) 628-3232
 Sales Contact:
 Mark Manfre

and City of Madera, CA ("Customer")
 205 W 4th Street
 Madera, CA 93637
 Phone: 559-661-5454
 Principal Contact and Master Access Holder:
 Tim Przybyla, Financial Services Director

This Agreement, and the Exhibits attached hereto, set forth the business relationship between the parties and the terms and conditions under which the following products are licensed and Services are provided to Customer, and supersedes all previous agreements between eCivis and Customer.

Recurring Annual Fee(s)	Description	Units	Avg Unit Price	Total Price
Allocate: Base Subscription - Tier 1	Develop cost allocation plan and indirect cost rate for annual budgets < \$1Billion	1	\$6,000.00	\$6,000.00
Allocate: Base Standard License	License fee per user	1	\$1,000.00	\$1,000.00
Recurring Annual Fee(s) Sub-Total				\$7,000.00
Incentive Discount				(\$4,501.00)
TOTAL PRICE				\$2,499.00

Subscription Period(s) and Payment Terms

The Subscription Period of this Agreement will conclude 6/08/2020. Payment is due net 30 days from invoice date.

Cycle 1: 6/09/2019 through 6/08/2020 for a price of \$2,499.00


PRICE IS ONLY VALID IF AGREEMENT IS SIGNED ON OR BEFORE: 11:59PM PST, August 16, 2019.

IN WITNESS WHEREOF, the parties hereto have caused to be executed or executed this Agreement as of the day and year first above written.

Accepted By:
 City of Madera, CA

Accepted By:
 eCivis, Inc.

By: _____
 (Authorized Signature)

By: 
 (Authorized Signature)

Name: _____
 (type or print)

Name: James Ha
 (type or print)

Title: _____

Title: CEO

Date: _____

Date: 7/16/2019

Send invoice to (if different than address above): _____

eCivis Master Subscription and Service Agreement

THIS MASTER SUBSCRIPTION AND SERVICE AGREEMENT ("AGREEMENT") GOVERNS YOUR ACQUISITION AND USE OF ALL OUR SERVICES.

BY ACCEPTING THIS AGREEMENT, EITHER BY CLICKING A BOX INDICATING YOUR ACCEPTANCE OR BY EXECUTING THIS AGREEMENT, YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS "YOU" OR "YOUR" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES.

You may not access the Services if You are Our direct competitor, except with Our prior written consent. In addition, You may not access the Services for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes.

This Agreement was last updated on August 1, 2018. It is effective between You and Us as of the date of You accepting this Agreement.

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1. DEFINITIONS

"Affiliate" means any entity which directly or indirectly controls, is controlled by, or is under common control with the subject entity. "Control," for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

"Malicious Code" means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs.

"Professional Services" means work performed by Us for You by Our professional services division under this Agreement or any relevant purchase order. Such work may include, but not limited to, Grant Writing, Peer Review, Technical Assistance, Consulting, and/or Training services.

"Purchased Services" means Services that You or Your Affiliates purchase under this Agreement for Grants Network™, Allocate™ products and Professional Services.

"Services" means the products and services that are ordered by You and made available by Us online via the customer login link at <http://www.ecivis.com>, <https://www.costtree.net/> and/or other web pages designated by Us.

"Users" means individuals who are authorized by You to use the Services, and who have been supplied user identifications and passwords by You (or by Us at Your request). Users are limited to Your employees. Non-employees such as consultants, contractors and agents, and third parties with which You transact business may not be granted access.

"We," "Us" or "Our" means eCivis, a Delaware corporation.

"You" or "Your" means the company or other legal entity for which you are accepting this Agreement, and Affiliates of that company or entity.

"Your Data" means all electronic data or information submitted by You to the Purchased Services.

2. PURCHASED SERVICES

2.1. Provision of Purchased Services. We shall make the Purchased Services available to You pursuant to this Agreement and any relevant Purchase Order during a subscription term. You agree that Your purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by Us regarding future functionality or features.

2.2. User Subscriptions. Unless otherwise specified in writing, (i) Services are purchased as User subscriptions and may be accessed by no more than the specified number of Users, (ii) additional User subscriptions may be added during the applicable subscription term at the same pricing as that for the pre-existing subscriptions thereunder, prorated for the remainder of the subscription term in effect at the time the additional User subscriptions are added, and (iii) the added User subscriptions shall terminate on the same date as the pre-existing subscriptions. User subscriptions are for designated Users only and cannot be shared or used by more than one User but may be reassigned to new Users replacing former Users who no longer require ongoing use of the Services.

3. USE OF THE SERVICES

3.1. Our Responsibilities. By 11:59PM on the day prior to the cycle start date, we shall: (i) provide Our basic support for the Purchased Services to You at no additional charge, and/or upgraded support if purchased separately, (ii) use commercially reasonable efforts to make the Purchased Services available 24 hours a day, 7 days a week, except for: (a) planned downtime (of which We shall give at least 8 hours notice via the Purchased Services and which We shall schedule to the extent practicable during the weekend hours from 6:00 p.m. Friday to 3:00 a.m. Monday Pacific Time), or (b) any unavailability caused by circumstances beyond Our reasonable control, including without limitation, acts of God, acts of government, floods, fires, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving Our employees), Internet service provider failures or delays, or denial of service attacks, and (iii) provide the Purchased Services only in accordance with applicable laws and government regulations.

3.2. Our Protection of Your Data. We shall maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Your Data. We shall not (a) modify Your Data, (b) disclose Your Data except as compelled by law in accordance with Section 7.3 (Compelled Disclosure) or as expressly permitted in writing by You, or (c) access Your Data except to provide the Services and prevent or address service or technical problems, or at Your request in connection with customer support matters.

3.3. Your Responsibilities. You shall (i) be responsible for Users' compliance with this Agreement, (ii) be responsible for the accuracy, quality and legality of Your Data and of the means by which You acquired Your Data, (iii) use commercially reasonable efforts to prevent unauthorized access to or use of the Services, and notify Us promptly of any such unauthorized access or use, and (iv) use the Services only in accordance with the user guide and applicable laws and government regulations. You shall not (a) make the Services available to anyone other than Users, (b) sell, resell, rent or lease the Services, (c) use the Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (d) use the Services to store or transmit Malicious Code, (e) interfere with or disrupt the integrity or performance of the Services or third-party data contained therein, or (f) attempt to gain unauthorized access to the Services or their related systems or networks.

3.4. Usage Limitations. Services may be subject to other limitations, such as, for example, limits on the number of licenses, grants or applications that can be managed in Our Grants Network™ product, on the number of grant applications, peer reviews and/or trainings provided by Us, or number of licenses provided for Allocate™. Any such limitations are specified in the signature page of this Agreement.

3.5. Third Party Data. We do not own data or files submitted to Purchased Services by third parties. You assume all risks that may occur from downloading third-party data or files.

4. PROFESSIONAL SERVICES, COOPERATION: DELAYS

4.1. Should this Agreement include Professional Services as part of its User Subscriptions and each party agrees to cooperate reasonably and in good faith with the other in the performance of such Professional Services and acknowledges that delays may otherwise result. You agree to provide, or provide access to, the following as needed, and when applicable, for Services that require Us to be at Your location: office workspace, telephone and other facilities, suitably configured computer equipment with Internet access, complete and accurate information and data from Your employees and agents, continuous administrative access to its ecivis.com account, coordination of onsite, online and telephonic meetings, and other resources as reasonably necessary for satisfactory and timely performance of the Professional Services.

4.2. Each party agrees its respective employees and agents will reasonably and in good faith cooperate with each other in a professional and courteous manner in the performance of their duties under this Agreement to complete such Professional Services.

4.3. It is understood by You that delays in providing material or information resulting in missed deadlines does not constitute non delivery Professional Services by Us. We shall provide a reasonable timeline to ensure the delivery of Our Professional Services.

4.4. Reserved.

4.5. You shall provide to Us written acceptance of each Professional Service listed in Exhibit A within 5 business days of Professional Services being delivered to You. Failure to provide written acceptance during this period shall be deemed acceptance of Professional Services delivered.

5. FEES AND PAYMENT FOR PURCHASED SERVICES

5.1. Fees. You shall pay all fees specified under this Agreement. Except as otherwise specified herein, (i) fees are based on Services purchased and not actual usage for Purchased Services, (ii) payment obligations are non-cancelable and fees paid are non-refundable and will not result in any refund or credit and (iii) the number of User subscriptions purchased cannot be decreased during the relevant subscription term.

5.2. Invoicing and Payment. Unless otherwise stated in this Agreement, invoice charge(s) are due net 30 days from the invoice date. You are responsible for providing complete and accurate billing and contact information to Us and notifying Us of any changes to such information.

5.3. Overdue Charges. If any charges are not received from You by the due date, then at Our discretion, (a) such charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid, and/or (b) We may condition future subscription renewals on payment terms shorter than those specified in Section 5.2 (Invoicing and Payment).

5.4. Suspension of Service and Acceleration. If any amount owing by You under this or any other agreement for Our Services is 30 or more days overdue (or 10 or more days overdue in the case of amounts You have authorized Us to charge to Your credit card), We may, without limiting Our other rights and remedies, suspend Our Services to You until such amounts are paid in full. We will give You at least 7 days' prior notice that Your account is overdue.

5.5. Taxes. Unless otherwise stated, Our fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added, sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, "Taxes"). You are responsible for paying all Taxes associated with Your purchases hereunder. If We have the legal obligation to pay or collect Taxes for which You are responsible under this paragraph, the appropriate amount shall be invoiced to and paid by You, unless You provide Us with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, We are solely responsible for taxes assessable against it based on Our income, property and employees.

6. PROPRIETARY RIGHTS

6.1. Reservation of Rights in Services. Subject to the limited rights expressly granted hereunder, We reserve all rights, title and interest in and to the Services, including all related intellectual property rights and all legally protectable elements or derivative works. No rights are granted to You hereunder other than as expressly set forth herein.

6.2. Restrictions. You shall not (i) permit any third party to access the Services except as permitted herein or in an Order Form, (ii) create derivative works based on the Services except as authorized herein, (iii) copy, frame or mirror any part or content of the Services, other than copying or framing on Your own intranets or otherwise for Your own internal business purposes, (iv) reverse engineer the Services, or (v) access the Services in order to (a) build a competitive product or service, or (b) copy any features, functions or graphics of the Services.

6.3. Your Applications and Code. If You, a third party acting on Your behalf, or a User creates applications or program code using the Services, You authorize Us to host, copy, transmit, display and adapt such applications and program code, solely as necessary for Us to provide the Services in accordance with this Agreement. Subject to the above, We acquire no right, title or interest from You or Your licensors under this Agreement in or to such applications or program code, including any intellectual property rights therein. If You choose to use a third-party application with a Service, You grant Us permission to allow the application and its provider to access Your Data as required for the interoperation of the application with the Service. We are not responsible for any disclosure, modification or deletion of Your Data resulting from access by such application or its provider.

6.4. Your Data. Subject to the limited rights granted by You hereunder, We acquire no right, title or interest from You or Your licensors under this Agreement in or to Your Data, including any intellectual property rights therein. Unless otherwise specified in this Agreement or an Exhibit, You shall be solely responsible for collecting, inputting and updating all Your data. You shall review the accuracy of all data submitted into and through the Software and ensure the final accuracy of all reports or other products produced.

6.5. Suggestions. We shall have a royalty-free, worldwide, irrevocable, perpetual license to use and incorporate into the Services any suggestions, enhancement requests, recommendations or other feedback provided by You, including Users, relating to the operation of the Services.

6.6. Your Equipment. You shall be responsible for selecting, obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Services, including, without limitation, modems, hardware, servers, software, operating systems, networking equipment, web servers, and Internet access, but excluding the Software (collectively "Equipment"). You shall be responsible for ensuring that the Equipment is compatible with the Services and the Software. You shall also be responsible for the security and use of the Equipment.

7. CONFIDENTIALITY

7.1. Definition of Confidential Information. As used herein, "Confidential Information" means all confidential information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information is subject to open records requirements defined by state statute, unless explicitly exempt under state statute. Your Confidential Information shall include Your Data; Our Confidential Information shall include the Services; and Confidential Information of each party shall include the terms and conditions of this Agreement, as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information (other than Your Data) shall not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

7.2. Protection of Confidential Information. The Receiving Party shall use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) (i) not to use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) except as otherwise authorized by the Disclosing Party in writing, to limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates' employees, contractors and agents who need such access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein. Neither party shall disclose the terms of this Agreement other than its Affiliates and their legal counsel and accountants without the other party's prior written consent.

7.3. Compelled Disclosure. The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to such Confidential Information.

8. WARRANTIES AND DISCLAIMERS

8.1. Our Warranties. We warrant that (i) We have validly entered into this Agreement and have the legal power to do so, (ii) the Services shall perform materially in accordance with this Agreement, (iii) We will not transmit Malicious Code to You, provided it is not a breach of this subpart (iv) if You or a User uploads a file containing Malicious Code into the Services and later downloads that file containing Malicious Code. For any breach of a warranty above, Your exclusive remedy shall be as provided in Section 10.3 (Termination for Cause) below.

8.2. Your Warranties. You warrant that You have validly entered into this Agreement and have the legal power to do so.

8.3. Disclaimer. EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

9. LIMITATION OF LIABILITY

9.1. Limitation of Liability. NEITHER PARTY'S LIABILITY WITH RESPECT TO ANY SINGLE INCIDENT ARISING OUT OF OR RELATED TO THIS AGREEMENT (WHETHER IN CONTRACT OR TORT OR UNDER ANY OTHER THEORY OF LIABILITY) WILL EXCEED THE AMOUNT PAID BY YOU HEREUNDER IN THE 12 MONTHS PRECEDING THE INCIDENT, PROVIDED THAT IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT (WHETHER IN CONTRACT OR TORT OR UNDER ANY OTHER THEORY OF LIABILITY) EXCEED THE TOTAL AMOUNT PAID BY YOU HEREUNDER. THE FOREGOING SHALL NOT LIMIT YOUR PAYMENT OBLIGATIONS UNDER SECTION 5 (FEES AND PAYMENT FOR PURCHASED SERVICES).

9.2. Exclusion of Consequential and Related Damages. IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS OR REVENUES OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES HOWEVER CAUSED, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER SHALL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

10. TERM AND TERMINATION

10.1. Term of Agreement. This Agreement commences on the date You accept it and continues until all User subscriptions granted in accordance with this Agreement have expired or been terminated.

10.2. Term of Purchased User Subscriptions. User subscriptions purchased by You commence on the start date specified under this Agreement and continue for the subscription term specified herein.

10.3. Termination for Cause. A party may terminate this Agreement for cause: (i) upon 30 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

10.4. Return of Your Data. Upon request by You made within 30 days after the effective date of termination of a Purchased Services subscription, We will make available to You for download a file of Your Data in comma separated value (.csv) format along with attachments in their native format. After such 30-day period, We shall have no obligation to maintain or provide any of Your Data and shall thereafter, unless legally prohibited, delete all of Your Data in Our systems or otherwise in Our possession or under Our control.

10.5. Surviving Provisions. Section 5 (Fees and Payment for Purchased Services), 6 (Proprietary Rights), 7 (Confidentiality), 8.3 (Disclaimer), 9 (Limitation of Liability), 10.4 (Return of Your Data), 11 (Governing Law and Jurisdiction), 12 (General Provisions) and 13 (Mutual Indemnification) shall survive any termination or expiration of this Agreement.

11. GOVERNING LAW AND JURISDICTION

11.1. Agreement shall be governed by and construed and enforced in accordance with the laws of the State of California as it applies to a contract made and performed in such state.

11.2. Notice. All notices pertaining to this agreement shall be sent via certified mail to: eCivis, Inc., Attn: James Ha, CEO, 418 N. Fair Oaks Blvd. Suite 301, Pasadena, CA, 91103. To expedite processing, an electronic copy can be sent to legal@ecivis.com. Notices to You will be directed to the "Customer" address listed on the first page of this Agreement.

12. GENERAL PROVISIONS

12.1. Anti-Corruption. You have not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of Our employees or agents in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. If You learn of any violation of the above restriction, You will use reasonable efforts to promptly notify Our Legal Department (legal@ecivis.com).

12.2. Relationship of the Parties. The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.

12.3. No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement.

12.4. Waiver. No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right.

12.5. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect. Agreement shall be deemed as a joint work product of the parties and shall not be construed against either party as a drafter.

12.6. Attorney Fees. You shall pay on demand all of Our reasonable attorney fees and other costs incurred by Us to collect any fees or charges due Us under this Agreement following Your breach of Section 5.2 (Invoicing and Payment).

12.7. Assignment. Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior

written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, either party may assign this Agreement in its entirety (including all Order Forms), without consent of the other party, to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets not involving a direct competitor of the other party. A party's sole remedy for any purported assignment by the other party in breach of this paragraph shall be, at the non-assigning party's election, termination of this Agreement upon written notice to the assigning party. In the event of such a termination, We shall refund to You any prepaid fees covering the remainder of the term of all subscriptions after the effective date of termination. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

12.8. Entire Agreement. This Agreement, including all exhibits and addenda hereto constitutes the entire Agreement between the parties and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and either signed or accepted electronically by the party against whom the modification, amendment or waiver is to be asserted.

13. MUTUAL INDEMNIFICATION

13.1. Indemnification by Us. We shall defend You against any claim, demand, suit, or proceeding made or brought against You by a third party alleging that the use of the Services as permitted hereunder infringes or misappropriates the intellectual property rights of a third party (a "Claim Against You"), and shall indemnify You for any damages, attorney fees and costs finally awarded against You as a result of, and for amounts paid by You under a court-approved settlement of, a Claim Against You; provided that You (a) promptly give Us written notice of the Claim Against You; (b) give Us sole control of the defense and settlement of the Claim Against You (provided that We may not settle any Claim Against You unless the settlement unconditionally releases You of all liability); and (c) provide to Us all reasonable assistance, at Our expense. In the event of a Claim Against You, or if We reasonably believe the Services may infringe or misappropriate, We may in Our discretion and at no cost to You (i) modify the Services so that they no longer infringe or misappropriate, without breaching Our warranties under "Our Warranties" above, (ii) obtain a license for Your continued use of the Services in accordance with this Agreement, or (iii) terminate Your User subscriptions for such Services upon 30 days' written notice and refund to You any prepaid fees covering the remainder of the term of such User subscriptions after the effective date of termination.

13.2. Indemnification by You. You shall defend Us against any claim, demand, suit or proceeding made or brought against Us by a third party alleging that Your Data, or Your use of the Services in breach of this Agreement, infringes or misappropriates the intellectual property rights of a third party or violates applicable law (a "Claim Against Us"), and shall indemnify Us for any damages, attorney fees and costs finally awarded against Us as a result of, or for any amounts paid by Us under a court-approved settlement of, a Claim Against Us; provided that We (a) promptly give You written notice of the Claim Against Us; (b) give You sole control of the defense and settlement of the Claim Against Us (provided that You may not settle any Claim Against Us unless the settlement unconditionally releases Us of all liability); and (c) provide to You all reasonable assistance, at Your expense.

13.3. Exclusive Remedy. This Section 13 (Mutual Indemnification) states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any type of claim described in this Section.

[Remainder of page intentionally left blank, signature page is on the cover page to this Agreement]