



EMS Technology Solutions, LLC

Main Services Agreement

This Main Services Agreement governs the Customer's purchase and use of EMS Technology Solutions, LLC Services.

This Agreement and the purchase details of any sales order or purchase order constitute the entire Agreement between EMS Technology Solutions, LLC ("Company") and the City of Delray Beach, FL ("Customer"), collectively referred to as (the "Parties"). All terms and conditions contained in any other prior or subsequent oral or written communication, including, without limitation, terms and conditions contained in Customer's purchase order which are different from or in addition to this Agreement, are hereby rejected and shall not be binding on the Company, and the Company hereby objects thereto. Only amendments to this Agreement recorded in writing and signed by an authorized individual of both Parties hereto will be valid.

Both Parties shall abide by the entirety of the terms of this Agreement and any applicable laws, rules, and regulations in connection with furnishing or using the Services. All purchased Services are for Customer use only and may not be shared with other entity or persons.

This Agreement form was last updated May 17, 2024, and is effective between the Customer and Company beginning on the date of the Customer's acceptance of this Agreement. This Agreement may be accepted by 1) signing this Agreement or the Company's order form, or 2) submitting a purchase order 3) accessing Company's services. Upon acceptance, this Agreement will be legally binding on the Customer and the Company. Any individual accepting this Agreement on behalf of an entity, represents and warrants that they have the legal right and authority to do so and effectively binds such entity and its Affiliates to the terms of this Agreement.

The Services may not be used with the intent to monitor availability or performance.

Direct competitors of the Company are prohibited from accessing the Services unless the Company has provided prior written consent.

1. Definitions

1.1. **"Affiliate"** means any entity that directly or indirectly controls or is controlled by (i.e., retains more than 50% ownership of), or is under common control with, the subject entity.

1.2. **"Agreement"** means this Main Services Agreement.

1.3. **"Confidential Information"** refers to all confidential and proprietary information of a Party ("Disclosing Party") disclosed to the other Party ("Receiving Party") that is designated and clearly identified as confidential. Notwithstanding the foregoing, Confidential Information includes all Customer Data, regardless of whether such Customer Data is designated or confirmed in writing as confidential. Confidential Information may be furnished to a Receiving Party orally (and promptly confirmed in writing) or in writing. Subject to the provisions of Section 7 below, Confidential Information (except for Customer Data) does not include any information that 1) is or becomes generally known to the public without breach of any obligation owed to the Disclosing

Party, 2) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, 3) was independently developed by the Receiving Party without breach of any obligation owed to the Disclosing Party, or 4) is received from a third party without breach of any obligation owed to the Disclosing Party.

- 1.4. **“Company”** means EMS Technology Solutions, LLC, a Georgia limited liability company.
- 1.5. **“Customer”** means the entity and any of its Affiliates that have accepted this agreement.
- 1.6. **“Customer Data”** means any data and information submitted by or for the Customer to the Company.
- 1.7. **“Equipment”** means hardware and consumables that can be used with a Company Service.
- 1.8. **“Non-EMS Technology Solutions Application or Equipment”** means any application or equipment not created by the Company. This includes all integrated solutions and equipment.
- 1.9. **“Parties”** means both the Company and Customer and a **“Party”** means the Company and Customer individually. Each Party includes all employees and affiliated contractors.
- 1.10. **“Professional Services”** refers to additional Services including setup expenses, remote hourly training, data entry hours, onsite professional services, remote optimization services, or custom IT systems integration and development.
- 1.11. **“Service”** or **“Services”** refers to the licenses to the Company’s management software as a service, including but not limited to the Operative IQ management software.
- 1.12. **“Term”** means the length of time the Agreement is valid. The Term includes the initial agreed upon duration in addition to any extensions.
- 1.13. **“Users”** refers to anyone with authorized access to the Service.

2. Company Responsibilities

- 2.1. **Purchased Services.** Company will provide the Customer with access to the purchased licenses of the Operative IQ management software for the agreed upon Term.
 - 2.1.1. **Professional Services.** Professional Services, including setup expenses, remote hourly training, data entry hours, onsite professional services, remote optimization services, or custom IT systems integrations and development shall be as specified on the quote.
 - 2.1.1.1. **Training.** Remote hourly training includes dedicated time, scheduled by the Customer, for the Customer’s operations administrators to complete interactive training online with a Company Implementation Specialist. Onsite Professional Services fees include travel expenses within the continental United States. Travel Expenses outside of the continental United States are not included and will be invoiced upon completion of travel. Training packages are available for use up to one year from the date of purchase. Unused training hours or onsite packages will not be refunded after the one-year term has passed.
 - 2.1.1.2. **IT Professional Services.** IT Professional Services projects are typically started within four weeks of the signed Agreement date, subject to resource availability. Project timelines are clearly communicated with the Customer and the Customer agrees to engage in a timely manner for the project’s duration acknowledging that the

completion of the project is dependent on Customer engagement. Projects with no Customer engagement over two weeks will be put on hold and are subject to resource allocation and additional costs. Once projects are considered complete, any changes or additional requests are subject to revision fees, which will require an additional quote and authorized approval.

2.1.2. **Technical Support.** Company will provide 1) application support and hosting, 2) database management services for the Service on our application servers, and 3) on-going technical and non-technical support for application users as part of the Service. Maintenance upgrades to the Service that are relevant to all customers will be provided at no additional charge.

2.1.3. **Data Security.** Company uses a Disaster Recovery as a Service (DRAAS) solution to replicate data to a secondary datacenter for use in case of a disaster. Local data backups are performed daily. Threat management services and data center security are in place to further protect the computing environment and Customer Data.

2.1.4. **Force Majeure.** If by reason of any act of God, labor dispute, strike, lockout, riot, war, inability to obtain labor or materials, pandemic, earthquake, fire or other action of the elements accident, internet service provider failure or delay, denial of service attack, governmental restriction or other cause beyond the reasonable control of a Party hereto (each, a "**Force Majeure Event**"), either party is unable to perform in whole or in part its obligations as set forth in this Agreement, excluding any obligations to make payments hereunder, then such Party will be relieved of those obligations to the extent it is so unable to perform and such inability to perform will not make such party liable to the other Party. Neither Party will be liable for any losses, injury, delay or damages suffered or incurred by the other party due to a Force Majeure Event; provided, however, payment of any amount due hereunder shall not be excused by a Force Majeure Event.

3. Use of Services

3.1. **Company Intellectual Property.** The Company represents and warrants that the Services provided by Company under this Agreement will not violate, infringe, or misappropriate any patent, copyright, trademark, trade secret, or other third party rights of another party. The Customer acknowledges that the Operative IQ management software, including all aspects of all versions of the system and software, all supporting documentation, and all associated intellectual property rights belong to the Company. The Company holds all related patent, trademark, copyright, or trade secret interests related to Services provided. The Customer also acknowledges that the Operative IQ management software, including the software and supporting documentation, is treated by Company as its secret and proprietary information of substantial value and the Customer shall keep such information in confidence and shall not use, copy, disclose, reverse engineer, nor permit any other third party to use, copy, disclose, or reverse engineer for any purpose not specifically authorized under this agreement, unless required by law. All rights not granted in this Agreement are reserved by Company.

3.2. **Usage Restrictions.** The Customer will not share the Services with anyone other than its Users nor shall the Customer use the Services to the benefit of anyone other than itself and its Affiliates. Customer will not use the Services for any illegal or unlawful purpose.

3.3. **Customer Responsibilities.** The Customer acknowledges that it will take sole responsibility for the actions of its Users, employees, and Affiliates in connection with the Services and shall use the Services only as provided in this Agreement and any Service documentation provided by the Company. The Customer is also solely responsible for the Customer Data connected with the Services. Customer acknowledges that the Services depend on stable, reliable internet service

and that changes to internet access or networks can result in a loss of Services.

- 3.4. **Removal of Non-Company Equipment and Applications.** If the Customer receives notice that a non-Company application or equipment used with a Service is no longer lawful to operate or use, they will cease use and remove or disable the application or piece of equipment. The Customer acknowledges that they may 1) be required to provide proof of removing or disabling the application or equipment, and 2) be removed from Company Services if they refuse to discontinue illegal use of the non-Company application or equipment.

4. Non-EMS Technology Solutions Applications and Equipment

- 4.1. **Equipment.** The Customer may purchase equipment including RFID Equipment, Barcode and RFID Tag Printers, Biometric Readers, and Consumables as needed to operate the Service. Prices for equipment will be specified on the order and invoices are payable upon receipt. Equipment returns are accepted within 30 days for Equipment that is in its original packaging. Used equipment or returns after the 30-day period are subject to approval and restocking fees.
- 4.2. **Integrations with Third Party Applications.** The Services provided may integrate with a non-Company application. Company does not guarantee the Customer continued availability of the third-party services and are not required to provide a notice or a refund in connection with a change to a third party integrated service.
- 4.3. **Warranties.** Equipment sold by Company carries only those warranties specified by their manufacturers, for the duration specified by their manufacturer, with no other expressed or implied warranties. If there is a Customer warranty claim, Company has the option to repair or replace the equipment but is not liable for any damage, modification or nonconformity of equipment caused by the Customer. Customer will be responsible for all regular service and maintenance of equipment.

5. Fees and Payment

- 5.1. **Service Fees.** Requested payment and the quantity of licenses specific to each Service will be specified on the order and invoice.
- 5.2. **Taxes.** Prices do not include any sales, use, or excise tax or any other tax, duty, or charge which is now in effect or may be imposed by any Federal, State, or other authority during the Term. All such taxes, duties, or other charges shall be assessed and paid by the Customer at the time of invoicing unless the Customer provides Company an exemption certificate acceptable to the appropriate authorities.
- 5.3. **Late Fees.** 1.5% of the requested payment or the maximum amount permitted by law, whichever is less, will be charged in addition to the requested payment as a late fee 90 days after an undisputed payment was due.
- 5.4. **Pricing Increases.** Company reserves the right to increase prices at the time of renewal, up to and including a maximum of 5% increase annually.
- 5.5. **Changes in License Quantity.** The quantity of licenses can be increased or decreased without penalty by contacting Company. Minimum license requirements may apply, depending on the Service selected. All changes to the Services or Equipment must be by a written amendment or change order. Such changes to the Services or Equipment will still be subject to this Agreement unless otherwise specified in the amendment or change order.

- 5.6. **Invoicing and Payment.** Electronic invoices will be provided to the Customer. Payment terms are annual net 45, unless otherwise agreed upon terms have been indicated in the invoice. If the Service is cancelled during the Term, the license will be prorated to reflect the number of months remaining in the then current Term.
- 5.7. **RFID Solutions.** All RFID Solutions require a non-cancellable purchase order and are payable upon receipt. Company reserves the right to require upfront payment for equipment and supplies as well as the right to cancel any order they believe to be fraudulent.
- 5.8. **Professional Services.** All Professional Services require a non-cancellable purchase order and are payable upon receipt.

6. Term and Termination

- 6.1. **Term and Renewal.** The initial Term begins on the order date and lasts for one year. Upon expiration, the Term will automatically renew for an additional year, unless terminated in accordance with Section 6.2 or Section 6.3. The renewals may not exceed a total of four one-year terms.
- 6.2. **Termination.** Either Party can terminate this Agreement at any time without penalty and without cause as long as they provide written notice informing the other Party of their intent at least 30 days in advance. Company may immediately terminate this Agreement by written notice to the Customer if the requested payment is not paid within 90 days of the due date. Both Parties reserve the right to terminate this Agreement immediately by written notice if the other Party 1) is no longer a going concern, or 2) commits or suffers any act of bankruptcy or insolvency.
- 6.3. **Non-appropriation.** Notwithstanding anything to the contrary contained herein or in the order, if the Customer's City Commission does not appropriate the funding needed by the Customer to make payments under this Agreement for a given fiscal year, the Customer will not be obligated to pay amounts due beyond the end of the last fiscal year for which funds were appropriated. In such event, the Customer will promptly notify the Company of the non-appropriation, and this Agreement will be terminated at the end of the last fiscal year for which funds were appropriated. No act or omission by the Customer which is attributable to non-appropriation of funds shall constitute a breach of or default under this Agreement.
- 6.4. **Refund upon Termination.** If the Customer pays for Services and terminates this Agreement, Company will promptly issue a pro-rated refund equal to the number of months remaining in the then-current Term.
- 6.5. **Customer Data after Termination.** The Customer will be provided access to a backup of their data upon written request if this Agreement is terminated for any reason. Company will retain a copy of the Customer's Data for up to one year from the date of termination unless otherwise directed by Customer or longer if required by law.
- 6.6. **Surviving Provisions.** Any section of this Agreement which requires survival after the termination hereof, including but not limited to Sections 7, 8 and 9 shall survive termination or expiration of this Agreement.

7. Confidentiality

- 7.1. **Protection of Confidential Information.** Neither Party may share or use Confidential Information, without the prior written consent of the other Party, except as required in performance of this Agreement or by law (see the Compelled Disclosure Section (7.2)). Both Parties will maintain all ownership rights to their own Confidential Information. The Customer will

during the Term and at all times thereafter maintain the confidentiality of all source materials and sensitive information regarding software functionality.

Company may use Customer information as input data in a database where the Customer's identity shall remain anonymous, as long as the Customer has provided prior written consent. Neither Party will make any press release or public announcement regarding this Agreement without the other Party's prior written consent, except when required by law.

- 7.2. **Compelled Disclosure.** Either Party may disclose Confidential Information of the other Party to the extent required by the law, if compelled by a valid order or directive from any court, government body, agency, department, political subdivision, or entity of the United States, any state, or in response to a subpoena (or similar instrument), or as necessary to perform or establish its obligations or to enforce its rights obligations under this Agreement. The Receiving Party must give prompt notice, where allowed by law, to the Party whose confidential information is being requested of any order, directive, or subpoena prior to disclosure so that an appropriate protective order can be sought, or other action can be taken, at the Disclosing Party's sole expense.

8. Mutual Indemnification

- 8.1. **Indemnification by Company.** The Contractor shall indemnify and hold harmless the City and its officers, employees, agents, and instrumentalities from any and all liability, losses or damages, including attorney's fees and costs of defense, which the City or its officers, employees, agents, or instrumentalities may incur as a result of claims, demands, suits, causes of actions, or proceedings of any kind or nature arising out of, relating to, or resulting from the performance of the agreement by the Contractor or its employees, agents, servants, partners, principals, or subcontractors. The Contractor shall pay all claims and losses in connection therewith, and shall investigate and defend all claims, suits, or actions of any kind or nature in the name of the City, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may be incurred thereon. The Contractor expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Contractor shall in no way limit the responsibility to indemnify, keep and save harmless, and defend the City or its officers, employees, agents, and instrumentalities as herein provided the obligations of this section shall survive the term of this Agreement.
- 8.2. **Indemnification by Customer.** To the extent permitted by law, the Customer will defend Company from any claims, losses, damages, penalties, judgments, and liabilities, including all reasonable related costs and expenses, brought against Company by a third party claiming 1) a Service was combined with a non-Company application or configuration provided by the Customer that violates copyright or intellectual property laws, or 2) the Services are being used in an unlawful way. Company will provide prompt written notice of any claim against Company by a third party and will give all reasonable assistance with respect thereto, at the Customer's expense. The obligations in this section only apply if the claim does not arise from Company's violation of this contract. Nothing in this agreement shall be considered a waiver of Customer's sovereign immunity protections under Section 768.28, Florida Statutes.
- 8.3. **Exclusive Remedy.** This "Mutual Indemnification" section (8.1-8.3) states the indemnifying party's sole liability to the indemnified party and the indemnified party's sole remedy against the indemnifying party for any third-party claim.

9. Liability Limitation & Warranty Limitations

- 9.1. **LIMITATION OF LIABILITY.** COMPANY'S LIABILITY FOR A CLAIM OR A JUDGMENT BY ANY ONE PERSON SHALL BE LIMITED TO THE SUM OF \$200,000 OR ANY CLAIM OR JUDGMENT, OR PORTIONS THEREOF, WHICH, WHEN TOTALED WITH ALL OTHER CLAIMS OR JUDGMENTS PAID BY COMPANY ARISING OUT OF THE SAME INCIDENT OR OCCURRENCE, SHALL BE LIMITED TO \$300,000. THE OBLIGATIONS OF THIS SECTION SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS AGREEMENT.
- 9.2. **Exclusion of Consequential and Related Damages.** NEITHER PARTY WILL BE RESPONSIBLE FOR PUNITIVE DAMAGES NOR SPECIAL, PROXIMATE, INCIDENTAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES INCLUDING LOSS OF PROFITS AS LONG AS THE LIABLE PARTY HAS NOT BREACHED THIS AGREEMENT.
- 9.3. **WARRANTY LIMITATION.** EXCEPT FOR ANY EXPRESS WARRANTY PROVIDED HEREIN, COMPANY AND ITS LICENSORS AND SUPPLIERS EXPRESSLY DISCLAIM ALL, AND MAKE NO, WARRANTIES (WHETHER EXPRESS, STATUTORY, IMPLIED OR OTHERWISE ARISING IN LAW OR FROM A COURSE OF DEALING OR USAGE OF TRADE), INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD-PARTY RIGHTS. COMPANY DOES NOT WARRANT THAT THE COMPANY SERVICES WILL MEET CUSTOMER'S REQUIREMENTS OR THAT THE OPERATION OF THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE.

10. Security.

- 10.1 **Security Measures.** Company deploys commercially reasonable security precautions intended to protect against unauthorized access to Customer Data stored by Company, including use of firewalls, encryption, authentication technologies and background screenings for employees. Not all security risks are reasonably foreseeable, however, and Company is not responsible for the consequences of security breaches that are not reasonably foreseeable and not reasonably within its control. Notwithstanding the foregoing or anything else to the contrary contained herein or in the order, Company agrees that in the event of any actual or suspected security breach, or any actual or suspected unauthorized access, disclosure, or use of Customer Data, Company shall be solely responsible for containing such security breach, mitigating potential risks to affected individuals, and immediately notifying Customer, affected individuals, and regulatory authorities where required by law.
- 10.2 **Non-Circumvention.** Neither Customer nor any Customer personnel may circumvent or otherwise interfere with any User authentication or security used by Company. Customer will immediately notify Company of any breach, or attempted breach, of security that Customer knows of or reasonably believes to know of.

11. Proprietary Rights

- 11.1. **License by Customer to Use Feedback.** Company reserves the right to make any changes to the Services, at its sole discretion, based on Customer feedback. The Customer grants Company free use of and revokes any proprietary claim to Customer's feedback.
- 11.2. **License by Customer to Company.** During the Term, Customer grants Company nonexclusive, worldwide license to host, copy, use, transmit, and display any non-Company application or program code created for or by the Customer to use with the Services. If the Customer uses a non-Company application, the Customer permits Company to provide the third

party with Customer Data and information about the Customer's usage as appropriate for the programs to work together. Customer also grants Company a non-exclusive, worldwide license to use, copy, and store any Customer Data solely for the purpose of providing the Services in accordance with the terms of this Agreement. Notwithstanding this limited license, Customer maintains exclusive ownership of all Customer Data.

- 11.3. **Federal Government End Use Provisions.** Company provides the Services for federal government end use. In accordance with applicable law, the federal government has the right to use, modify, reproduce, release, perform, display, or disclose relevant commercial computer software and its related documentation and data, provided that if a federal government agency requires additional access rights, it must negotiate with both Parties to develop an acceptable addendum to this Agreement.

12. General Provisions

- 12.1. **Anti-Corruption.** Both Parties acknowledge that they have neither given nor received any illegal or improper bribe from the other agent of the other Party in connection with this Agreement. Reasonable gifts given in the normal course of business do not violate this section's restrictions.
- 12.2. **Export Compliance.** The Services may be subject to United States' export laws. Both Parties assert that they are not on any U.S. government denied-party list. The Customer acknowledges that they will not provide access to the Service to any Users in a U.S. embargoed country or region.
- 12.3. **Equal Opportunity Compliance.** Company will perform its obligations under this Agreement without discrimination on account of race, color, religion, national origin, ancestry, age, gender, genetic information, physical or mental disability, medical condition, marital status or veteran's status and in compliance with all applicable laws related thereto.
- 12.4. **Relationship of Parties.** Each Party is an independent contractor of the other Party. Unless otherwise authorized in writing, neither Party will operate as the legal agent of the other for any purpose and therefore has no authority to 1) make or underwrite any promise, warranty, or representation to execute any Agreement, or 2) assume any obligation or responsibility in the name of or on behalf of the other Party.
- 12.5. **Assignment.** The rights and obligations established in this Agreement will be binding and take effect to the benefit of both Parties and their respective successors and assign. Either Party may assign this Agreement under two circumstances: 1) the Party transfers offices by way of merger, reorganization, consolidation, amalgamation, or as part of a transfer of all or substantially all of the assigning Party's assets, or 2) the non-transferring Party consents to the transfer. In the event of a transfer, the transferring Party agrees to confirm that the transferee will adhere to the obligations and terms dictated in this Agreement. Both Parties are required to promptly give the other Party written notice of any anticipated assignment of the Agreement.
- 12.6. **Notices.** All notices or other communications required or permitted by this Agreement must be recorded in writing and 1) personally delivered 2) sent by facsimile (any facsimile should be promptly confirmed by personal delivery, registered or certified mail, or overnight courier) or 3) sent by a nationally recognized overnight courier or 4) sent by registered United States mail with prepaid postage and a return receipt requested.

Notices or other communications will be considered received according to the following: 1) if delivered personally, at the time of delivery, 2) if sent by facsimile, at the time the confirmation of the facsimile is provided, regardless of the method of confirmation, 3) if sent by nationally

recognized overnight courier, at the time of delivery by the courier, or 4) if sent by registered or certified mail with postage prepaid and a return receipt requested, 72 hours after the postmark date.

- 12.7. **Headings.** The headings in this Agreement are for convenience only and do not affect the meaning of the terms of this Agreement.
- 12.8. **Waiver.** The failure of either Party to assert a right or insist the other Party complies with any term of this Agreement does not constitute a waiver of that right or insistence nor does it excuse a subsequent failure to perform any such term by the other Party.
- 12.9. **No Third-Party Beneficiaries.** This Agreement is solely for the benefit of the Customer, Company, and their Affiliates, and do not and are not intended to create or grant any rights, contractual or otherwise, to any third party or entity.
- 12.10. **Severability.** Both Parties acknowledge that all clauses of this Agreement are independent of the others. Therefore, if any term of this Agreement is determined to be illegal, invalid, or unenforceable under any future or present law, the conditions in question will be removed, as long as the rights or obligations of either Party under this Agreement will not be materially or adversely affected, and the other condition will remain in effect to the fullest extent under the law. Each Party waives any provision of law that would render any provision prohibited or unenforceable in any respect.
- 12.11. **Debarment.** Company hereby certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this Agreement by any governmental department or agency. Company must notify Customer within thirty (30) days if debarred by any governmental entity during this Agreement.
- 12.12. **Compliance with E-Verify Program.** Pursuant to N.C.G.S. § 143-133.3, Company agrees that, unless it is exempt by law, it shall verify the work authorization of its employees utilizing the federal E-Verify program and standards as promulgated and operated by the United States Department of Homeland Security, and it shall require its subcontractors to do the same. Upon request, Company agrees to provide Customer with an affidavit of compliance or exemption.
- 12.13. **Governing Law and Venue.** This Agreement shall be construed in accordance with the City of Delray Beach's Code of Ordinances and the laws of the State of Florida. Any dispute relating to this Agreement shall only be filed in a court of competent jurisdiction in Palm Beach County, Florida, and each of the parties to this Agreement submits itself to the jurisdiction of such court. It is hereby understood and agreed that in the event any lawsuit in the judicial system, federal or state, is brought to enforce compliance with this contract or interpret same, or if any administrative proceeding is brought for the same purposes, each party shall pay their own attorney's fees and costs, including appellate fees and costs.
- 12.14. **Dispute Resolution.** Should a dispute arise as to the terms of this Agreement, both parties agree that neither may initiate binding arbitration. The parties may agree to non-binding mediation of any dispute prior to the bringing of any suit or action.
- 12.15. **Governmental Immunity.** Customer, to the extent applicable, does not waive its governmental immunity by entering into this Agreement and fully retains all immunities and defenses provided by law with regard to any action based on this Agreement.
- 12.16. **Public Records. IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA**

STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS OR DESIGNEE BY PHONE AT 561-243-7050 OR VIA EMAIL AT CITYCLERK@MYDELRAYBEACH.COM.

Contractor shall comply with public records laws, specifically to:

- i. Keep and maintain public records required by the City to perform the service.
- ii. Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Florida Statute or as otherwise provided by law.
- iii. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if the Contractor does not transfer the records to the City.
- iv. Upon completion of the Agreement, transfer, at no cost, to the City all public records in possession of the Contractor or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City upon completion of the Agreement, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Agreement, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.
- v. If the Contractor does not comply with this section, the City shall enforce the contract provisions in accordance with the contract and may unilaterally cancel this contract in accordance with state law.

12.17. **Inspector General.** Contractor is aware that the Inspector General of Palm Beach County has the authority to investigate and audit matters relating to the negotiation and performance of this contract, and may demand and obtain records and testimony from Contractor and its subcontractors and lower tier subcontractors. Contractor understands and agrees that in addition to all other remedies and consequences provided by law, the failure of Contractor or its subcontractors and lower tier subcontractors to fully cooperate with the Inspector General when requested may be deemed by the City to be a material breach of this Agreement justifying its termination.

12.18. **Fiscal Funding.** The continuation of this Agreement beyond the end of any fiscal year shall be subject to both the appropriation and the availability of funds in accordance with Florida law.

12.19. Pursuant to Florida §787.06(13), Contractor has provided to the City an affidavit executed by an officer or representative of the nongovernmental entity under penalty of perjury attesting that Contractor does not use coercion for labor or services as defined in the statute.

12.20. By entering into this Agreement, Contractor acknowledges its obligation to comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility." Contractor affirms and represents it is registered with the E-Verify system, utilizing same, and will continue to utilize same as required by law. Compliance with this section includes, but is not limited to, utilization of the E-Verify System to verify the work authorization status of all newly hired employees and requiring all subcontractors to provide an affidavit attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. Failure to comply with this section will result in the termination of this Agreement, or if your subcontractor knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than 20 calendar days after the date of termination. If terminated for a violation of the statute by Contractor, the Contractor may be prohibited from conducting future business with the City or awarded a solicitation or contract for a period of 1 year after the date of termination. All costs incurred to initiate and sustain the aforementioned programs shall be the responsibility of the Contractor.

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IN WITNESS WHEREOF, the City and Contractor executed this contract as indicated in this Agreement.

ATTEST:

CITY OF DELRAY BEACH, FL

Alexis Givings, City Clerk

Thomas F. Carney, Jr., Mayor

Approved as to form and
legal sufficiency:

Lynn Gelin, City Attorney

EMS TECHNOLOGY SOLUTIONS, LLC

By: _____

Print Name: _____

Title: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, 20__, by _____ (name of person), as _____ (type of authority) for EMS TECHNOLOGY SOLUTIONS, LLC (name of party on behalf of whom instrument was executed).

Personally known ____ OR Produced Identification
Type of Identification Produced _____

Notary Public – State of _____

May 7, 2024