This Contract is entered into on the date indicated below by and between Doug Welborn, East Baton Rouge Clerk of Court, (“CLERK”), and _________________ (“CONTRACTOR”) a __________________ authorized to do business in the State of Louisiana, acting through its duly authorized agent, ______________ (collectively, “Parties”). In consideration of the mutual covenants and agreements herein, parties hereto mutually agree as follows:

ARTICLE 1 - CONTRACTOR'S SERVICES

1.1 CONTRACTOR agrees to install, migrate, train designated employees, and facilitate a successful Go-Live of a replacement RMS/DMS systems and support the systems in accordance with the Request for Qualifications and Proposals dated December 20, 2019 and CONTRACTOR’s proposal thereto (“SERVICES”).

1.2 CONTRACTOR’s relationship to CLERK shall be that of an independent contractor. It is understood that Parties have not entered into any joint venture or partnership with each other. CONTRACTOR shall not be considered an agent of CLERK.

1.3 CONTRACTOR shall not subcontract any of the services herein without the express prior written approval of CLERK.

1.4 Within forty-five (45) days of the execution of this CONTRACT, or pursuant to a mutually agreeable extension of time, CLERK and CONTRACTOR shall cooperatively build a comprehensive list of Requirements Documents for the completion of each deliverable under Article 1.1 of the CONTRACT. The Requirements Documents will consolidate and provide a comprehensive list of requirements for each deliverable along with the agreed upon workflow, processes, and implementation plan. The Requirements Documents will consolidate the RFQ&P proposal requirements, MoSCow documents, CONTRACTOR’s proposal response, and any other documentation related to the RFQ&P. Once each Requirements Document has been written and is considered complete by the Parties, it shall be signed by CLERK and CONTRACTOR, thereby identifying and acknowledging the contract requirements and specifications.

1.5 Upon successful completion of each deliverable under Article 1.1 of the CONTRACT, CLERK and CONTRACTOR shall sign the associated Requirements Document, confirming the acceptance and completion of the requirements for that item.

1.6 Within forty-five (45) days of the execution of this CONTRACT, or pursuant to a mutually agreeable extension of time, CLERK and CONTRACTOR shall cooperatively prepare an Implementation Schedule, setting forth the time frames for installation, migration, testing, training, integration, and successful Go-Live of a replacement.
1.7 CONTRACTOR shall keep its security software up-to-date and consistent with industry standards to the satisfaction of CLERK.

1.8 CONTRACTOR shall designate a Project Manager who shall act as the primary contact with CLERK’s designee on all matters pertaining to this Contract. CONTRACTOR shall notify CLERK of key personnel changes in writing as soon as practicable.

1.9 CONTRACTOR shall provide support to CLERK during its regular business hours, 7:30 am to 5:30 pm, Monday through Friday. CONTRACTOR shall provide emergency support at no cost to CLERK after CLERK’s regular business hours when necessary to restore access.

1.10 CONTRACTOR shall ensure that any routine maintenance, updates, or other prescheduled system downtime occurs after CLERK’s regular business hours. CONTRACTOR shall give CLERK advance notice of any routine maintenance, updates, or other prescheduled system downtime. CONTRACTOR shall make every effort to ensure that any emergency maintenance, updates, and/or downtime occurs after CLERK’s regular business hours. To the extent possible, CONTRACTOR shall provide CLERK with advance notice of any emergency maintenance, updates, and/or downtime.

1.11 CONTRACTOR shall annually, on or before July 15, provide CLERK with a record of all support and maintenance provided during the previous fiscal year.

ARTICLE 2 - COMPENSATION FOR SERVICES

2.1 CLERK agrees to pay fees in accordance with CONTRACTOR’s proposal. CONTRACTOR will submit to CLERK an itemized statement and a progress report each month supporting any requested compensation for services performed during the previous month and indicating the percentage of work completed.

2.2 During installation, migration, testing, training, integration, and successful Go-Live of a replacement, CLERK shall retain 10% of each statement issued pursuant to this Contract as surety for performance (“retainage”). Within 90 days of the completion of the Go-Live and upon request of CONTRACTOR, CLERK shall release the retainage, provided that all related Requirements Documents are signed and acknowledged by the parties pursuant to Article 1.6. If, upon receipt of a request to release retainage, CLERK does not agree that the CONTRACTOR completed all items properly, CLERK shall provide CONTRACTOR with a detailed list of items to be corrected prior to release of retainage. CONTRACTOR and CLERK shall work cooperatively to remedy the items on the detailed list. The retainage shall be released by CLERK to Contractor within thirty (30) days of the successful completion of all items in the detailed list and the execution of all related Requirements Documents pursuant to Article 1.6.

2.3 In the event that there are items to be corrected after completion of the Go-Live pursuant
to Article 2.2, CONTRACTOR shall be responsible for any costs incurred by CLERK as a result of CONTRACTOR’s failure to successfully complete the Go-Live.

2.4 CONTRACTOR hereby agrees that the responsibility for payment of taxes on any compensation received pursuant to this Contract shall be CONTRACTOR’s obligation and will be reported under the Federal Tax I.D. number provided below.

2.5 CONTRACTOR acknowledges that CLERK is exempt from all state and local sales and use taxes.

2.6 Parties agree that the maximum amount payable under the Contract and for implementation of and perpetual use of the RMS/DMS system shall be the amount budgeted by CLERK for said project and shall in no event exceed $__________________.

2.7 CONTRACTOR shall submit an estimate of cost to CLERK for any additional work. CLERK shall not be liable for any payments for additional work unless CLERK issues a Notice to Proceed for the additional work after appropriating funds.

2.8 CONTRACTOR shall have no right to assess any fee for use of the RMS/DMS, including any fee for processing a local charge pursuant to this Contract. For any use of the RMS/DMS requiring processing of a local charge, CLERK shall determine the payment devices to be accepted and the fees applicable to processing the local charge. If CONTRACTOR is selected to process local charges, CONTRACTOR and CLERK shall enter into a separate agreement with respect to fees for processing local charges.

**ARTICLE 3 - CONTRACT TIME**

3.1 CONTRACTOR agrees to perform the services herein provided within the times herein set forth in the Implementation Schedule prepared pursuant to Article 1.7.

3.2 CONTRACTOR agrees to complete design of Go-Live by a date agreed upon by the parties.

3.3 CONTRACTOR may request an extension of the times provided in the Implementation Schedule and preceding paragraph, provided said application is made in writing prior to the expiration of the time provided for the applicable work, and is for reasons beyond CONTRACTOR’s control. If at any time the CONTRACTOR’s production is delayed for causes beyond its control (including, but not being limited to actions of any Participant or CLERK), CONTRACTOR shall immediately advise CLERK and request, in writing, a Stop Work Order or time extension for the work being delayed, including a revised Implementation Schedule. The loss of CONTRACTOR’s personnel shall not be considered a reason beyond CONTRACTOR’s control.

3.4 CONTRACT shall keep CLERK or CLERK’s designee apprised of the status of completion of SERVICES.
ARTICLE 4 – AUDIT REQUIREMENT

4.1 CONTRACTOR shall maintain records and accounts documenting the receipt of compensation paid under the terms of the Contract for a period of five (5) years from the completion of the services required by the Contract. CONTRACTOR shall permit authorized representatives of CLERK to inspect and audit data and records relating to performance under this Contract for a period of five (5) years after the issuance of a final payment for the services rendered.

ARTICLE 5 - GENERAL PROVISIONS

5.1 CONTRACTOR will furnish competent designers, developers, programmers and other staff qualified in their respective fields, and will provide adequate direction. All professional services shall be performed by individuals and entities with all current licenses required by the State of Louisiana to provide said service.

5.2 CONTRACTOR agrees to notify CLERK of any material changes in the Principals or Owners of CONTRACTOR, any change in corporate status or authorization to do business in Louisiana, any change in licensure status and of any fact that would materially affect CONTRACTOR’s ability to contract with CLERK or to timely complete the services required herein.

5.3 This Contract shall be interpreted according to the laws of the State of Louisiana. Parties irrevocably agree that the venue for any and all disputes arising out of this Contract, except for those disputes submitted to mutually agreeable mediation, shall be brought exclusively in the Nineteenth Judicial District Court for the Parish of East Baton Rouge, State of Louisiana.

5.4 Consistent with the applicable professional standard of care, CONTRACTOR shall comply with all applicable Federal, State and Local laws and ordinances, as shall all others employed by CONTRACTOR to carry out the provisions of this Contract.

5.5 Parties agree that upon signature of this Contract by Parties the Contract shall become fully valid and binding subject to the stipulations herein, and CONTRACTOR shall commence the work promptly when the Notice to Proceed is issued, consistent with applicable industry standards, and accomplish the required work in the time specified in Article 3 hereof.

5.6 This Contract shall be considered severable and if any portions thereof are declared to be invalid or unenforceable by a court of competent jurisdiction, all other portions shall remain in full force and effect.

5.7 No amendment to, or modification of, this Contract is effective unless it is in writing, identified as an amendment to or modification of this Contract, and signed by an authorized representative of each party.
5.8 No waiver by any Party of any of the provisions of this Contract shall be effective unless explicitly set forth in writing and signed by the Party so waiving. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Contract shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

5.9 Except as otherwise provided in this Contract, all notices, requests, consents, claims, demands, and waivers, (each, a "Notice", and with the correlative meaning "Notify") must be in writing and addressed to the other Party at its address set forth below. All Notices must be delivered by personal delivery, nationally recognized overnight courier, or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) on receipt by the receiving Party; and (b) if the Party giving the Notice has complied with the requirements of this Section.

Notice to CLERK
Greg Brown, Chief Deputy, Clerk of Court
222 St. Louis Street, Suite 179
Baton Rouge, LA 70802
Telephone: (225) 389-7642
Email: gbrown@ebclerkofcourt.org

Notice to CONTRACTOR
(NAME OF DESIGNEE)
[ADDRESS]
[PHONE/FAX/EMAIL]

5.10 This Contract, including and together with any related exhibits, schedules, attachments, and appendices, constitutes the sole and entire agreement between the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, regarding such subject matter.

5.11 The provisions of this Contract related to termination, transition, confidentiality, inspection, indemnification, and liability for damages shall survive the term of the Contract.

5.12 Neither Party shall be deemed to be in default of any provision hereof or be liable for any delay, failure in performance, or interruption of service resulting directly or indirectly from acts of God, civil or military authority, civil disturbance, war, strikes, fires, hurricanes, other catastrophes or natural disasters, or any other major force beyond its reasonable control.

ARTICLE 6 - TERMINATION

6.1 CLERK may terminate all or any portion of the services to be provided under this
Contract without cause and at its option by sending CONTRACTOR a written Notice of Termination. The Notice of Termination shall specify the work to be discontinued and shall identify the date the termination will be effective. If CLERK terminates this Contract for a reason other than a material, uncured breach by CONTRACTOR, CLERK agrees to reimburse CONTRACTOR upon receipt of itemized invoice for services satisfactorily performed and charges incurred by CONTRACTOR prior to termination. CLERK shall pay CONTRACTOR for the services satisfactorily performed and charges incurred prior to the Notice of Termination within thirty (30) days of receipt of an itemized invoice from CONTRACTOR.

6.2 Either Party may terminate this Contract for cause if the other party commits a material uncured breach. In the event that either party believes that a material breach has occurred, it shall direct to the breaching party a Notice of Proposed Termination, which Notice shall specifically delineate the alleged breach. From receipt of the Notice of Proposed Termination, the party allegedly at fault shall have ten (10) days to cure the alleged breach. Parties agree to cooperate in good faith in any effort to cure any breach identified in the Notice of Proposed Termination. If the breaching party fails to cure the breach, this Contract shall terminate immediately upon breaching party’s receipt of notice of termination from the other party.

6.3 The continuation of this Contract is contingent upon the appropriation of funds to fulfill the requirements of this Contract. If CLERK is unable to appropriate sufficient funds to provide for payments under the Contract, CLERK shall immediately notify CONTRACTOR. CLERK shall have the option to obtain those services for which CLERK has sufficient funds. The obligation to make payment under the Contract shall terminate on the last day of the fiscal year (June 30th) for which funds were appropriated.

ARTICLE 7 - MEDIATION

7.1 All claims, disputes, or other matters in question between the Parties to this Contract arising out of or relating to this Contract or any breach thereof shall be submitted to non-binding mediation prior to instigation of litigation, unless the parties mutually agree otherwise. Any mutual agreement by the Parties not to pursue mediation shall be set forth in writing and signed by an authorized representative of each party.

7.2 A demand for mediation shall be submitted in writing to the other Party pursuant to Section 6.7 of this Contract. A demand for mediation shall be made within a reasonable time after any claim, dispute, or other matter in question arises.

7.3 Both Parties shall be responsible for their costs and fees and shall share the costs of the mediation equally, unless otherwise agreed to in writing.

ARTICLE 8 – WARRANTIES AND INDEMNIFICATION

8.1 CONTRACTOR shall indemnify CLERK against any loss or expense arising out of any breach of this Contract or warranty specified herein. No cause of action, dispute,
controversy, or claim, regardless of form, arising out of this Agreement may be brought by either Party after the applicable time period for the cause of action.

8.2 CONTRACTOR shall be fully liable for the actions of its agents, employees, partners and subcontractors and shall fully defend, indemnify, and hold forever harmless CLERK and its respective employees, representatives, officers, directors, elected and appointed officials, and CLERK to the extent permitted by law, from and against any damages, losses, expenses and/or attorney's fees which result from any breach by CONTRACTOR of any of the terms, provisions, conditions, and/or limitations of the Contract, as well as any and all claims resulting from the negligence, liability, strict liability, and/or fault of CONTRACTOR.

8.3 CONTRACTOR warrants that the RMS/DMS installed hereunder shall be free from defect in design and implementation and will continue to meet the specifications agreed to during development and CONTRACTOR will, without any additional compensation, correct any such defect and make such additions, modifications, or adjustments to the RMS/DMS as necessary to operate as specified in its proposal.

8.4 CONTRACTOR warrants that its software will conform to the terms of this CONTRACT. CONTRACTOR will use reasonable efforts to correct software errors at no charge. If CONTRACTOR is unable to correct software errors, CONTRACTOR will refund any fees paid by CLERK for such defective software. Additionally, CLERK shall be entitled to any and all remedies available to CLERK pursuant to this Contract.

Other provision from executed CMS contract:

8.4 The inclusion of this provision could cause additional requirements to be read in to the RFQ&P (i.e. “CONTRACTOR warrants that all software and programming produced hereunder will be of original development by CONTRACTOR except for the software to be used for scanners…”). If so, a version of this warranty should be included in the contract. Much of Article 8.4 is specific to CLERK’s arrangement with Software and Services for the CMS. These provisions may end up applicable to the RMS/DMS contract, but such provisions are probably too specific to include in the sample contract.

ARTICLE 9 - INSURANCE

9.1 CONTRACTOR shall not commence work until Certificates of Insurance for all insurance required by this paragraph have been provided to CLERK and shall not allow any subcontractor to commence work on his subcontract until the insurance required has been obtained and submitted to CLERK. All Certificates of Insurance must contain provisions indicating that no cancellation or change in limits shall be effected for any cause without written notice to CLERK at least 30 calendar days prior to cancellation.

9.2 The insurance coverage shall be procured from an insurer approved by CLERK.
9.3 If at any time, any of the insurance policies required to be furnished by the CONTRACTOR under the terms of this Article shall lapse, expire, or fail to comply with the requirements of this Article, CONTRACTOR shall procure and obtain such new insurance policies as may be required in order to comply with the requirements of this Article. Upon obtaining a new insurance policy, CONTRACTOR shall submit a new Certificate of Insurance to CLERK for approval. Upon failure of CONTRACTOR to furnish, deliver and maintain required insurance this Contract, at the election of CLERK, may be declared suspended, discontinued or terminated. Failure of the CONTRACTOR to maintain any required insurance shall not relieve the CONTRACTOR from any liability under the Contract.

9.4 CONTRACTOR shall notify CLERK in writing within 30 calendar days of any claims filed against CONTRACTOR in excess of Twenty-Five Thousand Dollars ($25,000) relating to the scope of services provided under this Contract.

9.5 CONTRACTOR shall keep in effect and maintain until completion and acceptance of the work, insurance as follows:

(a) Commercial General Liability Insurance with at least One Million Dollars ($1,000,000) per occurrence and Two Million Dollars ($2,000,000) General Aggregate, covering claims for injuries to members of the public or damages to property of others arising out of any acts of CONTRACTOR undertaken to provide services for CLERK as required in this Contract or omission of CONTRACTOR or any of its employees, or subcontractors.

(b) Comprehensive Automobile and Vehicle Liability Insurance with at least One Million Dollars ($1,000,000) covering claims for injuries to members of the public and/or damages to property of others arising from the use of CONTRACTOR’s owned, non-owned or leased motor vehicles, including onsite and offsite operations.

(c) Statutory Worker’s Compensation as required by the State of Louisiana and Employers Liability Insurance with One Million Dollars ($1,000,000) in coverage.

(d) Professional Liability Coverage Professional Liability Insurance with limits of at least One Million Dollars ($1,000,000) per claim and Three Million Dollars ($3,000,000) in the aggregate. Said coverage shall include within its scope Cyber/Privacy protections unless included in another policy. CONTRACTOR shall be responsible for maintaining Professional Liability Insurance for a minimum of two years from the date of expiration or termination of this Contract. Upon request of CLERK, CONTRACTOR shall make available for inspection copies of all claims filed or made against any policy during the policy term.

(e) Umbrella Policy of at least Two Million Dollars ($2,000,000) in coverage. (1) The CLERK, its officials and employees must be named on all liability policies (except for Workmen’s Compensation) described above as additional insured. (2) Coverage afforded to the CLERK, its officials, employees and others insured pursuant to this Contract
applies as primary and not as excess or contributing to any other insurance issued in the name of the named or additional insured.

(f) Waiver of Subrogation – CONTRACTOR shall obtain a Waiver of Subrogation from each insurance carrier providing coverage required by this Contract for any and all claims which could be asserted against the CLERK, its employees, agents, representatives, officers, directors, elected and appointed officials.

ARTICLE 10 – CONFIDENTIALITY AND OWNERSHIP OF DOCUMENTS AND DATA

10.1 “Confidential Information” shall mean any materials or information which either Party reasonably regards as confidential or proprietary. Each party will keep in confidence and protect the Confidential Information of the other Party, and neither Party shall use or disclose to third parties the Confidential Information except as expressly permitted by this Contract. The employees and contractors and/or subcontractors of each Party shall be bound by this provision, and each Party shall inform its employees, contractors and/or subcontractors of their obligations with respect of Confidential Information to ensure that such obligations are met.

10.2 All work-product, including all programs developed by CONTRACTOR pursuant to this Contract, shall be exclusively owned by CLERK which shall have the right to copyright any program in CLERK’s name. CONTRACTOR shall agree not to use any information provided to CONTRACTOR by CLERK or any program created pursuant to this Contract for the benefit of any party other than CLERK. Upon termination of the Contract, CONTRACTOR shall surrender to CLERK all programs, source codes, documentation, materials and other materials either received from CLERK or developed by CONTRACTOR pursuant to this Contract.

10.3 CLERK shall retain ownership of all documents, records, and/or data migrated, imported, uploaded, or otherwise maintained in the RMS/DMS systems. CONTRACTOR is prohibited from using, selling, sharing, disclosing, or otherwise disseminating documents, records, and/or data owed by CLERK, except as necessary to provide SERVICES pursuant to this Contract.

10.4 No public news release, no technical papers, or presentations concerning this Project may be made by CONTRACTOR without prior written approval by CLERK.

ARTICLE 11 – PERFORMANCE BOND

11.1 CONTRACTOR shall submit a performance bond acceptable to CLERK in the amount of half of the total proposed cost through development and half of the total proposed cost of three months of operation. CONTRACTOR may deposit a cash bond with CLERK in the amount of half of the proposed cost through development and half of the proposed cost of three months of operation, in lieu of a performance bond.

11.2 In the event that CONTRACTOR fails to perform any of the obligations set forth in this
Contract in a timely manner or refuses to continue any obligation of this Contract, and where such nonperformance or unacceptable performance will cause CLERK to incur costs to have a third party perform such obligations, CLERK shall give written notice via electronic mail to CONTRACTOR of CLERK’s intention to make a claim on the performance bond or to incur such costs using the cash bond. CLERK shall give such notice at least ten (10) days prior to the date CLERK intends to make a claim on the performance bond or incur the costs using the cash bond. Upon delivery of such notice to CONTRACTOR, the Parties shall meet and confer in good faith in an attempt to remedy the perceived nonperformance or unacceptable performance. If the Parties are unable to remedy the perceived nonperformance or unacceptable performance, CLERK may make a claim on the performance bond or incur the intended costs using the cash bond, no earlier than the date set forth in CLERK’s written notice to CONTRACTOR.

11.3 Nothing in this Article shall alter the retainage or compensation for services as outlined in Article 2.

ARTICLE 12 - SUCCESSORS AND ASSIGNS

12.1 CONTRACTOR shall bind its successors, executors, administrators and assigns to this Contract and shall give CLERK’s successor the option to adopt the terms of this Contract.

12.2 CONTRACTOR may not assign this Contract without the prior written approval of CLERK.

ARTICLE 13 – TRANSITION REQUIREMENTS

13.1 Upon termination of this Contract for any reason or upon expiration of the Contract period, CONTRACTOR shall transition operation of the RMS/DMS to CLERK or a third party by complying with: (a) all terms and conditions stipulated in the Contract until the effective date of the termination or expiration; and (b) CLERK’s directions to assist in the orderly transition of equipment, services, software, leases and other related matters to CLERK or to a third party designated by CLERK.

13.2 Upon termination of this Contract for any reason or upon expiration of the Contract period, CONTRACTOR shall, upon request of CLERK, provide all data and images in the RMS/DMS to CLERK in a readable format.

13.3 Within thirty days of execution of this Contract, CONTRACTOR shall present to CLERK for approval, a comprehensive Transition Plan detailing the proposed schedule, activities, and resource requirements associated with transitioning operation of the RMS/DMS. Within thirty days of receipt of the Transition Plan, CLERK shall review and approve or request revision to the Transition Plan.
ARTICLE 14 – COMPLIANCE WITH CIVIL RIGHTS AND ETHICS LAWS


14.2 CONTRACTOR agrees not to discriminate in its employment practices, and to render services under this Contract without regard to race, color, religion, sex, national origin, veteran status, political affiliation, or disabilities. Any act of discrimination committed by Contractor, or failure to comply with applicable statutory obligations shall be grounds for termination of this Contract. CONTRACTOR shall be liable for any fines imposed for failure to comply with this provision.

14.3 CONTRACTOR acknowledges that CLERK is an elected official to whom the Louisiana Code of Governmental Ethics, La. R.S. 42:1101, et seq. (“Ethics Code”) applies and hereby represents that CONTRACTOR has made a diligent effort to determine that no conflict of interest or other violation of the Ethics Code will occur by execution of and/or performance of this Contract. CONTRACTOR agrees to immediately notify CLERK of any potential or actual violation of the Ethics Code.