

RESOLUTION NO. -13

**RESOLUTION AUTHORIZING TRANSFER OF SURPLUS FUNDS FOR PURCHASING
CERTAIN CAPITAL ITEMS IN THIS FISCAL YEAR INSTEAD OF FY14**

WHEREAS, there are surplus funds available in the departmental retirement expense accounts in the current FY13 budget, and

WHEREAS, there is a desire to use the surplus funds to purchase certain capital items now that are currently listed in the FY14 budget, and

WHEREAS, this transaction would allow the FY14 budget to be reduced by \$60,854 if the items were purchased now in the current fiscal year rather than waiting until FY14.

NOW THEREFORE BE IT RESOLVED that the City Council of the City of Foley, Alabama, as follows:

SECTION 1: Authorizes Transfer of funds from departmental surplus retirement accounts as reflected on the attached spreadsheet.

SECTION 2: Approves purchase of time and attendance system from Gorrie Regan not to exceed \$46,268.50 as reflected on the attached quote.

SECTION 3: Approves purchase of Fire Proof Filing Cabinet from Office Depot not to exceed \$3,000.

SECTION 4: Approves purchase of NeoGov Insight Hiring Management online job application web based system not to exceed \$11,585.00 as shown on the attached quote.

SECTION 5: This Resolution shall become effective immediately upon its adoption as required by law.

Transfer from Department Retirement Expense Accounts to Various Accounts						
Transfer FROM Department Account #01-xxx-1050	FY13 Budget	YTD as of 07/31	Projected Close (Based off of 07/31 Actuals)	Difference of Budget vs Projected Close	% of Remaining Total	Amount to Transfer From
Public Works	\$ 4,648.45	\$ 3,319.17	\$ 3,983.00	\$ 665.45	0.59%	\$ 361.49
Street	\$ 47,256.35	\$ 32,805.99	\$ 39,367.19	\$ 7,889.16	7.04%	\$ 4,285.64
Police	\$ 285,474.68	\$ 201,379.49	\$ 241,655.39	\$ 43,819.29	39.12%	\$ 23,803.99
Fire	\$ 74,635.73	\$ 53,260.88	\$ 63,913.06	\$ 10,722.67	9.57%	\$ 5,824.89
Sanitation	\$ 43,394.89	\$ 32,042.18	\$ 38,450.62	\$ 4,944.27	4.41%	\$ 2,685.88
Parks	\$ 36,961.64	\$ 24,200.51	\$ 29,040.61	\$ 7,921.03	7.07%	\$ 4,302.95
Library	\$ 31,537.67	\$ 22,600.85	\$ 27,121.02	\$ 4,416.65	3.94%	\$ 2,399.26
Comm. Dev.	\$ 29,519.46	\$ 21,172.46	\$ 25,406.95	\$ 4,112.51	3.67%	\$ 2,234.04
Mun. Complex	\$ 16,441.44	\$ 10,905.66	\$ 13,086.79	\$ 3,354.65	2.99%	\$ 1,822.35
Mun. Court	\$ 13,161.32	\$ 9,511.92	\$ 11,414.30	\$ 1,747.02	1.56%	\$ 949.03
Senior Center	\$ 10,156.41	\$ 7,353.38	\$ 8,824.06	\$ 1,332.35	1.19%	\$ 723.78
Gen. Gov't	\$ 73,396.78	\$ 50,616.02	\$ 60,739.22	\$ 12,657.56	11.30%	\$ 6,875.97
Maintenance	\$ 11,106.82	\$ 7,945.67	\$ 9,534.80	\$ 1,572.02	1.40%	\$ 853.97
Recreation	\$ 18,863.11	\$ 13,600.64	\$ 16,320.77	\$ 2,542.34	2.27%	\$ 1,381.08
Depot Museum	\$ 2,069.91	\$ 1,463.76	\$ 1,756.51	\$ -		-
Engineering	\$ 13,313.34	\$ 9,548.51	\$ 11,458.21	\$ 1,855.13	1.66%	\$ 1,007.76
Welcome Center	\$ 9,264.59	\$ 6,525.51	\$ 7,830.61	\$ 1,433.98	1.28%	\$ 778.98
Horticulture	\$ 8,594.37	\$ 6,298.40	\$ 7,558.08	\$ 1,036.29	0.93%	\$ 562.94
	\$ 729,796.96	\$ 514,551.00	\$ 617,461.20	\$ 112,022.36	100.00%	\$ 60,854.00
		Transfer To:				
Needed:		01-620-3500	Content Hosting	(1 month subscription)		\$ 779.00
Time System	\$ 46,269.00	01-620-5020	Supplies	(badges)		\$ 500.00
Cabinets	\$ 3,000.00	01-620-7010	Capital Purchases	(12 clocks)		\$ 44,990.00
NeoGov	\$ 11,585.00	(includes configure, install, manager train, Police & Fire setup)				
	\$ 60,854.00				Subtotal:	\$ 46,269.00
		01-620-3500	Content Hosting	(online applications)		\$ 11,585.00
		01-620-7010	Capital Purchases	Fire Proof Cabinet		\$ 3,000.00
					TOTAL:	\$ 60,854.00

PROPOSAL

NEOGOV™

Insight Enterprise (IN)

Account Detail:

Foley, City of (AL)	Jayne Dolan NEOGOV Regional Account Manager Email: jdolan@neogov.net Direct Line: 310-658-5732 Fax Line: 310-426-6305
<u>Quote Date:</u> 7/11/2013	
<u>Requested Service Date:</u> TBD <u>Initial Term:</u> 12 Months	

Option 1:

Item	Annual Recurring Price	One-time Price
1.0 Insight Enterprise (IN)		
1.1 Annual License Subscription	\$6,586.00	
1.2 Provisioning (one time payment)		\$2,500.00
1.3 On-line User Training (one time payment)		\$2,500.00
Total:		\$11,585.00

1.0 Insight Enterprise Edition (IN)

1.1 License Subscription

The Customer's subscription to the Insight Hiring Management Software includes the following functionality:

Recruitment

- Customized online job application
- Accept job applications online
- Online applications integration with current agency website
- Online job announcements and descriptions
- Automatic online job interest cards
- Proactively search your applicant database
- Real-time database of all applicant information
- Recruitment and examination planning

Selection

- Create, store, and reuse supplemental questions in the Insight item bank
- Screen applicants automatically as they apply
- Define unique scoring plans per recruitment, or copy existing scoring plans
- Test Item bank (optional in TMS at an extra charge)
- Conduct item analysis
- Test processing (automatically input Scantron test data sheets)*
- Test analysis and pass-point setting
- Score, rank, and refer applicants

Applicant Tracking

- Email and hardcopy notifications
- EEO Data collection and reports
- Track applicants by step/hurdle
- Schedule written, oral, and other exams
- Detailed applicant history record
- Skills tracking and matching

Reporting and Analysis

- Collect and report on EEO data
- Analyze and report on adverse impact and applicant flow
- Track and analyze data such as time-to-hire, recruitment costs, staff workload, applicant quality, etc.
- Over 80 standard system reports
- Ad Hoc reporting tool

HR Automation

- Create and route job requisitions
- Refer and certify applicants electronically
- Scan paper application materials

* Requires a Scantron or similar Optical Mark Reader (OMR) scanner, special forms, form set-up, and scanner software, which are not included in the cost.

Additionally, during the term of the subscription, the Customer will be provided:

Unlimited Customer Support (6:00 AM – 6:00 PM PT)

Customer Support shall be provided to the Customer both on-line and by telephone Monday – Friday, 6:00 AM – 6:00 PM PT (excluding NEOGOV holidays).

Product Upgrades to Licensed Software

Customer shall receive all product upgrades to purchased package. Product upgrades are automatic and available upon the next login following a product upgrade rollout. Product upgrade rollouts are generally released every three months.

Gorrie-Regan & Associates, Inc.
2927 Central Avenue
Birmingham, AL 35209
205-871-7395
800-223-3277
205-868-6868 fax

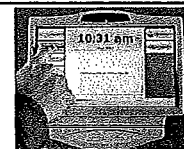
Gorrie-Regan Sales Order Form

Sales Representative: Scott Graham

GORRIE & REGAN



DATE 8/8/13 **DRAFT PROPOSAL: Web Hosted Time and Attendance w/ Purchased IntelliTouch Clocks System Pricing for 290 Active Employees and 47 Manager Accounts**



BILL TO
CUSTOMER NAME City of Foley
ADDRESS P.O. Box 1750
CITY, STATE, ZIP Foley, AL 36536
CONTACT Ann Smith
TELEPHONE 251-970-5098
EMAIL ADDR: asmith@cityoffoley.org

SHIP TO
City of Foley
407 E Laurel Ave.
Foley, AL 36536

QTY	MODEL #	DESCRIPTION	UNIT PRICE	INSTALLATION	MAINTENANCE	MONTHLY \$
		September 2013 Costs				Sep-13
1	NT70X52	Purchase of 12 each IntelliTouch Clocks				\$ 35,940.00
1	5076	One Month Software based on (290 Employees & 47 Managers)				\$ 778.50
1	9999-PS	Configuration and Installation		\$ 3,150.00		\$ 3,150.00
12	9999-LB	Clock Installation (Optional)		\$ 175.00		\$ 2,100.00
2	9999-TR	Manager Training Onsite		\$ 1,200.00		\$ 2,400.00
100	4311	HID Proximity Badges	\$ 5.00			\$ 500.00
1	9999-PS	Payroll Interface to Incode		\$ -	Included	\$ -
1	9999-PS	Police & Fire FLSA Overtime Setup		\$ 1,400.00	Included	\$ 1,400.00
		September 2013 Grand Total				\$ 46,268.50
		Fiscal Year 2014 Costs				Oct. 2014
12	5076	12 Months Software based on (290 Employees & 47 Managers)			\$ 778.50	\$ 9,342.00
12		Annual Clock Maintenance & Support			\$ 350.00	\$ 4,200.00
		Maintenance is Onsite with local technicians				
		Fiscal Year 2014 Grand Total				\$ 13,542.00
		Software costs above include unlimited support calls and all future software upgrades				

2013 Grand Total \$ 46,268.50
2014 Fiscal Total \$ 13,542.00

Tax Liability Options:

Initial your selection:

Yes, we do pay tax and the city and county are:

X No, we are tax exempt and our tax certificate is attached Y: (Y,N)

Payment Term Options

Initial your selection:

Payment in full with order.

X 1/2 of Hardware, Professional Service, and 6 months of service fees required upon signed sales order.

Items other than "systems" invoiced at Net 30 days (clocks, terminals, etc.)

Gorrie-Regan Full Service Lease.

SIGNATURE INDICATES ACCEPTANCE OF ALL PRICES CONTAINED HERE AND ALL TERMS ON PAGE TWO OF THIS DOCUMENT

**All contracts are written with a 24 month contract in place.

If customer should decide to cancel before the 24 months, customer agrees to pay 1/2 of the remaining months left in the contract

CUSTOMER ACCEPTANCE:

GORRIE-REGAN AND ASSOCIATES ACCEPTANCE:

Signature _____ Date _____

Signature _____ Date _____

Title _____

Title _____

CUSTOMER AGREEMENT

This Agreement is effective on the date of Exhibit A, among Gorrie-Regan and Associates, Inc., an Alabama corporation located at 2927 Central Ave., Birmingham, AL 35209 ("GORRIE"), Attendance on Demand, Inc., a Michigan corporation located at 23206 Commerce Drive, #100, Farmington Hills, MI 48335 ("AOD") and the Employer listed on Exhibit A ("Customer").

Collectively, GORRIE, AOD and Customer are referred to as the "Parties".

- A. GORRIE sells access to Attendance on Demand, a time and attendance solution which includes online training, job aids and Customer account and billing information, all of which are available at AOD's World Wide Web site ("Web site"); Collectively, GORRIE and AOD are referred to as "Service Providers"; and
- B. Customer, an employer, desires to use/access the services of the Web site.

THEREFORE, in consideration of the mutual promises in this Agreement, other good and valuable consideration, the receipt, adequacy and sufficiency of which are acknowledged, Service Providers and Customer agree as follows:

I. SERVICE PROVIDERS' RESPONSIBILITIES

- A. Services and Documents. The various Time & Attendance functions and Human Relations Department functions selected by Customer are set forth on Exhibit A and, based on Customer's data, shall be provided to Customer ("Web Site Services") in accordance with this Agreement.
- B. Duties. Service Providers shall perform all reasonably necessary steps to provide Customer with the Web Site Services ("WSS") during the term of this Agreement.
- C. Service Level Guarantee. If Customer is unable to access the Web site for more than fifteen (15) consecutive minutes during any twenty-four (24) hour period for reasons caused by AOD and Customer reports such outage to Service Providers within three (3) days after the outage, Service Providers shall credit Customer 1/30th of the monthly fee for the WSS. Only one credit will be given for outages occurring during any twenty-four (24) hour period. This Guarantee shall not apply in the event of Force Majeure (as described below), scheduled maintenance periods, or if Customer's account is not in good standing at the time of the outage.
- D. Limitations of Service.
1. Service Providers do not guarantee that Customer will be able to access the WSS at any particular time or during scheduled maintenance periods.
 2. Customer's use of the WSS and Internet are at Customer's sole risk; Service Providers assume no responsibility for Customer's utilization of the Web site or the WSS.
 3. Compliance with all applicable international, national, state and local law and regulation is the sole responsibility of Customer.
 4. Service Providers do not guarantee the security of Customer's utilization of the Web site or the WSS. Although AOD has implemented state-of-the-art security features to protect the Customer's database, it does not warrant secure operation of the Web site or the WSS or that it will be able to prevent third party disruptions.
 5. Customer acknowledges that anyone who has access to Customer's user identification and password can gain access to the Web site and WSS and agrees that it will maintain security practices standard to the industry in which it is engaged to protect access to the Web site and the WSS.
 6. Service Providers do not guarantee that there will be no transmission errors, disclosures, erasures, corruptions or security-breaches of data forwarded to the Web site or the data returned to the Customer.
- E. Limit on Service Providers' Financial Responsibility. Service Providers shall not be liable for the loss of or inaccuracies contained in data or interruption of service or breaches in security of data for any losses resulting from these events unless such events have been caused by Service Providers' gross negligence or willful misconduct. In no event shall AOD or GORRIE be responsible for any indirect, special, punitive, incidental or consequential damages, whether arising in contract or tort or from the negligence of AOD, even if AOD and/or GORRIE had been advised of the possibility that such damages could result from the occurrence of these events. In no event shall GORRIE or AOD be responsible for any indirect, special, punitive, incidental or consequential damages, whether arising in contract or tort or from the negligence of GORRIE, even if GORRIE and/or AOD had been advised of the possibility that such damages could result from the occurrence of these events. If, for whatever reason, AOD is unable to generate a particular payroll for Customer, Customer agrees that, as the fallback procedure, Customer shall repeat its most recent payroll.
- F. Agent. AOD has appointed GORRIE as its authorized agent to sell WSS to the public, to provide Customer with contact and bank information, to specify product options, to train Customer regarding how to properly utilize the Web site and to provide service and support to Customer as necessary. Customer shall pay for any and all charges in connection with the Agent's services. Subsequent to Customer obtaining initial access to the WSS, GORRIE shall make the following services available to the Customer at the rate schedule found in Exhibit A: (i) training, integration, technical support and related services required by Customer after obtaining initial access to the WSS; and (ii) lease of time clocks and software to Customer.

II. FEES

- A. Compensation. Customer agrees to pay to GORRIE the WSS Fees specified on Exhibit A (and found on the Web site after the installation of the WSS at Customer's site) along with any other charges payable by Customer. Such amounts

are due monthly in advance on or before the first (1st) day of each month during the term of this Agreement. Customer's payment shall be made available to GORRIE through wire transfer from Customer's bank account to GORRIE's bank account and in United States dollars. The fees and any additional charges payable under this Agreement are exclusive of any and all taxes, interest and penalties imposed thereon.

- B. Late Payment. If any EFT transaction is refused or rejected, the Customer will be notified of same immediately by e-mail. GORRIE will retry the transaction once each day for the next five (5) business days and assess a \$35.00 per day late fee for each day that EFT transaction fails. If payment is not received within five (5) business days, the Customer's access to the Web site shall be terminated.
- C. Taxes. Customer shall be responsible for payment of all taxes, duties, levies and any other fees incurred as a result of this Agreement, except for taxes on GORRIE's net income. Charges specified herein are exclusive of any such taxes, levies or fees.

III. TERM AND TERMINATION

- A. Term. This Agreement shall commence on the date specified in Exhibit A and terminate on the second anniversary of the Commencement Date ("Initial Term").
- B. Renewal. At the end of the Initial Term, this Agreement will automatically renew on the first day of each consecutive calendar month thereafter unless one Party gives the other Parties written notice of its intent to terminate this Agreement. This Agreement shall not renew if the Party desiring termination gives notice to the other Parties ninety (90) days prior to the expiration of the Initial Term.
- C. Termination for Cause. Except as provided in Section II.B. of this Agreement, any Party shall have the right to terminate this Agreement for material breach upon written notice describing the material breach and the date of the material breach. The breaching party will have thirty (30) days from receipt of notice to cure the material breach. If such breach is not cured, then the non-breaching party may immediately terminate this Agreement in writing.
- D. Effect of Termination. On the date of termination, Customer shall pay all of its obligations through date of termination.

IV. AOD'S WARRANTIES

- A. Web Site Location. AOD represents and warrants that the Web Site is located at a secure hosting facility and that AOD will maintain this system for the term of this Agreement. This representation and warranty shall not apply when Customer cannot access the Web Site through no fault of AOD.
- B. AOD Services Warranty. AOD warrants that it will use reasonable care and skill to perform the WSS. AOD MAKES NO OTHER WARRANTY TO CUSTOMER IN CONNECTION WITH THIS AGREEMENT AND SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE OR THAT THE SERVICE OR NETWORK TRANSPORT WILL BE UNINTERRUPTED OR ERROR-FREE.
- C. GORRIE Services Warranty. GORRIE warrants that it will use reasonable care and skill to perform its services. GORRIE MAKES NO OTHER WARRANTY TO CUSTOMER IN CONNECTION WITH THIS AGREEMENT AND SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE OR THAT THE SERVICE OR NETWORK TRANSPORT WILL BE UNINTERRUPTED OR ERROR-FREE.

V. LIMITATIONS OF DAMAGES. Customer agrees that the WSS are provided "AS IS" and on an "AS AVAILABLE" basis.

- A. AOD'S LIABILITY TO CUSTOMER UNDER THIS AGREEMENT IS LIMITED TO THE WARRANTY AND SERVICE LEVEL GUARANTEE SET FORTH IN SECTIONS 1 AND 4 ABOVE. IN NO EVENT SHALL AOD OR ANY OTHER PARTY INVOLVED IN PROVIDING SERVICES UNDER THIS AGREEMENT BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY DIRECT, INDIRECT, SPECIAL, CONSEQUENTIAL, PUNITIVE OR INCIDENTAL DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS OR LOSS OR DAMAGE TO DATA ARISING OUT OF THE USE, PARTIAL USE, OR INABILITY TO USE THE SERVICES, WHETHER ARISING IN CONTRACT OR IN TORT, OR RESULTING FROM THE FAULT OR NEGLIGENCE OF AOD, EVEN IF AOD HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. AOD DOES NOT MONITOR OR EXERCISE CONTROL OVER THE CONTENT OR THE INFORMATION TRANSMITTED THROUGH ITS SYSTEM. AOD MAKES NO WARRANTY REGARDING ANY PAYROLL OR HUMAN RELATIONS DEPARTMENT FUNCTIONS GENERATED THROUGH THE WEB SITE, AND CUSTOMER UNDERSTANDS AND AGREES THAT SUCH PAYROLLS ARE GENERATED ENTIRELY AT CUSTOMER'S OWN RISK. THE FOREGOING DISCLAIMER SHALL APPLY UNLESS OTHERWISE PROHIBITED BY LAW.
- B. Other Disclaimers. AOD does not warrant uninterrupted or error-free operation of any WSS or that AOD will correct all defects. In addition, AOD does not make any warranty as to the capacity or performance of the WSS.
- C. Force Majeure. AOD will not be liable for delays, damages, or failures in performance due to events of force majeure (causes beyond its reasonable control), including, but not limited to, acts of a governmental body, acts of God, acts of third parties, fires, floods, strikes or other labor-related disputes, an inability to obtain necessary equipment or services, the severing of off-site communication lines by a third party, or other events of force majeure.
- D. Indemnification. Customer agrees to indemnify and hold harmless AOD and

GORRIE from all liability, loss, damages, claims, or causes of action, including reasonable legal fees and expenses that may be incurred, arising out of or related to the Customer's breach of any of the promises, representations or warranties contained in this Agreement.

- E. Limitation of Remedies. Neither AOD nor GORRIE shall not be liable to Customer for any special, punitive, incidental, or consequential damages, whether the claim is in contract, tort (including negligence), or otherwise, and whether or not either AOD or GORRIE has been advised of the possibility of such damage.

VI. CUSTOMER'S RESPONSIBILITIES

- A. In General. In addition to Customer's obligations specified elsewhere in this Agreement, Customer shall be solely responsible for
1. Selection of services, including the WSS, to achieve Customer's intended result and determining whether the Web site will meet Customer's performance needs.
 2. The accuracy and content of any information provided by Customer to AOD and to fully cooperate with Service Providers.
 3. Any loss of data, programs, breaches of security, viruses, and disabling or harmful devices that Customer may download or otherwise experience as a result of Customer's use of the WSS.
 4. Using the WSS in a manner consistent with any and all applicable international, federal, state and local laws and regulations.
 5. Obtaining the maintenance, training, service and support necessary from Agent to utilize the Web site properly.
 6. Having properly functioning Internet Explorer software and an Internet connection with sufficient speed and available bandwidth to support payroll and supervisory activities.
 7. Performing no act which would prevent Customer's equipment from communicating with AOD.
 8. Returning leased equipment in the same condition the equipment was in when it was leased, reasonable wear and tear excepted. In addition, Customer shall be responsible for replacement of leased equipment that is damaged, lost or stolen.
- B. Services Support. Customer performance of the responsibilities identified in sub-section A above shall be at its sole cost. Service Providers' obligations under this Agreement are contingent on Customer performing the responsibilities identified in sub-section A above.
- C. Information. All information provided to Service Providers shall be complete and accurate; if any Customer information changes or is supplemented after the execution of this Agreement, Customer agrees to provide the changes in or supplements to GORRIE within fifteen (15) days; if any additional Customer information is required by Service Providers, Customer agrees to provide such information within fifteen (15) days after the request for same.
- D. SERVICE PROVIDERS RECOMMEND THAT THE DATA THAT THE CUSTOMER GIVES TO SERVICE PROVIDERS NOT INCLUDE EMPLOYEE SOCIAL SECURITY NUMBERS OR CREDIT CARD NUMBERS ("PERSONAL DATA"). CUSTOMER AGREES THAT IF PERSONAL DATA IS INCLUDED IN THE DATA GIVEN TO SERVICE PROVIDERS, IT SHALL BE DISCLOSED AT THE CUSTOMER'S SOLE RISK. IF THE PERSONAL DATA IS COMPROMISED IN SUCH A WAY THAT ONE OR MORE EMPLOYEES ARE INJURED, THE CUSTOMER AGREES THAT IT SHALL INDEMNIFY SERVICE PROVIDERS FOR ANY AND ALL DAMAGES THEY SUFFER, INCLUDING REASONABLE ATTORNEY FEES AND LEGAL COSTS, AS A RESULT OF THE PERSONAL DATA BEING COMPROMISED.

- VII. OWNERSHIP OF CODE, CUSTOMER INFORMATION AND PATENTS. The Parties acknowledge and agree that AOD has previously developed source and object code for purposes of creating an operational Web site (collectively, the "Source Code"); that the Source Code is owned exclusively by AOD; and that the Parties have no intention to convey any rights or licenses of the Source Code to Customer based upon this Agreement. Furthermore, there is no agreement for AOD to provide a license or sublicense to Customer for any software. All materials, documentation, computer programs, inventions (whether or not patentable), pictures, audio, video, artistic works, and all works of authorship, including all worldwide rights in them under patent, copyright, trade secret, or other property right, created or developed by AOD while providing services (collectively, "Work Product") is owned by AOD. Work Product shall not include Customer's Confidential Information (defined below). Customer shall not use in any manner any patents, trademarks, imprints, or service marks ("Marks") relating to software or hardware purchased hereunder. Further, Customer shall not, under any circumstances, acquire any property interest in any Marks or in any goodwill associated therewith. Customer shall do nothing to infringe, impeach or lessen the validity of the Marks. Customer agrees to protect, defend, indemnify and save AOD harmless from any and all expenses, attorneys' fees, claims, demands, or causes of action arising out of any claim of patent infringement arising out of the Customer's improper use of the Marks.

- VIII. CONFIDENTIAL INFORMATION. AOD shall use reasonable care and discretion, to prevent disclosure, publication, or dissemination of Customer's Confidential Information (defined below) to anyone other than GORRIE; and shall not use, reproduce, distribute, disclose, or otherwise disseminate the Customer's Confidential Information, except, as necessary, to GORRIE, in connection with the performance of its obligations under this Agreement. All CUSTOMER's time and attendance data will remain property of AOD. It is the CUSTOMER'S responsibility

to update records relating to its time and attendance account. Neither AOD nor GORRIE is or will be the CUSTOMER's official record keeper. GORRIE acknowledges that during the term of this Agreement, Customer may disclose to GORRIE confidential and proprietary information concerning Customer's business and operations. GORRIE agrees that it will not use, reproduce, distribute, disclose, or otherwise disseminate such confidential and proprietary information during the term of this Agreement or any time thereafter without the express written consent of Customer, except as is necessary to effectuate the terms of this Agreement. The foregoing provisions shall not apply to: (1) any information known to AOD or GORRIE or any of their employees, officers or shareholders prior to the execution of this Agreement; (2) any information which is or becomes generally available to the industry or the public through no breach of this Agreement; or (3) any information disclosed to AOD or GORRIE or any of its employees, officers or shareholders by a source (other than Customer) which is legally entitled to disclose such information. As used in this Agreement, "Customer's Confidential Information" means any and all data and information relating to the business and employees of the Customer of which AOD becomes aware as a consequence of, or through, this Agreement.

IX. INDEMNIFICATION FOR THIRD PARTY CLAIMS

- A. Indemnification by AOD. If a third party claims or threatens a claim that the material AOD uses in connection with providing services to Customer infringe on that party's patent, trademark, copyright or trade secret, then AOD will indemnify, defend and hold harmless the Customer and its respective employees, officers, agents and directors against such claim or threatened claim at AOD's expense and will pay all costs, damages and reasonable attorney's fees that a court of competent jurisdiction awards in connection with that claim (or which AOD agrees is a final settlement) provided that Customer: (1) promptly notifies AOD of the claim or threatened claim; (2) permits AOD to control and cooperates with AOD in the defense of any claim or related settlement negotiations; and (3) obtains the consent of AOD prior to incurring any cost, damage or attorney fee for which it will seek reimbursement from AOD.
- B. Indemnification by Customer. If a third party claims or threatens a claim that in using the Web site the Customer has violated a federal, state or local regulation or law or Customer has infringed on third party's patent or copyright, then Customer will indemnify, defend and hold harmless AOD and its respective employees, officers, agents and directors against such claim or threatened claim at Customer's expense and will pay all costs, damages and reasonable attorney's fees that a court of competent jurisdiction awards in connection with that claim (or which Customer agrees is a final settlement) provided that AOD: (1) promptly notifies Customer of the claim or threatened claim; (2) permits Customer to control and cooperates with Customer in the defense of any claim and related settlement negotiations; and (3) obtains the consent of Customer prior to incurring any cost, damage or attorney fee for which it will seek reimbursement from Customer, which consent shall not be unreasonably withheld.
- X. LIMITATION OF LIABILITY. Circumstances may arise where, because of a default by AOD, Customer is entitled to recover damages from AOD. Regardless of the basis on which Customer is entitled to claim damages from AOD, whether under contract law, tort law or equity, AOD shall be liable for payment of the lesser of (1) the amount of any actual direct damage; or (2) \$10,000. Circumstances may arise where, because of a default by GORRIE, Customer is entitled to recover damages from GORRIE. Regardless of the basis on which Customer is entitled to claim damages from GORRIE, whether under contract law, tort law or equity, GORRIE shall be liable for payment of the lesser of (1) the amount of any actual direct damage; or (2) \$10,000.

XI. MISCELLANEOUS

- A. Amendment. This Agreement may be modified only by written Agreement signed by all the Parties that expressly sets forth their intent to modify this Agreement.
- B. Applicable Law, Jurisdiction and Attorney Fees. This Agreement shall be governed by and construed in accordance with the laws of the state of Michigan without reference to its conflicts of law provisions. Any dispute which may arise between the parties concerning this Agreement shall be determined by the courts of the State of Michigan and the parties hereby submit to the exclusive jurisdiction of the courts of the State of Michigan for such purpose. Should any Party reasonably retain counsel for the purpose of preserving, determining, enforcing, or preventing the breach of any rights under this Agreement through judicial remedy the prevailing Party (whether at trial or on appeal) shall be entitled to be reimbursed by the losing Party for all costs and expenses incurred thereby, including, but not limited to, all attorney fees and costs actually incurred for the services rendered to the prevailing Party. Further, the prevailing Party shall be entitled to additional awards of attorney fees for services reasonably rendered in aid of enforcing the judgment or award or in collecting any monies awarded.
- C. Assignment, Successors and Parties in Interest. Except as otherwise provided within this Agreement, Customer may not transfer or assign this Agreement or any rights under it without the prior written consent of AOD, which shall not be unreasonably withheld, denied or delayed. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, representatives, successors, and permissible assigns. Nothing in this Agreement shall be construed to be to the benefit of any third party, nor is it intended that any provision shall be for the benefit of any third party.
- D. Captions, Headings, Construction, Presumption. The headings and captions in this

Agreement are included as a matter of convenience and shall not be construed as a substantive part of this Agreement. All pronouns and any variations of them shall be deemed to refer to the masculine, feminine, neuter, singular, or plural, as the identity of the person or persons may require in the context of the Agreement. No provision of this Agreement is to be interpreted for or against any Party because that Party or its legal representative drafted the provision.

- E. Computation of Time, Delay and Time of the Essence. In computing any period of time under this Agreement, the day of the act, event, or default from which the designated period of time begins to run shall be included, unless it is a Saturday, Sunday, or legal holiday. In that case, the period will begin to run on the next day that is not a Saturday, Sunday, or legal holiday, and the period shall run until the end of the next day thereafter that is not a Saturday, Sunday, or legal holiday. No forbearance, delay or indulgence by either party in enforcing the provisions of this Agreement shall prejudice or restrict the rights of that party nor shall any waiver of its rights operate as a waiver of any subsequent breach and no right, power or remedy herein conferred upon or reserved for either party is exclusive of any other right, power or remedy available to that party and each such right, power or remedy shall be cumulative. With regard to the Parties' performance of their obligations under this Agreement, time is expressly made of the essence.
- F. Counterparts and Facsimile Signatures. This document may be signed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement, even though all the Parties are not signatories to the original or the same counterpart. A facsimile signature shall be deemed an original.
- G. Exhibits, Further Action. The Exhibits referred to in this Agreement shall be incorporated by this reference into this Agreement whether or not they are attached.
- H. General Understandings, Good Faith, Cooperation, and Due Diligence. Each Party represents that, in entering into this Agreement, (1) each Party has read and understands this Agreement, and is relying on the advice of the Party's own legal counsel; (2) this Agreement is being made without reliance upon any statement or representation not contained or referenced in this Agreement; and (3) no promise, inducement, or agreement not expressed in this Agreement has been made to any of the Parties. Each Party covenants, warrants, and represents to each other Party that he will act in good faith, act with due diligence, and provide his complete cooperation in carrying out the purposes and intent of this Agreement. Said promises and covenants are mutual and dependent.

- I. Notices. Notice under this Agreement shall be in writing and shall be effective when actually delivered. If mailed, notice shall be deemed effective 72 hours after mailing as registered or certified mail, postage prepaid, directed to the a Party at the address set forth in Exhibit A or in the opening Paragraph of this Agreement or such other address as a Party may indicate by written notice to the other Parties.
- J. Authority. Each of the Parties represents and warrants to the other that it has the full right, power, and authority to enter into this Agreement and to perform all of its obligations in accordance with its provisions; and that neither the execution nor the delivery of this Agreement by it, nor the performance of any of its obligations under this Agreement, will result in the breach or violation of any provision (or constitute a default) under any indenture, contract, or other agreement or instrument to which it is a party or under which it has any rights or obligations.
- K. Savings Clause and Survival. If any provision of this Agreement or its application is held to be invalid, void, or illegal, that provision shall be severed and the remainder of this Agreement shall not be affected. Such a finding shall in no way affect, impair, or invalidate any other provision of this Agreement, which shall remain in full force and effect. The covenants and agreements contained in Section II, III.D, V, VII, VIII, IX, X and XI of this Agreement shall survive the termination (for any reason) or breach of this Agreement.
- L. Waiver. The waiver by either Party of the breach of any provision of this Agreement by the other Party shall not operate or be construed as a waiver of any subsequent breach.
- M. Entire Agreement. This Agreement contains the entire understanding between the Parties pertaining to the subject matter of this Agreement and supersedes and replaces all prior or existing written and oral agreements, including contemporaneous agreements, between the Parties and/or their representatives pertaining to the subject matter of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their authorized officers on the day and year indicated.

Gorrie-Regan and Associates, Inc.

Customer _____

By _____
For itself and on behalf of AOD

By _____

Printed Name _____

Printed Name _____

Its _____

Its _____

Date _____

Date _____