Board of County Commissioners
Agenda Request

Date of Meeting: April 7, 2020
Date Submitted: March 18, 2020
To: Honorable Chairman and Members of the Board
From: Wesley Hall, Interim County Administrator
       Lonyell L. Butler, Human Resource Manager
Subject: Approval of Proposal for a Web Based Human Resource Platform

Statement of Issue:

This agenda item seeks Board approval for a service agreement and purchase of a web based Human Resources program with Canopy Workforce Solutions.

Background:

The Human Resource Office has utilized a software program, People Trak, for many years to carry out the daily functions of human resources. This software allows staff to generate reports and manage the employment history of staff along with other functions. People Trak is owned by Canopy Workforce Solutions, which no longer provides upgrades and technical support for the software.

Analysis:

Canopy Workforce Solutions will provide a web based program that will allow for a better streamline process in contacting and notifying staff through automated alerts to email and mobile devices. More employee tracking fields will be made available for customization which will allow staff to build a platform specific to needed functions.

Fiscal Impact:

The cost of the set-up and monthly software fees total $5,455.60.

Options:

1. Approve the Proposal for an upgrade from the current Human Resource system to a web-based platform offered by Canopy Workforce Solutions and authorize the Chairman to sign.
2. Do not approve.
3. Board direction
**Interim County Administrator’s Recommendation:**

Option 1.

**Attachment:**

Canopy Workforce Solutions Proposal
Canopy Workforce Solutions

PROPOSAL

DATE:  March 17, 2019

CLIENT:  Gadsden County
          Attn:  Lonyell L. Butler, HR Manager
          5-B East Jefferson Street, Quincy, FL 32351

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I. OVERVIEW

OVERVIEW:  Gadsden County is seeking to upgrade their current human resources system to a web-based platform to manage their 204 employees. The proposed solution for Gadsden County is the CoreHR Suite, Career Center and Benefits Enrollment.

Upon the proposal being to your satisfaction, please sign and return it to your sales representative. Upon receipt of payment of the set up fee your installation will be scheduled and you will be contacted by your assigned project manager.

II. PERSONNEL

The following people are your dedicated contacts:

Sales Rep: Jennifer Porzio, jennifer.porzio@canopyws.com

Project Manager: Kassie Choppa, kassie.choppa@canopyws.com
ESTIMATED START DATE: TBD

ESTIMATED END DATE: TBD

III. Canopy HR Suite

The following modules have been demonstrated to Gadsden County:

CoreHR Suite
- Employee self service
- Employee tracking with the ability to add fields for custom tracking needs
- Customized automated alerts to email or mobile device
- Add and store unlimited documents
- Safety management and disciplinary action taking
- Ability to make and share custom reports
- Compensation management and pay history
- Benefits tracking
- Integrated onboarding with electronic signature for all new hire forms

Recruiting
- Post available jobs to an online personalized career page
- Applicant tracking workflow to convert candidates and schedule interviews
- Create unlimited number of online job applications to match available jobs
- Automatically rank candidates and optionally set up elimination questions
- Create checklist for different jobs
- Schedule interviews and collect feedback
- Offer letter templates and approval workflows

Performance Management
- Configurable review question library
- Create an unlimited number of reviews
- Configurable rating methods to fit your business
- Create review schedules based on a particular date or calculated from another date, e.g. hire date
- Manager, self and peer reviews are all supported
- Easily add notes to individual question responses or make comments applicable to an entire section
- Upload attachments to reviews
- Maintain complete review history

Timekeeping
- Timesheet and web-clock time entry
- Paid time off accruals
- Online PTO requests and PTO tracking
- Monthly calendar to see time off requests submitted and approved
- Custom approval workflow

Benefits Open Enrollment
- Administer medical, dental, vision, life, disability, dependent, HSA, FSA, 401K, commuter, and even custom plans
- Rules based enrollment engine
- Online employee access for open enrollment, new hire enrollment, and life events
- Side by side plan comparison
- Electronic integration with multiple carriers

Active Employee Count: 204

Document Storage limits and fees: None

Recurring fee includes all product updates and maintenance, designated support representative, and email, phone, and web customer support.

### IV. INTEGRATIONS AND CUSTOMIZATION

Your system is capable of sending data to or receiving data from other systems. The following integrations are included within the scope of this project.

<table>
<thead>
<tr>
<th>Third Party System</th>
<th>Direction from Canopy</th>
<th>Format</th>
<th>Field Definition</th>
<th>One Time Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>None at this time</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Client may elect to include different fields that in the attached Field Definition. Transformation of data is not included in the above quote. Inclusion of such fields and/or data transformations will be done pursuant to a separate statement of work which will be billed at rates not to exceed those contained in the Customization section of this proposal.

### CUSTOMIZATION

The Canopy suite is capable of being customized to meet client specific needs beyond those which are supported by the standard software. This section lists any customization work agreed to as part of the initial implementation.

<table>
<thead>
<tr>
<th>CUSTOM WORK</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Action Form - need form from customer</td>
<td>TBD</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>
V. IMPLEMENTATION AND TRAINING

A. IMPLEMENTATION TIMELINE

The implementation timeline sets forth our estimate for the number of days to complete your installation based on the information available to us. We will make every good faith effort to meet this timeline, but delays may happen because of changes in scope, problems with historical data or absence of personnel. The estimates set forth in this section assume Gadsden County representatives will be reasonably available throughout this project and data and information will be supplied to Canopy in "import ready" electronic format according to guidelines from Canopy. The implementation timeline is measured in days from the date of the Project Plan meeting.

<table>
<thead>
<tr>
<th>Deliverable</th>
<th>Day (From Project Plan Meeting)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Project Kick-Off Meeting</td>
<td>TBD</td>
</tr>
<tr>
<td>Project Plan Meeting</td>
<td>TBD</td>
</tr>
<tr>
<td>Core Employee Data Import and set up of base tables</td>
<td>30</td>
</tr>
<tr>
<td>Recruiting</td>
<td>45</td>
</tr>
<tr>
<td>Onboarding</td>
<td>60</td>
</tr>
<tr>
<td>Training, and Go Live</td>
<td>60-90 days</td>
</tr>
<tr>
<td>Benefits Enrollment</td>
<td>2020</td>
</tr>
</tbody>
</table>

B. CLIENT SPECIFIC REQUIREMENTS

This section lists any client specific requirements that are must haves for going live with the system. The purpose of this section is to advise us in advance of items you must have so that we can ensure a smooth implementation. Examples include accrual formulas, workflow approvals, specific reports, data tracking fields beyond customary HR fields.

Unless listed here client specific requirements which are not supported by the software may be deemed, in the Company’s discretion, out of scope subject to a separate statement of work billed at rates not to exceed those specified below in the Customization section of this proposal.
CLIENT SPECIFIC REQUIREMENTS FOR GO LIVE

- Migrate PT data
- Track discipline
- Track safety
- Pay grades
- Offer letter
- Display paycheck history

C. TRAINING

Web-based training is included. However, client may elect onsite or remote training. Onsite training is billed at $500 per 4 hour half day plus travel, room and meal expenses.

VI. TERMS and FEES

The initial term of this agreement is for 1 year from the date of the signed Proposal and shall automatically renew for successive one year terms unless either party give 60 days notice of intent to terminate the Services.

Prices shall remain fixed during the term and shall increase by no more than 5% if this agreement is renewed prior to the expiration of the applicable term.

In the event of termination of this agreement, client will retain access to the Personnel, Employment, Reporting and Export modules plus applications in the Canopy marketplace free of charge except for the following:

- $1 per month per gigabyte of data and document storage
- $0.15 per employee per month for any electronic connection to Canopy Application Programming Interfaces (API).
One Time Set-Up Fees

Client subscription contains all modules in the CoreHR suite but client only pays for set up of those modules it wishes to have implemented by Canopy staff. Pricing below is good for 12 months for date of contract. Set-up fees are non-refundable.

<table>
<thead>
<tr>
<th>Module</th>
<th>204 employees</th>
<th>Yes, No or Deferred</th>
</tr>
</thead>
<tbody>
<tr>
<td>One time Core HR Setup fee-Install and Migrate PT Data Base</td>
<td>$1000</td>
<td>Yes</td>
</tr>
<tr>
<td>includes 3 alerts, 10 reports</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Online Performance Reviews - Base includes 3 reviews</td>
<td></td>
<td>No- $300</td>
</tr>
<tr>
<td>Online Benefits Enrollment - Base includes up to 5 plans</td>
<td>$300</td>
<td>Yes, August 2020</td>
</tr>
<tr>
<td>($200 a plan over 5). Annual Plan maintenance can be</td>
<td></td>
<td></td>
</tr>
<tr>
<td>requested for future enrollments at $150 per plan.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Career Center - Base Includes 3 job applications ($200</td>
<td>$300</td>
<td>Yes</td>
</tr>
<tr>
<td>each application over 3)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Time and Attendance/PTO - Base includes 5 accrual accounts</td>
<td></td>
<td>No - $300</td>
</tr>
<tr>
<td>($200 an account over 5)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mobile APP</td>
<td></td>
<td>No</td>
</tr>
<tr>
<td>Total</td>
<td>$1600</td>
<td></td>
</tr>
</tbody>
</table>

Recurring monthly software module fees

Core HR Suite (PT Upgrade) for up to 225 active employees (21 extra employees at no cost) Additional employees will be billed at $1.75 per month.

OR

Client can choose to pay upfront annually for a 10% discount.**Due prior to Kick-off Meeting

<table>
<thead>
<tr>
<th>Core HR Suite (PT Upgrade) for up to 225 active employees</th>
<th>$357 per month</th>
</tr>
</thead>
<tbody>
<tr>
<td>OR</td>
<td>$3855.60 Annually</td>
</tr>
</tbody>
</table>

Recurring fee includes all product updates and maintenance, designated support representative, and email, phone, and web customer support.

Our projects are based on a recurring subscription model. We will process your monthly payment via ACH/EFT or credit card on the first of each month. A receipt for each payment will be emailed to you or your designated recipient. If payment is rejected or not received for 3 months straight, we will suspend your access.

Use of the Canopy software is subject to the Canopy’s current terms of service, a copy of
which is attached hereto as Exhibit 1 and incorporated herein as if stated in full by this reference.

Unless otherwise agreed in writing, billing will commence 60 days after the project kick-off meeting.

Proposal pricing is valid for thirty (30) days from the proposal date.

This Proposal together with the Legal Terms and Exhibits referenced herein constitute the entire agreement between Client and Canopy with respect to the Project. Please read it carefully. Any prior or contemporaneous understandings or agreements between the parties are superseded by this Agreement.

**APPROVAL:**

![Signature]

Sunil Vatave  
CEO  
SS Software Technologies LLC  
Dba Canopy Workforce Solutions.

Date: 3/17/2020

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**ATTEST:**  **GADSDEN COUNTY CLERK OF COURT**

**GADSDEN COUNTY, FLORIDA, a political subdivision of the State of Florida**

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**ANTHONY O. VIEGBESIE**  
Chairperson, Gadsden County Board of County Commissioners

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**Date:**

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This proprietary proposal has been prepared solely for Gadsden County. SS Software Technologies, LLC, a division of Canopy Workforce Solutions requests it not be used for other purposes other than the evaluation of our capabilities.
EXHIBIT 1
Terms of Service

Effective: May 1, 2019

Thank you for subscribing to the Canopy Workforce Solutions human resources platform. These Terms of Service (collectively with our “Privacy Policy”) govern your use of the software applications or application programming interfaces, processing or administrative services, features, content, documentation, and data storage, offered by Canopy Workforce Solutions through app.webhris.com, mobile application, or affiliated sites (collectively the “Services”) by SS Software Technologies, LLC, Technical Difference, Inc. or one of its authorized resellers (collectively referred to as “CWS”).

These Terms of Service together with the CWS Privacy Policy and the fully executed Proposal, which are incorporated herein by this reference, shall constitute the entire legal agreement between you and CWS and supersedes and replaces any prior or contemporaneous understandings and agreements, whether written or oral, with respect to the Services. If there is a conflict between the documents that make up this Agreement, the documents will control in the following order: Proposal, Terms of Service, Privacy Policy

1. LICENSE AND ACCEPTABLE USE POLICY.

1.1 During the Term, CWS grants you a limited, non-transferable, non-sublicensable, non-exclusive right to access and use the hosted software products and related documentation included in the Service and all modifications and/or enhancements to any of the foregoing (“Software”) via a web browser or other device owned or controlled by you for your internal business use. Nothing in this Agreement obligates CWS to deliver or make available any copies of computer programs or code from the Software to you, whether in object code or source code form. You agree to use the Service only in compliance with all applicable local, state, national, and international laws, rules and regulations (“Applicable Law”).

Except as expressly set forth herein, this Agreement does not grant any other intellectual property rights, and without limiting the generality of the foregoing, does not impose any obligation to provide computer programs to you in source or object code format or to host the software except as determined by CWS.

1.2 If you terminate all paid Services you may continue to use the CWS database free of Service charges on the same license terms as specified in section 1.1. Your use of the CWS database under this section shall be subject to (1) payment of data/document storage fees in the amount of $1.00 per GB in excess of 1 GB storage (2) payment of an API connection charge in the amount of $0.15 per employee per month for any third party of custom applications accessing the CWS platform by way of CWS provided API and (3) compliance with CWS’ Terms of Service as they may exist from time to time.

1.3 Customer will not and will not allow or permit its End Users to (1) use the Service to build a similar service or website (2) damage, disable, overburden, or impair the Service (or any network connected to the Service); (3) resell or redistribute the Service or any part of it; (4) use any unauthorized means to modify, reroute, or gain access to the Service or attempt to carry out these activities; or (5) use any automated process or Service (such as a bot, a spider, or periodic caching of information stored by CWS) to access or use the Service.

1.4 Customer promises not to encourage or assist any third party to: (1) modify, alter, tamper with, repair or otherwise create derivative works of any software delivered as part of the Services; (2) reverse engineer, disassemble or
decompile the software used to provide or access the Service, including the Software, or attempt to discover or recreate the source code used to provide or access the Service, except and only to the extent that the applicable law expressly permits doing so; (3) use the Service in any manner or for any purpose other than as expressly permitted by these Terms of Service, the Privacy Policy, documentation made available to Customer by CWS; (4) sell, lend, rent, resell, lease, sublicense or otherwise transfer any of the rights granted to you with respect to the Services to any third party; (5) remove, obscure or alter any proprietary rights notice pertaining to the Service; (6) access or use the Service in a way intended to improperly avoid incurring fees or exceeding usage limits or quotas; (7) use the Service to engage in any unlawful or fraudulent activity.

2. SUPPORT, AVAILABILITY, AND CUSTOMER DATA.

2.1 CWS shall: (i) provide you with a named support representative and access to support by email, instant message and phone between the hours of 9 a.m. and 5 p.m. Eastern Standard time at no additional charge and (ii) from time to time, provide upgrades and enhancements to existing functionality at no additional charge. CWS reserves the right to, from time to time, offer upgraded or new functionality for an additional fee.

2.2 CWS shall (i) use commercially reasonable efforts to make the Service available 24 hours a day, 7 days a week, except for: (a) planned downtime (which CWS shall schedule to the extent practicable during the weekend hours from 9:00 p.m. Friday to 3:00 a.m. Monday Eastern Time), or (b) any unavailability caused by circumstances beyond CWS’ reasonable control, including acts of God, acts of government, floods, fires, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving our employees), Internet service provider failures or delays, or denial of service attacks, and (iii) provide the Service only in accordance with Applicable Law.

2.3 CWS shall maintain commercially reasonable administrative, physical, and technical safeguards for protection of the Services, and the security of your Data. CWS shall not (a) disclose your Data except as compelled by Applicable Law or as you expressly authorize in writing, or (b) access your Data except to provide the Service and prevent or address service or technical problems, or at your express request in connection with customer support matters. In the event we are compelled by Applicable Law to disclose your Data, we will provide you with notice thereof, (in advance, if possible) if permitted by Applicable Law.

2.4 CWS will make available from time to time, application programming interfaces to allow you to use data within the CWS platform in other applications. If you connect to CWS through any CWS API you agree CWS may require you to program your connection in a manner which, in CWS’ sole discretion, does not overload the CWS platform or otherwise negatively impact the CWS platform in any way. CWS reserves the right to terminate your use of any API connection until such time as you program your API connection in accordance with CWS’ instructions.

2.5 Customer data will be stored and processed in the United States. Customer agrees that CWS may upon 30 days written notice transfer, store, and process Customer data in locations other than the United States. By default all files will be stored in encrypted format.

3. Third Party Requests.

3.1 An “End User” account is an account with a username and password contained within the CWS platform. A “Third Party Request” means a request from a third party for records relating to an End User of the Services including information in or from an end user’s or Customer’s Services account. Third Party Requests may include valid search warrants, court orders, or subpoenas, or any other request for which there is written consent from End Users permitting a disclosure.
3.2 Customer is responsible for responding to Third Party Requests via its own access to information. Customer will seek to obtain information required to respond to Third Party Requests and will contact CWS only if it cannot obtain such information despite diligent efforts.

3.3 CWS will make commercially reasonable efforts, to the extent allowed by law and by the terms of the Third Party Request, to: (A) promptly notify Customer of CWS’s receipt of a Third Party Request; (B) comply with Customer’s commercially reasonable requests regarding its efforts to oppose a Third Party Request; and (C) provide Customer with information or tools required for Customer to respond to the Third Party Request (if Customer is otherwise unable to obtain the information). If Customer fails to promptly respond to any Third Party Request, then CWS may, but will not be obligated to do so.


4.1 If Customer uses any third-party service (e.g., a service that uses a CWS API) with the Services, (a) CWS will not be responsible for any act or omission of the third party, including the third party’s access to or use of Customer Data and (b) CWS does not warrant or support any service provided by the third party.

5. Fees & Payment.

5.1 Customer will pay fees as set forth in the fully executed Proposal. Fees are non-refundable except as required by law. Customer is responsible for providing complete and accurate billing and contact information to CWS. CWS may suspend or terminate the Services if fees are past due for three (3) consecutive months or more. Fees will be automatically charged and paid via ACH/EFT or credit card autopay on a monthly basis or in the case of payroll processing, on a per check basis.

5.2 Customer is responsible for all of its taxes incurred in connection with the Service except CWS’s income tax. CWS will charge tax when required to do so by applicable law.

6. Consent to Electronic Communications and Solicitation.

Customer agrees that we may send you communications or data regarding the Services, including but not limited to: (a) notices about your use of the Services, including any notices concerning violations of use; (b) updates; and (c) promotional information and materials regarding CWS products and services, via electronic mail. We give you the opportunity to opt-out of receiving promotional electronic mail from us by following the opt-out instructions provided in the message.

7. Term & Termination.

7.1 The initial term of this agreement is for 1 year from the date of the signed Proposal and shall automatically renew for successive one year terms unless either party give 60 days notice of intent to terminate the Services.

Either CWS or Customer may terminate this Agreement if: (i) the other party is in material breach of the Agreement and fails to cure that breach within 30 days after receipt of written notice or (ii) the other party ceases its business operations or becomes subject to insolvency proceedings and the proceedings are not dismissed within 90 days. Set-up fees are non-refundable.
8. Indemnification.

8.1 Customer will indemnify, defend, and hold harmless CWS from and against all liabilities, damages, and costs (including settlement costs and reasonable attorneys’ fees) arising out of any claim by a third party against CWS and its affiliates regarding: (i) Customer Content; (ii) Customer's use of the Services in violation of this Agreement; or (iii) End Users' use of the Services in violation of this Agreement.

8.2 CWS will indemnify, defend, and hold harmless Customer from and against all liabilities, damages, and costs (including settlement costs and reasonable attorneys’ fees) arising out of any claim by a third party against Customer to the extent based on an allegation that CWS's technology used to provide the Services to the Customer infringes or misappropriates any copyright, trade secret, U.S. patent, or trademark right of the third party. In no event will CWS have any obligations or liability under this section arising from: (i) use of any Services in a modified form or in combination with materials not furnished by CWS and (ii) any content, information, or data provided by Customer, End Users, or other third parties.

8.3 If CWS believes the Services infringe or may be alleged to infringe a third party's Intellectual Property Rights, then CWS may: (i) obtain the right for Customer, at CWS's expense, to continue using the Services; (ii) provide a non-infringing functionally equivalent replacement; or (iii) modify the Services so that they no longer infringe. If CWS does not believe the options described in this section are commercially reasonable then CWS may suspend or terminate Customer's use of the affected Services (with a pro-rata refund of prepaid fees for the Services).

8.4 The party seeking indemnification will promptly notify the other party of the claim and cooperate with the other party in defending the claim. The indemnifying party will have full control and authority over the defense, except that: (i) any settlement requiring the party seeking indemnification to admit liability requires prior written consent, not to be unreasonably withheld or delayed and (ii) the other party may join in the defense with its own counsel at its own expense. THE INDEMNITIES ABOVE ARE CWS AND CUSTOMER’S ONLY REMEDY UNDER THIS AGREEMENT FOR VIOLATION BY THE OTHER PARTY OF A THIRD PARTY’S INTELLECTUAL PROPERTY RIGHTS.

9. Disclaimers.

THE SERVICES ARE PROVIDED "AS IS." TO THE FULLEST EXTENT PERMITTED BY LAW, EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, NEITHER CUSTOMER NOR CWS AND ITS AFFILIATES, SUPPLIERS, AND DISTRIBUTORS MAKE ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE, OR NON-INFRINGEMENT.

10. Limitation of Liability.

TO THE FULLEST EXTENT PERMITTED BY LAW, EXCEPT FOR CWS OR CUSTOMER’S INDEMNIFICATION OBLIGATIONS, NEITHER CUSTOMER NOR CWS AND ITS AFFILIATES, SUPPLIERS, AND DISTRIBUTORS WILL BE LIABLE UNDER THIS AGREEMENT FOR (I) INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES, OR (II) LOSS OF USE, DATA, BUSINESS, REVENUES, OR PROFITS (IN EACH CASE WHETHER DIRECT OR INDIRECT), EVEN IF THE PARTY KNEW OR SHOULD HAVE KNOWN THAT SUCH DAMAGES WERE POSSIBLE AND EVEN IF A REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

TO THE FULLEST EXTENT PERMITTED BY LAW, CWS' AGGREGATE LIABILITY UNDER THIS AGREEMENT WILL NOT EXCEED THE LESSER OF $100,000 OR THE AMOUNT PAID BY CUSTOMER TO CWS HEREUNDER DURING THE TWELVE MONTHS PRIOR TO THE EVENT GIVING RISE TO LIABILITY.
11. Disputes.

Customer and CWS agree to resolve any claims relating to this Agreement or the Services through final and binding arbitration, except as set forth below. The American Arbitration Association (AAA) will administer the arbitration under its Commercial Arbitration Rules. The arbitration will be held in Atlanta (GA).

Either party may bring a lawsuit in the federal or state courts in Fulton County, Georgia, to which jurisdiction each party agrees to submit, solely for injunctive relief to stop unauthorized use or abuse of the Services or infringement of intellectual property rights.


12.1 THE AGREEMENT WILL BE GOVERNED BY FLORIDA LAW EXCEPT FOR ITS CONFLICTS OF LAWS PRINCIPLES.

12.2 Severability. Unenforceable provisions will be modified to reflect the parties' intention and only to the extent necessary to make them enforceable, and the remaining provisions of the Agreement will remain in full effect.

12.3 Notices must be sent via first class, airmail, or overnight courier and are deemed given when received. Notices to Customer may also be sent to the applicable account email address and are deemed given when sent. Notices to CWS must be sent to SS Software Technologies, LLC dba CWS, Attn: Legal Department, P.O.Box 7523, Atlanta, GA 30357.

12.4 A waiver of any default is not a waiver of any subsequent default.

12.5 Customer may not assign or transfer this Agreement or any rights or obligations under this Agreement without the written consent of CWS. CWS may not assign this Agreement without providing notice to Customer, except CWS may assign this Agreement or any rights or obligations under this Agreement to an affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets without providing notice. Any other attempt to transfer or assign is void.

12.6 CWS and Customer are not legal partners or agents, but are independent contractors.

12.7 Except as for payment obligations, neither CWS nor Customer will be liable for inadequate performance to the extent caused by a condition that was beyond the party's reasonable control (for example, natural disaster, act of war or terrorism, riot, labor condition, governmental action, and Internet disturbance).

12.8 There are no third-party beneficiaries to this Agreement. Without limiting this section, a Customer's End Users are not third-party beneficiaries to Customer's rights under this Agreement.