VCS Human Capital Management

IT'S ABOUT TIME

AGREEMENT
between
CITY OF COLUMBIA
and
VISUAL COMPUTER SOLUTIONS, INC
for SOFTWARE SERVICES

SOFTWARE TERMS & CONDITIONS

1. DEFINITIONS: (1) "Software" or "Program" refers to the proprietary computer software system owned by VCS known as POSS, COSS, FIRES, Active Schedules and PARS. (2) "VCS" refers to Visual Computer Solutions, Inc. (3) "Client" refers to the agency licensing or subscribing to VCS' software system. (4) "Services" refers to the cloud scheduling software and training provided by VCS.

2. PROGRAM AND INTELLECTUAL PROPERTY. VCS shall have the exclusive title to the software and any portion of the software materials including all documentation, enhancements, modifications and any new versions of the Software and all copies of the Software or any portions of the Software whether made by VCS or Client. VCS' title shall include, but not be limited to, any and all copyright, trademark and other intellectual property rights, or other rights in the Software.

3. SUBSCRIPTION
a. VCS hereby grants to the Client for the term set forth herein, a limited non-exclusive, non-transferable right and license to access the Program for its own internal scheduling/time & attendance purposes in accordance to the terms and conditions of this Agreement.

b. The Program and client data are housed on dedicated, secure servers with QTS Technology's Data Center NJ1. The physical and electronic security requirements are: (i) single point of entry; (ii) main access monitored with additional access for emergency purposes only; (iii) surveillance cameras in facility; (iv) access validation with identity check; (v) access only to persons on VCS approved access list; (vi) log-in validation; (vii) creation of accounts only as verified by VCS or sub-contracted hosting provider; (viii) access to servers via encrypted means; (ix) servers running behind secure firewall and (x) Intrusion Detection System (monitoring incoming/outgoing with real time notification alerts).

c. Software onboarding consists of a kickoff meeting, installation, data collection/configuration, onsite or online "train-the-trainer" instruction, and a streamlined transfer to support services. Client and their Project Team must make themselves available for regular appointments and be dedicated to learning the system and rolling it out to end users. VCS claims no responsibility for Client's timeline for end-user roll out and training.

d. Support Services are included in the subscription fee which includes: phone, e-mail and web support from 8:00 a.m. – 8:00 p.m. EST, M-F. A training video library, knowledgebase articles and an e-ticket Support Portal are available 24/7/365.

e. When Client registers to use the VCS Software System and/or its Support Portal, each Client user is responsible for maintaining the confidentiality of his/her member identification and password information, and for restricting access to their computer. Client agrees to accept responsibility for all activities that occur under each user, member identification, and password.

4. RESTRICTIONS
a. Client may not decompile, disassemble or reverse engineer the Program, or shall not provide access to the Compiled Program Application by any party, other than the VCS. Client shall not transfer, resell or grant any rights of any kind to any individual a copy of the product to any party. Client cannot create any derivative works based upon the Subscription Services or Documentation or access the Subscription Services in order to build a competitive solution or to assist someone else to build a competitive solution.

b. Client agrees and acknowledges that only VCS is authorized to support or maintain the Program.

5. BACKUPS. VCS shall keep offsite backups of Client's data. Client shall not make copies of the Software or any portion of the Software or documentation, except as follows: (1) archival purposes; (2) employee instructional purposes.

6. REQUIREMENTS. Client acknowledges that the requirements listed below are met to insure proper resource allocation to run Active Schedules, POSS, COSS, FIRES, and TIMES:
- Workstations: Intel Core i5 processor; Windows 7 and above; 17-inch monitor running at 768 X 1024 screen resolution.
- Internet Connection: Internet Explorer 10 and above, Google Chrome

7. EFFECTIVE DATE. The effective date is the date the Service is activated for the Client. Invoicing shall commence on the effective date.

1 | Software Terms and Conditions (Rev 5/18) Visual Computer Solutions, Inc.

1

8. FEES

a. Client assumes responsibility for and agrees to pay VCS all amounts due for Services. All invoices are due and payable according to Invoice Due Date.

b. All reasonable and customary travel expenses, including but not limited to; Airfare, Hotel, Car Rental and Meals will be paid by the Client. Travel fees and expenses will be invoiced upon completion of visit(s) and are due (30) days from receipt of invoice.

c. Should Client decide to purchase Services through a reseller or third-party vendor (such as Dell Marketing, Software House International (SHI), or Insight Public Sector), Client acknowledges that all fees will be paid according to the third-party vendor's payment schedule and directly to the third-party vendor.

d. If the number of users assigned to the Client's account exceeds the number of licenses purchased, then the Client's account may be suspended until Client: (a) reduces the number or users or (b) upgrades its license count to at least equal to the number of users.

e. If additional training is desired – over and above the contracted training package - Client will be billed for such training and all other related travel expenses according to the current fee schedule.

f. If Client's account is past due based on invoice date, in addition to any of its other rights and remedies, VCS shall impose a 1.5% finance charge on all past due invoices.

g. If Client's account is 30 days or more overdue, in addition to any of its other rights or remedies, VCS reserves the right to suspend Client's access to the Service, without liability to Client, until such amounts are paid in full.

h. If Client initially purchases Subscription Services for a term, and subsequently orders additional product, the purchase price for the additional product shall be pro-rated so that the added subscriptions renew on the same day as the initial subscription.

i. Should client intend to cancel subscription, the client must provide thirty (30) days written notice in advance of subscription renewal date. If no notice is received, the license will be extended for an additional 12-month term. The invoice for the continuation of the subscription will be sent automatically.

j. If for any reason Client cancels any or all training appointments for which VCS has already secured travel arrangements, Client agrees to pay VCS' scheduled travel fees, plus any applicable service charges, cancellation penalty fees and increased fares expressly due to the Client's cancellation. If Client cancels training after VCS has

arrived on location, Client will be responsible for paying all training fees and expenses.

9. ADDITIONAL CLIENT RESPONSIBILITIES

a. Client must provide and input data for use in the System. VCS is not obligated to input, modify or add to Client's Data. Client is solely responsible for the content and accuracy of the Client's Data.

b. VCS regularly upgrades and updates the Subscription Services. This means that the Subscription Services are continually evolving. Some of these changes will occur automatically, while others may require Client to schedule and implement the changes. The changes may also mean that Client needs to upgrade its equipment in order to make efficient use of the Subscription Services. VCS will provide Client with advance notification in this case.

c. Client acknowledges that VCS utilizes e-mail as its primary form of communication for billing, software enhancement/update information, and webinar/training purposes. It is Client's responsibility to notify VCS of personnel and/or e-mail changes.

d. Client acknowledges that it alone is responsible for the rollout and results obtained from its use of the Service, including without limitation the completeness, accuracy and content of such results.

10. SALES & USE TAX. Any sales tax payable as a result of the software, hardware and/or professional services purchase, shall be paid by Client. Client agrees to provide a completed *Tax Information Form* to VCS in the event that VCS is required to collect and remit sales tax as dictated by law in Client's state. Client hereby indemnifies and holds harmless VCS from any sales tax liability, claims, penalties, or losses incurred resulting from Client withholding or inaccurately reporting information on the *Tax Information Form.*

11. WARRANTY

a. The Software is licensed "AS IS." VCS represents and warrants that the Services will perform in accordance with the on-line and manual help documentation and the service level standards set forth in Section 3.

b. VCS warrants that it has good title to the Product and the right to license its use to Client free of any proprietary rights of any other party or any other encumbrance whatsoever.

12. INSURANCE AND INDEMNIFICATION

a. Throughout the life of this Agreement, VCS shall pay for and maintain in full force and effect the following policies of insurance:
(i) Commercial General Liability Insurance with combined single limits of not less than $1,000,000 per occurrence;

2 | Software Terms and Conditions (Rev 5/18)   Visual Computer Solutions, Inc.

2

(ii) Commercial automobile liability insurance with combined single limits of not less than $1,000,000 per occurrence; (iii) Worker's compensation insurance as required under the New Jersey Labor laws; (iv) Professional liability insurance of not less than $1,000,000 each claim.

See Addendum

b. ~~Either party will indemnify and hold the other party harmless against any claim or demand by a third-party, including without limitation reasonable attorney's fees, alleging that the Service (in the case of VCS) or any Subscriber Materials (in the case of Subscriber) infringes any intellectual property right under the laws of the United States of a third-party.~~ VCS' indemnification obligation does not cover third party claims arising from: (i) modifications to the Service by anyone other than VCS or its authorized agents and contractors; (ii) use of the Service by Subscriber in combination with other software or equipment not provided by VCS where the Service, but for such combination, would not be infringing; or (iii) Subscriber's failure to use the Service in accordance with these terms and conditions.

13. LIMITATION OF LIABILITY. VCS SHALL NOT BE LIABLE FOR DAMAGES, INJURY, COSTS OR CLAIMS ARISING OUT OF (i) DELAYS, MISTAKES, ACCIDENTS, ERRORS, OMISSIONS, INTERRUPTIONS, OR DEFECTS IN TRANSMISSION;(ii) INADVERTENT DISCLOSURE, CORRUPTION OR ERASURE OF DATA; (iii) SERVICES, FACILITIES OR EQUIPMENT NOT FURNISHED BY VCS; (iv) ANY ACT OR OMISSION OF A THIRD-PARTY VENDOR FURNISHING ANY PORTION OF THE SERVICES OR THE EQUIPMENT OR FACILITIES USED TO PROVIDE THE SERVICES; AND (v) ANY EVENT THAT PREVENTS VCS FROM PERFORMING ITS OBLIGATIONS UNDER THESE TERMS AND CONDITIONS, IF THAT EVENT IS BEYOND THE REASONABLE CONTROL OF VCS.

14. TERM AND TERMINATION OF AGREEMENT
a. The term of this subscription Agreement shall be no less than twelve (12) months and shall commence upon the effective date. The Client, at its sole option, may renew this Agreement for consecutive one-year terms upon payment of the next subscription invoice.
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b. Either party may terminate rights if the other breaches any material term in this Agreement and the breach is not cured within thirty (30) days of written notice.

c. Upon termination of Client's Subscription Service, VCS must promptly provide Client with all Client Data in comma separated value (CSV) format. However, VCS may retain Client Data in backup media for an additional period of up to 12 months, or longer if required by law.

d. Within 30 days after the expiration or termination of this Agreement for any reason, the receiving party must destroy the original and all copies (including partial copies) of all Confidential Information of the disclosing party.

e. All fees collected or accrued prior to the date of termination shall be retained by VCS without any pro rata refund to Client.

f. The termination of this Agreement shall not extinguish any rights or obligation of the parties under this Agreement or applicable law, including without limitation, rights and obligations relating to the protection of Confidential Information or Intellectual Property rights.

15. GENERAL PROVISIONS
a. Client warrants that the signature executed on this quote or agreement is by a duly authorized employee, agent or officer that is binding upon Client.

b. Any notice required or intended to be given to either party under the terms of this Agreement shall be in writing.

c. ~~Any controversy or claim arising out of or relating to this Agreement, or breach thereof, shall be settled by arbitration in accordance with the Rules of the American Arbitration Association and judgment upon the award rendered by the Arbitrator(s) may be entered in any Court having jurisdiction thereof.~~ See Addendum

16. CONTRACT DOCUMENTS. The Contract Documents include this Agreement and the following attachments and exhibits which are incorporated herein by reference.
Exhibit A: Addendum
Exhibit B: Invoice

17. ENTIRE AGREEMENT. This Agreement represents the entire and integrated agreement between the Parties relative to the Project herein. All previous or contemporaneous contracts, representations, promises and conditions relating to VCS's services described herein are superseded.

18. COUNTERPARTS AND ELECTRONIC SIGNATURES. This Agreement 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 document. Faxed signatures, or scanned and electronically transmitted signatures, on this Agreement or any notice delivered pursuant to this Agreement, shall be deemed to have the same legal effect as original signatures on this Agreement.

3 | Software Terms and Conditions (Rev 5/18)   Visual Computer Solutions, Inc.

3

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment by their duly authorized representatives as of the date of the last signatory hereto.

CITY OF COLUMBIA, MISSOURI

By: _____
    De'Carlon Seewood
    City Manager
    Date: _____

ATTESTED BY:

_____
Sheela Amin, City Clerk

APPROVED AS TO FORM:

_____
Nancy Thompson, City Counselor/mc

CERTIFICATION: I hereby certify that the above expenditure is within the purpose of the appropriation to which it is charged, Account No. 11002110-504801, and that there is an unencumbered balance to the credit of such appropriation sufficient to pay therefor.

By: _____
    Director of Finance LL

VISUAL COMPUTER SOLUTIONS, INC

By: _____

Name: _____Guy DiMemmo_____

Title: _____CEO_____

Date: _____2/28/24_____

ATTEST:

By: _____
Name: _____

4

ADDENDUM TO VISUAL COMPUTER SOLUTIONS TERMS AND CONDITIONS

The undersigned Parties agree to amend the Terms and Conditions ("Agreement") between Visual Computer Solutions, Inc ("VCS" or "Vendor") and City of Columbia, Missouri ("City" or "Purchaser") as follows:

The Parties further agree that this addendum modifies the Terms and Conditions attached and incorporated by reference, including any Terms and Conditions posted on Vendor's website and that notwithstanding anything stated elsewhere in this Agreement or the Vendor's Terms and Conditions that the following shall be effective:

1. The Parties agree that the Vendor is not permitted to unilaterally modify this Agreement and to further say that this Agreement may only be amended by the Parties in writing.

2. No provision of the Agreement is intended to nor shall it in any way inure to the benefit of any customer, property owner or any other third party, so as to constitute any such Person a third-party beneficiary under the Agreement.

3. The Parties agree that notwithstanding anything stated elsewhere in this Agreement, nothing shall be construed to constitute a waiver by City of the defense of sovereign immunity.

4. The Parties agree that Section 12 b is stricken and is amended as follows:

"b) Either Party to the extent permitted by law will indemnify and hold the other party harmless against any claim or demand by a third party. This does not include attorney's fees."

5. The Parties agree that Section 15 c is stricken and that any dispute between the Parties will be governed by the laws of Missouri and that sole and exclusive jurisdiction will be in the Circuit Court of Boone County, Missouri, or the United States Western District of Missouri. The Parties hereto irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of Missouri. The Parties agree to waive any defense of *forum non conveniens*.

6. The Parties agree that this Agreement prohibits the use of harmful code, backdoor software or any use of products, equipment, software/services prohibited by law.

7. The Parties shall comply with all federal, state, and local laws, rules, regulations, and ordinances.

8. City will make reasonable efforts towards Confidentiality but must at all times comply with the provisions of Chapter 610 RSMo. ("The Sunshine Law").

9. The Parties agree that notwithstanding anything stated elsewhere in this Agreement that City will not pay for attorney's fees in the event of litigation.

10. This Agreement is subject to the appropriation of funds.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment by their duly authorized representatives as of the date of the last signatory hereto.

CITY OF COLUMBIA, MISSOURI

By: _____
    De'Carlon Seewood
    City Manager
    Date: _____

ATTESTED BY:

_____
Sheela Amin, City Clerk

APPROVED AS TO FORM:

_____
Nancy Thompson, City Counselor/mc

VISUAL COMPUTER SOLUTIONS, INC

By: _____

Name: _____ Guy DiMenno _____

Title: _____ CEO _____

Date: _____ 2/28/24 _____

ATTEST:

By: _____
Name: _____

VCS Human Capital Management
IT'S ABOUT TIME

Visual Computer Solutions, Inc.
4400 US Highway 9 South
Suite 3500
Freehold, NJ 07728
(732) 730-9009
www.vcssoftware.com

Invoice 20141

BILL TO

Columbia Police Department
Attn: Lisa Roland, POC
600 East Walnut
Columbia, MO 65201

DATE	PLEASE PAY	DUE DATE
11/01/2023	$12,394.16	12/01/2023

SALES REP

HS

	QTY	DESCRIPTION	PRICE EACH	AMOUNT
	1	SaaS Renewal Services SaaS-Renewal Services - 248 For term of Jan 2024 to Dec 2024	12,394.16	12,394.16

VCS accepts payments via ACH:
Account #69437016
Routing #021052053

TOTAL DUE   **$12,394.16**

THANK YOU.