



## COUNTY COMMISSION

BALDWIN COUNTY  
312 Courthouse Square, Suite 12  
BAY MINETTE, ALABAMA 36507  
(251) 937-0264  
Fax (251) 580-2500  
www.baldwincountyal.gov

MEMBERS  
DISTRICT 1. FRANK BURT, JR.  
2. CHRIS ELLIOTT  
3. J. TUCKER DORSEY  
4. CHARLES F. GRUBER

October 2, 2018

VSS, LLC  
382 Galleria Parkway, Suite 400  
Madison, MS 39110  
ATTN: Bill Grote

**REFERENCE:** Professional Services Agreement to Upgrade the AS400 Server System for the Baldwin County Commission

Dear Mr. Grote:

The Baldwin County Commission during their regularly held meeting on October 2, 2018, approved the Professional Services Agreement to upgrade the AS400 Server System as follows:

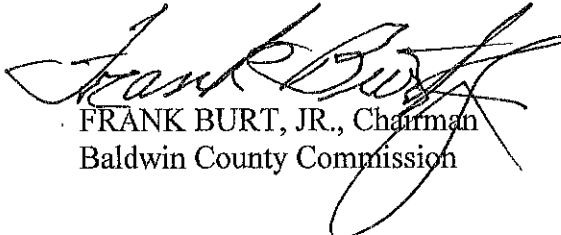
**Hourly Rate: \$180.00; Estimated Hours: 35; Travel Cost: \$90.00/hour capped at 8 hours per trip with total estimated cost of \$6,300.00 plus travel if needed.**

Please find attached your copy of the executed Agreement.

The project should be coordinated with the CIS Director, Brian Peacock at (251) 580-2598.

If you have any questions, please contact the Purchasing Director, Wanda Gautney, at (251) 580-2520.

Sincerely,

  
FRANK BURT, JR., Chairman  
Baldwin County Commission

FB:wg Item #BE6

Attachment

cc: Wanda Gautney, Purchasing Director  
Brian Peacock, CIS Director

# VSS STATEMENT OF WORK

This Statement of Work ("SOW") is entered into between VSS, LLC, a Virginia limited liability company having its principal place of business at the address listed on the signature page hereto ("VSS"), and the Customer listed on the signature page hereto and having its principal place of business at the address listed on the signature page hereto (the "Customer"), as is subject to all of the terms and provisions set forth on Appendix A attached hereto and incorporated herein.

## ARTICLE 1: GENERAL INFORMATION

**Contract #:** \_\_\_\_\_ **Project Title:** Upgrade to v7.3

**SOW #** BCC082918

### CUSTOMER INFORMATION

**Company Name:** Baldwin County Commission  
**Contact Name:** Brian Peacock  
**Email Address:** BPeacock@baldwincountyal.gov  
**Phone:**  
**Fax:**  
**Address:** 312 Courthouse Square  
Suite 15  
**City, State, Zip:** Bay Minette, AL 36507

### REFERENCE INFO:

**IBM Customer #:**  
**Revision Date:**  
**Revision Number:**  
**MSA Number:**

### VSS INFORMATION

**VSS Sales Rep:** Martha Rester  
**Email Address:** martha.rester@thinkvss.com  
**Phone:** 251-928-8034  
**VSS Engaged Specialist:** Joe Greer  
**Email Address:** Joe.greer@thinkvss.com  
**Phone:** 251-289-1304  
**VSS Project Manager:** David Corwin  
**Email Address:** david.corwin@thinkvss.com  
**Phone:** 816-916-4042

## ARTICLE 2: MASTER SERVICES AGREEMENT

This SOW, when executed and accepted by the Customer and delivered to VSS constitutes a binding agreement between VSS and the Customer subject to the terms and conditions contained herein and in Appendix A. This SOW may be executed by facsimile and email, and in counterparts, each of which shall be deemed an original.

## ARTICLE 3: STATEMENT OF WORK

The purpose of this SOW is to define the roles and responsibilities of both parties, the deliverables of the project referred to above (the "Project"), and the completion criteria for the Project.

Changes and modifications to this SOW may result in corresponding changes to the price, estimated dates, responsibilities, or other provisions of the Project.

## ARTICLE 4: PROJECT OBJECTIVE & SUMMARY

The objective of this SOW is to provide professional services for upgrading the customer's two systems to v7.3. VSS will provide onsite or remote resource based on the client requirement to complete the task outlined in Article 5.



**ARTICLE 5: VSS TASKS & DELIVERABLES**

VSS will provide the following:

**For each of (2) system perform the following:**

- Access system, determine current V7R1 PTF & CUM level, execute Pre-Upgrade Verification Tool,
- Order latest V7R1 PTFs & CUMs on physical media as well as V7R3 PTFs and CUMS
- Perform SLIP install if system is too far behind on PTF & CUM level,
- Load V7R1 PTF & CUM media; V7R3 PTF & CUM media; and V7R3 media to image catalog
- Set system to apply V7R1 PTFs and CUMs from image catalog at next IPL, and execute IPL
- Observe IPL and verify PTFs and CUMs applied properly & repeat if necessary
- Re-execute Pre-Upgrade Verification Tool
- Execute V7R1 to V7R3 upgrade
- Set system to apply V7R3 PTFs and CUMs from image catalog at next IPL, and execute IPL
- Observe IPL and verify PTFs and CUMs applied properly & repeat if necessary,
- Review system operation and communication for proper operation

**ARTICLE 6: CUSTOMER TASKS & RESPONSIBILITIES**

- 1) Client will identify a lead project contact to communicate and work directly with VSS personnel. The lead contact will have authority to make binding, executive decisions concerning the project.
- 2) Client shall have system engineers available for the duration of this project that have administrative authority over all project-related systems. Client will provide administrative logins to systems that may be required to complete this project.
- 3) Client will provide access to any areas and resources required to complete the project in a timely manner. This includes a reasonable work area for laptop and/or system assembly, an internet connection that allows full unobstructed connectivity to the internet for the purpose of transferring IBM and/or other project related materials. This includes proper security and physical access rights to all related systems in order to complete the tasks outlined in this SOW. Client will provide any required security clearances or escorts to allow engineer access to required facilities.
- 4) Client is responsible for all required media and licensing to support the engagement.

**ARTICLE 7: PROJECT ASSUMPTIONS & DEPENDENCIES**

- 1) VSS and the Customer base the tasks, deliverables and costs of this Project on the Project Objectives and Summary set forth above. These objectives represent the "scope" of the Project.
- 2) Additional changes to the scope of the Project not in this SOW, additional support from VSS or additional services performed by VSS to fulfill the Customer's tasks and responsibilities set forth above or otherwise are separately chargeable items by VSS. If the Customer does not object to the additional service/work, the Customer accepts the changes or additional work under the terms of this SOW understanding that additional cost to the Estimated Total Price referenced below may occur.
- 3) In the event that the Customer fails to provide VSS access to facilities and systems or designated personnel are not available during the on-site period, additional on-site days may be required, and the Customer may incur additional cost as a result.
- 4) In the event that systems, features, components, parts, software, version/release level updates are not provided when VSS services arrive at the designated time, additional on-site time and travel and expenses may be required (at additional cost to the Estimated Total Price referenced below).

**ARTICLE 8: PROJECT PRICING & PAYMENT TERMS**

<b>Estimated Start Date:</b>	To be scheduled	<b>SOW Expiration Date:</b>	12/31/2018
<b>Hourly Rate:</b>	\$180.00	<b>Estimated Hours:</b>	35
<b>Estimated Price:</b>	TBD based on actual hours used plus associated expenses		

The Customer agrees that the above totals represent VSS' best effort to accurately determine the labor required to perform the Project based on currently available information and are subject to change. VSS will notify the Customer if changes or modifications to these totals are necessary. Unless the Customer communicates to VSS in writing with instruction to not continue providing the services described in the written or orally communicated change/modification, VSS will continue and the Customer agrees to all terms of this SOW with acceptance and addition to the Total Estimated Price provided above.



Initials: DS  
JB  
VSS Customer

**Section 8.1: Scheduled Billing**

VSS will provide services under this SOW at the listed price above and the Customer will be billed as follows:

- Billing will be at project completion, not to exceed (1) month from project start to project finish.

**Section 8.2: Travel & Expenses Billing**

Travel & expenses include hotel/lodging, meals and travel expenses associated with the Project. Travel expenses related to the performance of services will be billed to the Customer as follows.

- Billing for Travel if needed and approved, will be based on actual cost and expenses accompanied by receipts and billed to the customer.

**Section 8.3: Consultant Travel Time Billing**

VSS consultant travel time will be billed as follows.

- Billing for travel time if needed and approved, will be at \$90.00 an hour and capped at 8 hours per round trip per engineer.

Payment of all fees and expenses hereunder are due in full within 30 days from the date of invoice. If equipment is associated with the Project, all equipment will be billed separately and payment will be due in full within 30 days from the date of invoice. A late payment/finance charge may be charged equal to one and one half percent (1 ½%) and shall be due on all amounts that remain unpaid for more than thirty (30) days.

**ARTICLE 9: VSS RESPONSIBILITIES**

Services as described in this SOW will be considered complete upon the occurrence of the earlier of:

1. The tasks/deliverables/responsibilities of VSS specified above are provided,
2. The SOW is terminated under the applicable provisions of Appendix A.

**ARTICLE 10: COMPLETION CRITERIA**

Services as described in this SOW will be considered complete when:

1. The tasks/deliverables/responsibilities specified above are provided, or
2. The Project is terminated under the applicable provisions of Appendix A.

Upon completion of the Project, the CUSTOMER will be presented a Project acceptance document and a Project survey. Failure to not present or complete the Project acceptance and Project survey does not relieve the Customer from its obligations under this SOW for timely payment of services performed by VSS.



Initials: DS  
JB  
VSS Customer

**ARTICLE 11: APPROVALS**

Both VSS and the Customer warrant and represent that they have authority to execute this SOW on behalf of their company and to bind them to the obligations contained herein.

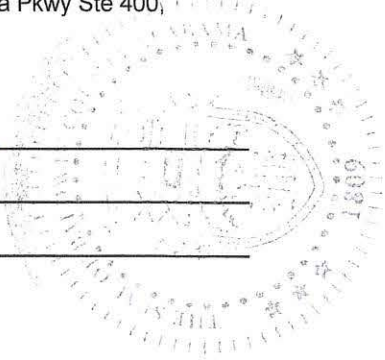
**IN WITNESS WHEREOF**, the parties have caused this Statement of Work to be executed by their duly authorized representatives on the respective dates set forth below, effective as of August 31, 2018.

**VSS, LLC**  
**Signature:** DocuSigned by: Jeff Bass  
9FB57AF494484D2  
**Print:** Jeff Bass  
**Title:** Business Manager Delivery and Managed Services

**Date Executed:** 9/17/2018 | 4:28 CDT, 2018

**Mailing and Email Address:** Attn: Bill Grote, 382 Galleria Pkwy Ste 400, Madison, MS 39110, and [bill.grote@thinkvss.com](mailto:bill.grote@thinkvss.com), with a copy to Attn: Linda Cobb, 382 Galleria Pkwy Ste 400, Madison, MS 39110, and [linda.cobb@thinkvss.com](mailto:linda.cobb@thinkvss.com).

**Baldwin County Commission**  
**Signature:** Frank Burt, Jr  
**Print:** Frank Burt, Jr  
**Title:** Chairman



**Date Executed:** October 2, 2018

**Mailing and Email Address:** Attn: Brian Peacock  
Address: 312 Courthouse Square, Suite 15, Bay Minette, AL 36507  
Email Address: BPeacock@baldwincountyal.gov

**PO Requirements** – Check Yes if PO is required to support invoicing for this SOW. Check No if PO is not required (Either YES or NO must be checked for proper and timely execution of this document.).

- YES - PO is required to support invoicing for this SOW.
  - NO – PO is not required to support invoicing for this SOW.
  - Check if billing address is same as Company address as recorded in Article 1 of this document.
  - Check if different billing address should be used and printed billing address below.
- Company Name: \_\_\_\_\_
- Contact Person: \_\_\_\_\_
- Billing Address: \_\_\_\_\_
- \_\_\_\_\_
- Check if you prefer a paperless invoice. Please print the name, phone number and email address of the recipient the invoice should be sent to.

\_\_\_\_\_  
Name Phone Number Email address

## APPENDIX A: TERMS & CONDITIONS

**GENERAL.** VSS desires to provide and the Customer desires to purchase professional computer consulting and analysis services and such support documentation or other materials as specified in the foregoing Statement of Work, together with all Additional Services and amendments and modifications described below to the foregoing Statement of Work being hereinafter referred to as the "SOW". The SOW and all of the terms and conditions of this Appendix A being hereinafter collectively referred to as this "Agreement". Each SOW shall be non-cancelable, except as specifically provided herein.

### SERVICES

**Services.** VSS shall provide the Services specified in the SOW.

**Site of Services.** The Services provided by VSS pursuant this Agreement shall either be performed at VSS' offices or the Customer's offices, except when the parties mutually agree that such Services may be performed at another site. If the Services are to be performed at the Customer's offices, the Customer shall provide office space and facilities to VSS' staff necessary to perform such Services.

**Additional or Future Services.** VSS may provide to the Customer under the terms and conditions of this Agreement additional consulting and analysis services and additional support documentation or other materials, which shall include design, conversion and implementation planning, installation evaluation, technical advice, day-to-day assistance, and specification preparation (collectively, the "Additional Services"). Should Additional Services be required, the Customer shall request Additional Services in writing, and such writing shall describe: (a) the nature of the work to be performed; (b) the term of the work assignment; and (c) the individual who will coordinate the work assignment for the Customer.

VSS shall use its good faith efforts to provide the Additional Services and shall reply in writing within ten (10) days following receipt by VSS of the Customer's written request indicating whether VSS will accept such request and provide a cost quote for the performance of such Additional Services. Upon approval by the Customer of the Additional Services and VSS's charges therefor, such services and charges shall be deemed an amendment to the SOW, shall constitute Services hereunder and shall be governed by the terms and conditions of this Agreement.

**Modification of Services.** If the Customer desires to modify the Services, the Customer shall so advise VSS and shall submit written specifications of such desired modifications to VSS. After receipt of the specifications, VSS shall provide the Customer with a cost quote for performing such services. Upon approval by the Customer as to the modified services and VSS's charges therefore, such services and charges shall be deemed an amendment to the SOW and shall be governed by the terms and conditions of this Agreement.

**Oral Modification.** In the event that the Customer wishes to modify the scope of the Services by oral request, VSS may perform such services and provide such support documentation or other materials at its discretion. If VSS performs the modified services in response to the Customer's oral request, the Customer agrees that VSS may expend the amount of time it deems reasonable and necessary to perform the modified services that such services constitute Services hereunder and under the SOW and that the charges for such modified Services shall be governed by this Agreement.

**Conflict between this Appendix A and SOW.** In the event of a conflict between the terms and conditions of this Appendix A and the terms and conditions of a SOW, the terms and conditions of this Appendix A shall govern.

### PAYMENT

**Payment.** In consideration of the Services rendered by VSS to the Customer under this Agreement, the Customer will pay to VSS fees and other charges in accordance with the terms of the applicable SOW and this Agreement.

**Overruns.** In the event that the Customer requests VSS to perform services beyond the number of days specified in the SOW, and the Customer permits such services to be performed, the performance of such services shall be governed by the Sections above entitled **Additional or Future Services**, **Modification of Services** or **Oral Modification**, and shall be deemed Services hereunder, including under the SOW.

**Invoicing.** VSS shall submit an invoice to the Customer each month for Services rendered during the preceding monthly period. Payment shall be made by the Customer within thirty (30) days of the invoice date. The Customer shall pay to VSS, with respect to any invoice which remains unpaid for thirty (30) days or more after the date of the invoice, a finance charge/late fee equal to one and one half percent (1 ½%) per month of the amount of the invoice. VSS will provide with its invoice a status report to the Customer describing Services rendered during the Invoicing period.

**Applicable Taxes.** The fees and charges payable under this Agreement shall not be construed to include local, state or federal sales, use, excise or other similar taxes or duties. Any such taxes shall be assumed and paid for by the Customer except those taxes based on the net income of VSS. The parties acknowledge and agree that the Customer is a governmental entity and is tax exempt.

**Out-of-Pocket Expenses.** Any out-of-pocket expenses incurred by VSS and pre-approved by the Customer shall be paid by the Customer. "Out-of-pocket expenses" shall mean any reasonable expenses incurred in connection with the performance of the Services under this Agreement, including, but not limited to, travel expenses, telephone calls, supplies and transportation. The Customer shall also reimburse VSS for additional reasonable expenses incurred by VSS in making changes requested by the Customer in the Services to be performed under this Agreement. All travel by VSS staff shall be in accordance with VSS' standard policies governing travel and business expenses.

### TERMINATION

**VSS**

Initials DS  
VSS JB  
Customer \_\_\_\_\_

This Agreement shall terminate upon the occurrence of one or more of the following:

- A. Mutual written agreement of the parties to terminate this Agreement;
- B. Written notice from one of the parties to the other party; provided, however, that this Agreement shall not terminate with respect to, and until the work under, all outstanding SOWs has been completed and accepted by the Customer and all fees have been paid in connection therewith;
- C. The Customer refuses or is unable to accept delivery of any item or Product;
- D. The Customer becomes insolvent or subject to proceedings under any Federal or state law relating to bankruptcy or the relief of creditors, or makes any assignment for the benefit of creditors;
- E. The Customer suffers a material adverse change in its financial condition or otherwise that affects the Customer's ability to perform all of its obligations under this Agreement and any SOW (as determined by VSS using its reasonable discretion); or
- F. Either party fails to perform in any material way any other obligation of such party under this Agreement and/or any SOW and the defaulting party fails to cure such breach within fifteen (15) days following written notice thereof from the non-defaulting party.

Either party's right to terminate shall be exercised by written notice. Upon termination under subsections C, D, E or F of this Article, the Customer shall be liable to VSS for any and amounts owed for work performed by VSS and expenses incurred by VSS, if any, pursuant to this agreement, which shall not exceed the Estimated Total Price, and VSS shall be entitled to immediate possession of any and all deliverables, documents and products for which payment in full has not been received without liability for entering Customer's premises for such purpose and to retain all monies paid hereunder as an offset to VSS' damages. Subject to the limitations set forth above, the remedies provided in this Agreement shall not be the exclusive remedies available to VSS and shall be in addition to any other remedies in law or equity, and no action by either party shall constitute a waiver of any such right or remedy. The election of one or more remedies shall not bar the use of other remedies.

#### EMPLOYEES AND SUBCONTRACTORS

**VSS Employees.** VSS will be responsible for payment of all compensation to VSS employees and subcontractors assigned to perform the Services under this Agreement. VSS shall not be responsible for any work performed by a VSS employee or subcontractor at the request of the Customer outside of the scope of the Services or for payment for any such work, unless otherwise agreed to in writing by VSS and the Customer.

**Subcontractors.** VSS reserves the right, in its sole discretion, to subcontract to qualified third persons any part or all of the performance of the Services described in this Agreement and the applicable SOWs.

**Right to Assign and Remove Employees and Subcontractors.** VSS shall have the right to determine which of its employees and subcontractors shall be assigned to perform the Services for the Customer under this Agreement, and shall have the sole right to re-assign any employee and/or subcontractor provided that such re-assignment does not interfere with the performance of the Services.

**Supervision.** The Customer shall be responsible for the direction of the Services performed by VSS' employees and subcontractors under this Agreement and shall appoint a representative to carry out this responsibility. VSS shall be responsible for supervision and general control of its employees and shall provide supervisory personnel to carry out this responsibility.

#### PROPERTY RIGHTS.

**Deliverables.** Upon payment in full of all fees and charges set forth in this SOW, the Customer shall have ownership of the tangible materials, computer programs and related documentation produced by VSS and specified herein to be delivered to the Customer hereunder (the "Deliverables"). VSS also grants to the Customer a non-exclusive, perpetual, fully paid-up, royalty free, worldwide license to use VSS' intellectual property contained within the Deliverables.

**Copyright Notice.** Each party hereto agrees to reproduce the copyright notice and any other legend of ownership on any copies made under the licenses granted in this Article.

#### LIABILITY, DEFAULT AND INDEMNIFICATION

**Force Majeure.** VSS shall not be liable for any damages caused by delay in rendering performance of the Services hereunder arising from any cause beyond the reasonable control of VSS, or as a result of strikes, work stoppages, shortages of materials or equipment, delays by vendors, riot, war, fire, flood or other disaster, or failure of equipment or programs not developed by or out of the control of VSS.

**Warranties.** VSS warrants and represents that the Services provided hereunder shall be delivered in a workmanlike manner and in keeping with the standards prevalent in the industry. Unless otherwise expressly provided herein, VSS excludes and disclaims all other warranties whatsoever not specifically stated in this Section, whether express, implied or statutory, including, without limitation, any merchantability or fitness in respect to the performance of Services by VSS under this Agreement. VSS shall in no event be liable for any claim for loss of profits, or any incidental, special, exemplary or consequential damages.

The Customer warrants that any workplaces owned, leased or supervised by the Customer and to which VSS employees or subcontractors are assigned shall be maintained free from any unreasonable hazards or defects.

**Amount of Liability.** In no event shall VSS' liability for breach of contract or damages to the Customer exceed the amount of money paid by the Customer to VSS during the immediately preceding six (6) months under this SOW under which the breach or damages arose. Services performed under this Agreement shall be considered to have been accepted by the Customer upon completion of the installation and testing of the completed services and/or deliverables unless a written proof of claim is made by the Customer to VSS within ten (10) days of the completion of such installation and testing of the Services. Nothing in this Section shall be deemed to limit the obligations of the parties under Indemnification Section herein.

**VSS**

Initials: DS  
JB  
VSS Customer

**Injury to Persons and Damage to Property.** VSS will maintain comprehensive general liability and automotive liability and property damage coverage for injuries to persons and property damage occurring during and as a result of the performance of Services by VSS employees under this Agreement as required in the Section below entitled **Insurance**. VSS shall not be responsible and have no liability for payment of any damages above and beyond the limits of such Insurance. VSS shall not be responsible and have no liability for injuries or damages resulting from the acts of those outside the control of VSS or those working outside the scope of Services as agreed hereunder.

**Default.** Failure by VSS or the Customer to comply with any term or condition under this Agreement shall entitle the other party to give the party in default written notice requiring it to cure such default. If the party in default has not cured such default within ten (10) days after receipt of notice, the notifying party shall be entitled, in addition to any other rights it may have under this Agreement or otherwise at law or in equity, to terminate this Agreement and all SOWs by giving notice to take effect immediately. The right of either party to terminate hereunder shall not be affected in any way by its waiver of or failure to take action with respect to any previous default.

**Indemnification.** VSS agrees to indemnify, defend and hold harmless the Customer from and against any and all claims, demands or actions brought by any third party for damage to tangible personal property and bodily injury (including death) resulting from the negligence or illegal acts of VSS unless such liability has been expressly waived or limited by the terms of this Agreement

VSS shall also, at its expense, defend or settle any claim, action or allegation brought against the Customer that any Deliverable infringes any U.S. Intellectual property right of any third party and shall pay any final judgments awarded or settlements entered into. Notwithstanding the foregoing, VSS shall not be responsible for or liable to the Customer for any infringement of a third party's intellectual or other property right arising out of: (i) the Customer's use of any third party software or equipment if such use violates or infringes any third party rights and the Deliverable by itself would not have infringed such third party rights; (ii) modifications, enhancements or alterations of Deliverables not performed or approved in writing by VSS; or (iv) VSS' adherence to the Customer's specific instructions outside the SOW. VSS makes no warranty whatsoever concerning, and shall bear no liability related to, any third party software, firmware, middleware, hardware or documentation. In the event any such infringement,

claim, action or allegation is brought or threatened, VSS may, at its sole option and expense: (i) procure for the Customer the right to continue use of the Deliverable or infringing part thereof; or (ii) modify or amend the Deliverable or infringing part thereof; or replace the Deliverable or infringing part thereof with other software having substantially the same or better capabilities; or (iii) if neither of the foregoing is commercially practicable, VSS may terminate this Agreement with respect to the infringing part of the Deliverable and refund the monies paid by the Customer for the infringing part less any reasonable amount for use or damage. VSS will then be released from any further obligation whatsoever to the Customer in connection with the infringing part of the Deliverable.

The indemnifying party agrees to defend against, and hold the indemnified party harmless from, any such claims and to pay all litigation costs (including the costs of any appellate bonds), all reasonable attorneys' fees, settlement payments and any and all damages awarded or resulting from any such claim.

The foregoing indemnities shall be contingent upon the following: the indemnified party shall: (1) give prompt written notice to the indemnifying party of any such claim, demand, or action for which indemnification is sought; (2) fully cooperate in the defense or settlement of any such claim, demand, or action; and (3) grant the indemnifying party sole control over the defense and settlement of such claim, demand or action provided the indemnifying party obtains the prior written consent of the indemnified party to any settlement or proposal of settlement (which consent shall not unreasonably be withheld).

In no event shall VSS have any liability under this Section in excess of the applicable deductible owed by VSS and the amounts payable by the insurer under VSS' Insurance policies as provided for under the Insurance Section herein.

**INSURANCE.** During the term of this Agreement and prior to completion of all outstanding SOWs, VSS shall maintain insurance coverage as follows:

- A. Comprehensive General Liability Insurance in a form consistent with industry standards and with limits of at least One Million Dollars (\$1,000,000) combined single limit for bodily injury, personal injury and property damage for each occurrence.
- B. Property and Casualty Insurance in a form consistent with industry standards and with limits sufficient to cover all products, equipment and other deliverables to be provided by VSS under this Agreement.
- C. Worker's Compensation Insurance for employees of VSS that meets or exceeds the statutory limits of the state(s) in which the services by VSS employees will be performed for the Customer.
- D. Comprehensive Automobile Liability Insurance in a form consistent with industry standards and with limits of at least One Million Dollars (\$1,000,000) combined single limit for bodily injury, personal injury and property damage for each occurrence.
- E. Technology Errors and Omissions Liability Insurance in the amount of not less than One Million Dollar (\$1,000,000) for each occurrence and in the aggregate.

A combination of primary and excess/umbrella policies will be acceptable as a means to meet the limits specifically required herein.

VSS shall provide the Customer with written evidence of the existence and maintenance of such Insurance policies upon the Customer's request. If any of such insurance policies are to be modified or cancelled during the term of this Agreement and prior to the completion of all SOWs in any way which would materially reduce the coverage required under, VSS shall provide written notice to the Customer at least thirty (30) days prior to such modification or cancellation.

During the term of this Agreement and until payment in full of all amounts due under this Agreement by the Customer to VSS, the Customer shall maintain insurance coverage as follows:

- A. Comprehensive General Liability Insurance in a form consistent with industry standards and with limits of at Least One Million Dollars (\$1,000,000) combined single limit for bodily injury, personal injury and property damage for each occurrence.
- B. Property and Casualty Insurance in a form consistent with industry standards and with limits sufficient to cover all products, equipment and other deliverables provided by VSS under this Agreement and not yet paid for by the Customer.



Initials: 

DS
JB
VSS

 Customer



C. Worker's Compensation Insurance for employees of the Customer that meets or exceeds the statutory limits of the state in which the services will be provided at the Customer's site by VSS employees.

A combination of primary and excess/umbrella policies will be acceptable as a means to meet the limits specifically required herein.

The Customer shall provide VSS with written evidence of the existence and maintenance of such Insurance policies upon VSS's request. If any of such Insurance policies are to be modified or cancelled during the term of this Agreement or prior to payment in full of all amounts due by the Customer to VSS under this Agreement in any way which would materially reduce the coverage required under, the Customer shall provide written notice to VSS at least thirty (30) days prior to such modification or cancellation.

**CONFIDENTIALITY.** Each party will treat as confidential and not disclose to any third party or use for its own behalf any of the other party's proprietary or confidential information which such party obtains hereunder or in connection herewith. Each party shall use the same degree of care in protecting the other party's proprietary or confidential information as such party uses in protecting its own proprietary or confidential information. Promptly upon termination or cancellation of this Agreement, each party will discontinue its use of any of the other party's proprietary or confidential information and, if requested by the other party, return the same to the other party, together with all copies, portions and other documents containing, in whole or part, such proprietary or confidential information. If such information is publicly available, is already in the receiving party's possession or known to the receiving party, is rightfully obtained by the receiving party from a third party, or is independently developed by the receiving party, the receiving party shall bear no responsibility for its disclosure, inadvertent or otherwise. Notwithstanding anything in this Agreement to the contrary, the parties acknowledge and agree that the Customer is a governmental entity and shall be entitled to disclose any information deemed necessary to comply with all applicable laws, rules and regulations.

**NOTICES.** All notices, requests, demands, consents or other communications given hereunder or in connection herewith shall be in writing, shall be sent by registered or certified mail, return receipt requested, postage prepaid, or by hand delivery or expedited delivery service, with delivery charges prepaid and with acknowledged receipt of delivery, or by email with acknowledgment of receipt, shall be deemed given on the date of acceptance or refusal of acceptance shown on such mail or hand delivery receipt, or on the date of acknowledgment of receipt of any email, and shall be addressed to the applicable party at the addresses shown on the signature page attached hereto.

#### GENERAL PROVISIONS

**Governing Law and Jurisdiction.** This Agreement shall be governed by and interpreted and enforced in accordance with the laws of the State of Alabama. The Customer hereby irrevocably consents (i) to the jurisdiction of the Courts of Baldwin County, Alabama, and of any Federal Court located in the Southern District of Alabama, and agrees that venue in each of such Courts is proper in connection with any action or proceeding arising out of or relating to this Agreement, and (ii) to the service of process by certified mail, return receipt requested. Nothing herein shall affect the right of any party to serve process in any other manner permitted by law or to commence legal proceedings or otherwise proceed against any party in any such jurisdiction.

**Entire Agreement/Amendments.** This Agreement, including the SOW and amendments thereto, contain the entire agreement between the parties with respect to the subject matter hereunder and supersede any previous understandings, commitments, or agreements (oral or written) between the parties with respect to the subject matter hereunder. No statement or promise made by VSS which is not contained herein shall be binding upon VSS.

**No Third Party Beneficiaries.** The representations, warranties, covenants and agreements contained in this Agreement are for the sole benefit of the parties hereto and, in the case of Section above entitled **Indemnification**, any specified indemnified parties, and their heirs, executors, administrators, legal representatives, successors and assigns, and shall not be construed as conferring any rights on any other persons or third party beneficiary.

**Waiver or Modification of Terms.** No waiver, alteration or modification of any of the provisions of this Agreement, including the SOW, shall be binding, unless in writing and signed by a duly authorized representative of VSS, except for modifications made pursuant to Sections above entitled **Additional or Future Services, Modification of Services, or Oral Modification**.

**Non-Waiver.** A term or condition of this Agreement can be waived only by written consent of both parties. Forbearance or indulgence by either party in any regard shall not constitute a waiver of the term or condition to be performed and, until performance of the term or condition is complete, the other party may invoke any remedy available under this Agreement or by law, despite such forbearance or indulgence.

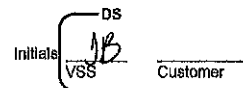
**Severability.** Any provision of this Agreement which is invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provisions hereof and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

**Captions.** Title and Section headings contained in this Agreement are for convenient reference and do not constitute part of the Agreement.

**Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the parties of this Agreement and their respective successors and assigns; provided, however, that neither party shall assign this Agreement without the prior written consent of the other party and assignment of this Agreement by either party without the prior written consent of the other party shall be void.

**Attorney's Fees.** If either party elects to enforce the terms and conditions of this Agreement in any arbitration or litigation, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs, including those incurred on appeal, as determined by the arbitrator or court.

**Counterparts.** This Agreement may be executed in any number of counterparts and any party hereto may execute any such counterpart, each of which when executed and delivered (whether via original, facsimile and/or email) shall be deemed to be an original and all of which counterparts taken together shall constitute but one and




the same instrument. This Agreement shall become binding when one or more counterparts taken together shall have been executed and delivered by the parties. It shall not be necessary in making proof of this Agreement or any counterpart hereof to produce or account for any of the other counterparts.

**Survival.** The parties' obligations under this Agreement which by their nature continue beyond termination, cancellation or expiration of this Agreement, shall survive termination, cancellation or expiration of this Agreement.

**Independent Contractors.** The relationship of the parties under this Agreement shall be and at all times shall remain one of independent contractor only. Neither party is an employee, agent or joint venture partner of the other party. Neither party shall have the authority to assume or create an obligation on behalf of the other party with respect to the Products or otherwise unless specifically instructed to do so, and shall not take any action which has the effect of creating the appearance of it having such authority.

**Time is of the Essence.** Time is of the essence with respect to this Agreement and the performance of the obligations hereunder.



Initials  Customer