

BLUEGEM



BlueGEM, LLC	Brevard County Clerk of the Court
1825 Riverview Drive	700 South Park Avenue
Melbourne, FL 32901	Titusville, FL 32780
("Supplier")	("Customer")

WHEREAS: in order to comply with the legislative mandate that clerk of the court continually advance the modernization, efficiency, accessibility, and safety of public records and to provide the residents of Brevard County with a better, safer, more accessible and more cost efficient solution to document storage, the Brevard County Clerk's office is entering into this contract for BlueGem, LLC to provide a high tech, cost efficient solution to the document storage problem that will provide substantial cost savings to the taxpayers.

Further, Pursuant to Fla. Stat. §28.2221 (2012) a proper and legitimate state purpose is served by providing the public with access to public records and information on the Internet;

Further, Pursuant to Fla. Stat. §28.22205 (2012), each clerk of the court is required to implement electronic filing process,

Further, Pursuant to Rule 2.420 of the Judicial Administrative Rules (2012), each clerk of the court is required to provide citizens with appropriate access to all judicial records;

Further, Pursuant to Rule 2.430 of the Judicial Administrative Rules (2012), the clerk of the court is obligated to retain public records as follows:

(c) Records Not Permanently Recorded. No court records under this subdivision shall be destroyed or disposed of until the final order, final docket entry, or final judgment is permanently recorded for, or recorded in, the public records. The time periods shall not apply in any action in which the court orders the court records to

be kept until the court orders otherwise. When an order is entered to that effect, the progress docket and the court file shall be marked by the clerk with a legend showing that the court records are not to be destroyed or disposed of without a further order of court. Any person may apply for an order suspending or prohibiting destruction or disposition of court records in any proceeding. Court records, except exhibits, that are not permanently recorded may be destroyed or disposed of by the clerk after a judgment has become final in accordance with the following schedule:

(1) For trial courts

(A) 60 days -- Parking tickets and noncriminal traffic infractions after required audits have been completed.

(B) 2 years -- Proceedings under the Small Claims Rules, Medical Mediation Proceedings.

(C) 5 years -- Misdemeanor actions, criminal traffic violations, ordinance violations, civil litigation proceedings in county court other than those under the Small Claims Rules, and civil proceedings in circuit court except marriage dissolutions and adoptions.

(D) 10 years -- Probate, guardianship, and mental health proceedings.

(E) 10 years -- Felony cases in which no information or indictment was filed or in which all charges were dismissed, or in which the state announced a nolle prosequi, or in which the defendant was adjudicated not guilty.

(F) 75 years -- Juvenile proceedings containing an order permanently depriving a parent of custody of a child, and adoptions, and all felony cases not previously destroyed.

(G) Juvenile proceedings not otherwise provided for in this subdivision shall be kept for 5 years after the last entry or until the child reaches the age of majority, whichever is later.

(H) Marriage dissolutions -- 10 years from the last record activity. The court may authorize destruction of court records not involving alimony, support, or custody of children 5 years from the last record activity.

Further, Pursuant to Fla. Stat. §119.0714 (2012) records provided to the public must be redacted to prohibit disclosure of specific information not allowed to be produced:

Further, Pursuant to Fla. Stat. §28.2221 (2012) the clerk of the court is responsible to ensure that Internet access to all court records is properly safeguarded to prevent the records from being altered or modified;

Further, in accordance with Fla. Stat. § 28.2222 (2012) the clerk of the court must each year file a capital improvement plan that documents the costs, methodology and success of obtaining the goals for modernizing and improving the storage and public access to court records;

Further, Historically the need to store and safeguard the above described records has been costly, inefficient, and is rapidly becoming unmanageable;

Further, as the number of stored documents and filings increase annually, the document storage problem is compounded;

Further, if the status quo of document maintenance is allowed to continue costs to the tax payer of the county will increase exponentially over the coming years.

Further, the status quo of document storage is inadequate to allow the residents of Brevard County appropriate access to these documents;

Further, the status quo for maintaining and storing records is not appropriate to properly preserve and safeguard these documents from the normal frailty imposed over time or from potential catastrophic emergencies in the event of Hurricane or other natural disaster;

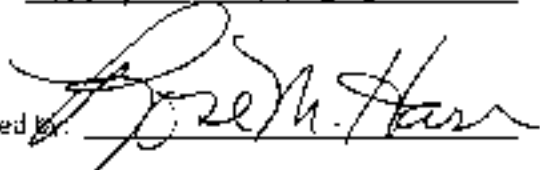
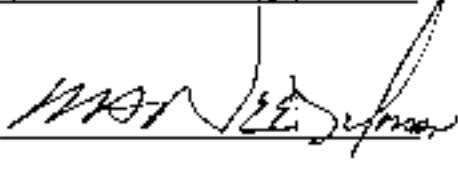
Further, the status quo for document storage has caused safety hazards for public employees who have had to treat documents with hazardous pesticides and mold concerns,

ACCORDINGLY IT IS AGREED as follows:

1. This Contract is made between Supplier and Customer for the provision of the Services described in Schedule A ("Statement of Work") in consideration of the Total Charge set out in Schedule B ("Pricing Schedule") and Schedule C ("Digital Pen Pricing Schedule"). Schedule A may be amended by mutual agreement of the Parties from time to time to incorporate business process change.
2. This Contract shall comprise:
 - 2.1. Supplier's Standard Terms and Conditions for IT Services;
 - 2.2. The Statement of Work;
 - 2.3. The Pricing Schedule; and
 - 2.4. Clause 3 set out below.

[Type the document title]

3. This Services performed under this Contract shall commence immediately upon execution of this Contract and, subject to the provisions of the Supplier's Standard Terms and Conditions for IT Services, the Statement of Work, and the Pricing Schedule, and shall continue for 60 months (the "Contract Term").

For and on behalf of:	For and on behalf of:
BlueGEM	Brevard County Clerk of the Court
Date: <u>29 June 2012</u>	Date: <u>29 June 2012</u>
Signed by: <u></u>	Signed by: <u></u>
<u>Rose M. Harr</u> (print name)	<u>Alex Heddell</u> (print name)

STANDARD TERMS AND CONDITIONS FOR IT SERVICES

1. Definitions

1.1. In this Contract the following expressions shall have the following meaning:

"*Associated Company*" means any subsidiary parent or other affiliated entity with common ownership, principles, or managing members of a party to this Contract or holding company of such party or any subsidiary of any such holding company;

"*Contract*" means this Contract entered into between Supplier and Customer;

"*Parties*" means Supplier and Customer and any successors or assigns thereto;

"*Contract Term*" means Five (5) Years from the Date this Contract is signed by both Parties;

"*Force Majeure*" means any of the following: (i) Act of God, (ii) outbreak of hostilities, riot civil disturbance, acts of terrorism, (iii) the act of any government or authority (including refusal or revocation of any license or consent), (iv) fire, explosion, flood, fog or bad weather, (v) power failure, failure of telecommunication lines, failure or breakdown of plant, machinery or vehicles, (vi) default of suppliers or sub-contractors, (vii) theft, malicious damage, strike, lock-out or industrial action of any kind and (viii) any cause or circumstance whatsoever beyond either Party's reasonable control;

"*Project Plan*" means the plan submitted by the Supplier to govern specifics on timing and how the Project will be implemented, including milestones and estimated timeframes for completion of tasks;

"*Green Light Document*" means the Customer's acceptance of a milestone or completion of the Project as indicated in the Project Management Plan, and authorizes Supplier to proceed with the next steps identified in the Project Plan.

"*Red Light Document*" means issues that may arise (either Customer or Supplier related) that may slow the progression of the Project, not contemplated in the Project Plan, to which the Customer has been made aware, which are prohibiting the progress of the Project's next steps, and will require corrective measures and potentially may require a revised Project Plan;

"*Intellectual Property Rights*" means all patents, utility models, petty patents, design patents, design rights (whether registered or unregistered), semiconductor topography rights, trademarks, trade secrets, services marks, and copyright, and applications in any country of the World for any of the foregoing.

"*Normal Working Hours*" means Monday through Friday, 8:00am until 5:00pm, excluding Saturdays, Sundays, and National and State holidays;

"*Services*" means the services to be provided by Supplier to Customer, more particularly described in this Contract and where the context admits shall include any part thereof;

"*Software*" means the computer software (if any) which Supplier has agreed to create for Customer as part of the Services;

"*Project Change Control*" means any agreed upon changes to the Services proposed in this contract formalized

in a written contract addendum executed by both Parties;

Interpretation

1.1.1. Except where the context otherwise requires, words denoting the singular include the plural and vice versa; words denoting any gender include all genders; words denoting persons include firms and corporations and vice versa;

1.1.2. Unless otherwise stated, a reference to a paragraph, Clause, or Section is a reference to the same in this Contract;

1.1.3. Headings are for ease of reference only and do not affect the construction of this Contract; and

1.1.4. Any reference to a party to the Contract includes reference to its successors in title and assigns.

2. Performance of Services

2.1. Supplier shall diligently perform the Services with reasonable skill and care and in accordance with the terms of the Contract. The Services shall be performed by Supplier during Normal Working Hours and any hours worked outside Normal Working Hours shall be charged separately as agreed upon by the Supplier and Customer in writing in advance of working outside of Normal Working Hours;

2.2. To the extent that they are reasonably required by Supplier to enable Supplier to perform the Services, Customer shall throughout the period of the Contract, whether or not requested by Supplier, promptly provide Supplier with all information requested by Supplier

and answer any questions from Supplier (including, without limitation, complete and accurate information concerning its requirements, organization, operations and activities and any decisions made by Customer in relation to the Services). Supplier reserves the right to charge Customer for reasonable costs incurred by Supplier as a result of any failure to comply with the provisions of this Contract; and

2.3. Customer shall provide Supplier free of charge with such office space and facilities as may reasonably be necessary to enable Supplier to fulfill its obligations under the terms of this Contract;

3. Extension of Time

3.1. Supplier shall incur no liability whatsoever to Customer by reason of any delay in the performance of the Services:

3.1.1. If the delay is due wholly or partly to any act, omission or default on the part of the Customer, including but not limited to failure to provide information, or to approve any documents, reports, specifications or results of the Services for which approval is required by Customer within any periods agreed in writing between Supplier and Customer or if there is no such period within a reasonable time; or

3.1.2. If the delay is due to Force Majeure.

In the event of any such delay as aforesaid, Supplier shall have the right to an extension of time to

perform the Services by such reasonable period having regard to the nature of such delay.

4. Price and Payment

4.1. Charges for cost of travel, accommodation and subsistence, and expenses incurred by Supplier are to be paid in addition to other fees owed under this Contract, so long as upon written request Supplier will provide Customer with such evidence of such costs and expenses as Customer may reasonably require so long as such costs are in accordance with applicable Florida statutes;

4.2. Charges for cost of travel, accommodation and subsistence, and expenses incurred outside of Florida or in excess of \$500.00 per individual item should be preapproved by Customer;

4.3. Supplier shall invoice Customer in accordance with the Pricing Schedule. Unless specified otherwise, payment of all amounts due under the Contract shall be made within forty-five (45) days of the date of invoice.

4.4. If Customer disputes the contents of any invoice, it shall provide Supplier in writing with reasons for non-payment and supporting evidence. In such event, Customer shall be entitled to suspend payment of the disputed part of the invoice. The parties shall discuss the disputed amount of the invoice as soon as possible. If it is established that the reasons are justified, the invoice shall be adjusted and Customer shall pay the remaining balance within forty-five (45) days after receipt of the

adjusted invoice. If it is established that the reasons are unjustified, Customer shall pay the disputed balance immediately, together with interest. Any part of an invoice properly disputed by Customer shall not affect payment of the undisputed portion. If no notification of dispute is received by Supplier within forty-five (45) days of Customer's receipt of the invoice for such costs or expenses, Customer shall be precluded from disputing payment of such invoice; and

4.5. Supplier reserves the right to charge Customer interest in respect of the late payment of any sum due under this Contract at the rate of one and one-half percent (1.5%) per month (or, if less, the maximum allowed by applicable law) on the overdue balance. Such interest shall immediately be paid by Customer upon first demand. All amounts due under this Contract shall be paid in full without any deduction or withholding other than as required by law.

5. Suspension of Services

If after the due date for payment has passed, payment due under the terms of this Contract is not made within forty-five (45) days of a written demand sent to Customer, Supplier may at its discretion suspend the performance of the Services or any part thereof until payment in full is received from Customer. If upon resumption of the Services, Supplier is required to carry out any services or incur any costs which but for the suspension would not have been carried out or

incurred, Customer shall reimburse the cost of any such service and costs, which shall be paid within forty-five (45) days of the date of the invoice. Any period of suspension shall be treated as a delay caused by Customer.

5. Communication

- 6.1. Customer shall nominate a person with the necessary knowledge and experience relevant to the provision of the Services and with the requisite knowledge of Customer's business (including but not limited to Customer's organization, its operations and business practices) as its representative and as the prime point of contact with Supplier and through whom all communication with Supplier shall be made (the "Customer Project Manager"). The Customer Project Manager shall:
 - 6.1.1. Serve as the interface between the Supplier and all departments of the Customer participating in the Project;
 - 6.1.2. In conjunction with the Supplier Project Manager, handle each Project Change Control;
 - 6.1.3. Obtain and provide all information, data, decisions, and approvals, within two (2) working days of his receipt of a request from the Supplier, unless the Parties (acting reasonably and promptly) agree to extend the response time;
 - 6.1.4. Resolve deviations from the Project Plan that are attributable to the Customer; assist with the resolution of any

issues with the Project, and escalate those issues internally, as necessary; and

- 6.1.5. Monitor and report to the senior management of the Customer on the status of the Project.

- 6.2. Supplier shall nominate a representative who shall be responsible for monitoring and reviewing the performance of the Contract and through whom all communication with Customer shall be made (the "Supplier Project Manager"). All significant concerns should be addressed to Supplier Project Manager in writing and delivered by certified mail.
- 6.3. Each Party may at any time substitute another suitable person as its representative, and shall give notice to the other party of any such substitution.
- 6.4. The Parties' representatives shall meet periodically as agreed between the Parties to review the Services and to deal with any requests and problems as may have arisen in the period prior to the review.
- 6.5. Either Party shall be entitled to call a meeting upon not less than three (3) days' notice if that party reasonably considers that there are issues which need to be discussed and/or resolved relating to the Services. Both Parties shall use all reasonable endeavors to attend meetings called on shorter notice when urgently required. Any such meeting may if the Parties agree be carried out by teleconference or videoconference.

7 Employment of Personnel

- 7.1. Supplier warrants that the personnel assigned by Supplier to the provision of the Services possess the degree of skill and experience appropriate to the tasks to which they are allotted. Supplier shall use reasonable endeavors to maintain the personnel so allotted but may substitute other suitably qualified personnel in connection with its own business requirements or if such personnel are for any reason absent from work. If any assigned personnel are promoted to a higher job category during the period of the Contract and Customer has requested that any such personnel should continue to provide Services, Supplier may adjust the Pricing Schedule to take account of the increased cost to Supplier of employing such personnel.
- 7.2. During the period of the Contract and for a period of six (6) months thereafter neither party shall without the prior written consent of the other party either directly or indirectly or in conjunction with any other person induce any employee or contractor of the other party or its Associated Companies who is or has, in the case of the Supplier's employees, been directly involved in the Supply or, in the case of the Customer's employees, been involved in the purchase of the Services to leave his employment and become an employee of such Party or any Associated Company of such Party.
- 7.3. As part of the written consent referred to in Clause 8.2, the Party giving the consent (the "Original

Employer") may require the other Party to make a payment to the Original Employer to reflect the cost of recruiting a replacement for such employee and to cover any losses and costs incurred by the Original Employer as a result of such employee ceasing to be employed by the Original Employer.

d. Intellectual Property Rights

- 8.1. Unless otherwise agreed in writing, any Intellectual Property Rights arising solely out of and in the course of the work carried out by Supplier as part of the Services shall vest in Supplier.
- 8.2. Subject to the payment of all sums due to Supplier under the Contract, Supplier agrees to grant or procure the grant to Customer of a non-exclusive, perpetual, royalty-free license (but with no right to sub-license the use to any third party) of the Intellectual Property Rights referred to in Clause 9.1 to use and reproduce the same in connection with the running of its own business.
- 8.3. To the extent that Supplier requires a license under any Intellectual Property Rights vested in or licensed to Customer to enable Supplier to carry out the Services, Customer hereby grants to Supplier, Supplier's Associated Companies, agents and sub-contractors engaged in providing the Services and warrants that it has the right so to grant a non-exclusive, royalty-free license for the duration of the Contract.
- 8.4. Infringement Notification:
- 8.4.1. Supplier shall forthwith notify Customer if any claim or demand is made or action brought against Supplier for

infringement or alleged infringement of any Intellectual Property Rights which may affect the use by Customer of the Services;

- 8.4.2. Customer shall forthwith notify Supplier if any claim or demand is made or action brought against Customer for infringement or alleged infringement of any Intellectual Property Rights in connection with the Services. Supplier shall have the right at its own expense to conduct any litigation arising therefrom and all negotiations in connection therewith and in such event Customer hereby agrees to grant to Supplier exclusive control of any such litigation and such negotiations;
- 8.4.3. Customer shall at the request of Supplier afford to Supplier all reasonable assistance for the purpose of contesting any claim or demand made or action brought against Customer or Supplier for infringement or alleged infringement of any such Intellectual Property Rights brought by third party vendors of Customer and shall be repaid all costs and expenses (including but not limited to reasonable attorneys' fees, costs, post judgment interests, and appellate attorneys' fees, costs, post judgment interests) incurred in so doing;
- 8.4.4. Customer shall not make any admissions which may be prejudicial to the defense or settlement of any claim

demand or action for infringement or alleged infringement of any such Intellectual Property Rights by Customer or Supplier;

- 8.4.5. If a claim, demand or action for infringement or alleged infringement of any such Intellectual Property Rights is made in connection with the provision of the Services or in the reasonable opinion of Supplier is likely to be made, Supplier may at its own expense either:
- 8.4.5.1. Modify the way the Services are provided, without reducing the performance and functionality of the same, so as to avoid the infringement or the alleged infringement and the terms herein shall apply mutatis mutandis to such modified Services; or
- 8.4.5.2. Procure a license on such terms as it shall think fit for Supplier to perform the Services and on terms which are reasonably acceptable to Customer.
- 8.5. The foregoing provisions of this Clause shall not apply insofar as any such claim or demand or action is in respect of:
- 8.5.1. Any use by or on behalf of Customer of anything supplied by Supplier under this Contract in combination with any item not so supplied where such use of the item directly gives rise to the claim, demand or action; or

8.5.2. Any modification carried out by or on behalf of Customer to any item supplied by Supplier under this Contract if such modification is not authorized by Supplier in writing; or

8.5.3. Customer's unreasonable refusal to use a modified form of the Services supplied pursuant to Clause 9.4.5.

8.6. If Supplier has availed itself of its rights to modify the way the Services are provided under Clause 9.4.5.1 or to procure a license in accordance with Clause 9.4.5.2 and such exercise of the said rights has avoided any claim, demand or action for infringement or alleged infringement, then Supplier shall have no further liability thereafter in respect of the said claim, demand or action.

8.7. Customer hereby warrants that any instructions given in relation to Supplier's use of any third party item supplied directly or indirectly by Customer shall not cause Supplier to infringe any third party's Intellectual Property Rights in such item.

9. Liability

9.1. The Supplier's liability in respect of (i) death or personal injury, and (ii) fraud or fraudulent misrepresentation, including statements made by Supplier fraudulently prior to the date of this Contract shall not be limited;

9.2. The Supplier's liability for direct physical damage to the Customer's tangible property under this Contract shall be limited to five million dollars (\$5,000,000). Supplier shall annually provide

customer with evidence of insurance meeting this minimum threshold.

9.3. The Supplier shall have no liability to the Customer for:

9.3.1. Loss of profits, revenue, savings, data, programs or electronic records, business, goodwill, loss of productivity, loss of use, or loss of contracts; and

9.3.2. Any type of indirect or consequential loss or damage; and

9.3.3. Supplier shall be liable to Customer for provable damages caused by Supplier.

9.4. The Supplier has no liability hereunder unless written notice has been received within six (6) months of the cause of action giving rise to the claim occurring, giving reasonable details of the subject matter of the claim. Notwithstanding the foregoing, no action, regardless of form, arising out of the subject matter of the Contract may be brought by either Party more than one year after completion of the Services except that action for non-payment may be brought by the Supplier within one year after the expiration or termination of the Contract or one year after the date of last payment whichever is later.

9.5. There are no implied warranties or liabilities.

10. Force Majeure

If either Party's performance of its obligations is affected by Force Majeure it shall forthwith notify the other Party of the nature and extent thereof. If by reason of Force Majeure, either Party is

unable to perform or there are delays by such Party in the performance of any such obligation, then in the event that Force Majeure affects such Party's obligations, such party's performance of any such obligation shall be suspended as long as the Force Majeure continues and the time for performance of that obligation shall be extended accordingly, and the party otherwise in default shall not in any event be liable to the other Party for any loss or damage whatsoever and howsoever arising (whether direct or indirect loss or damage) incurred or suffered or for any breach of any of the terms of the Contract by reason of such Force Majeure.

11. Confidentiality

11.1. Each Party ("the receiving Party") shall at all times during the continuance of this Contract and after its termination:

11.1.1. Maintain confidential all information given to him by the other Party ("the disclosing Party") at any time in respect of the business and affairs of the other Party, whether initially disclosed orally or in writing, or in the form of samples, models, computer data or Software, or by demonstration or otherwise, which is by its nature confidential or is previously identified or indicated to the receiving Party by the disclosing Party as being confidential information ("the Information") in compliance with Florida statutes; and

11.1.2. Not use the Information other than for the purposes of this Contract;

11.2. Information disclosed pursuant to this Contract shall be stored securely. Upon completion or termination of this Contract the receiving Party shall return all Information and all permitted copies of the same to the disclosing Party, save where archive copies kept by the receiving Party are required by law or a relevant regulatory authority.

11.3. Except where the disclosing Party gives written instructions to the receiving Party at any time that the obligations of confidentiality in respect of specified items of Information should be maintained for a different period, the receiving Party's obligations pursuant to this Contract shall notwithstanding subsequent termination continue for a period of five (5) years or as otherwise provided in Florida statutes.

12. Duration and Termination

12.1. The duration of this Contract shall be for a minimum initial term of five (5) years;

12.2. It is acknowledged that Supplier will need to invest substantial resources into the initial phases of this Contract that would not make the Project feasible on any shorter term than five (5) years; and

12.3. in the event Customer seeks early termination of the Contract, the term of performance of the Contract will be accelerated to end upon termination and the full amount owed under the Contract will be owed without any set off for any work that has not yet been completed. The remaining unpaid

balance owed under the contract shall become immediately due without setoff or reduction for work that has not yet been completed. By terminating this Contract early, Customer accepts all work is being fully completed and satisfactory and shall have no claims against Supplier; and

13. Consequences of Termination or Expiration

Upon termination or expiration of the Contract, Supplier shall be entitled to enter upon the premises of Customer for the purposes of recovering any equipment or materials which are the property of Supplier, for which purpose Customer hereby grants Supplier an irrevocable license to enter any such premises with reasonable notice to the customer and at reasonable times.

14. Risk of Loss

All work, including data, delivered to Customer by Supplier ("Deliverables") shall become the responsibility of Customer to protect from loss, damage or destruction on delivery and Customer assumes such responsibility and the related risk. Deliverables shall be considered delivered either when Customer takes physical possession of them directly from Supplier, when they are stored at Customer's location.

15. Assignment of Agreement

Neither Party may assign or subcontract (in whole or in part) any of the benefit of or their obligations under the Contract without the written consent of the other Party, except that: (i) the Supplier may assign the benefit subject to the burden of this Contract (or any part thereof) to any Associated Company; (ii) Supplier shall be entitled to sub-contract any of its obligations

under this Contract to any other person with the consent of Customer, such consent not to be unreasonably withheld or delayed, except that such consent shall not be required in the case of Supplier subcontracting its obligations to an Associated Company; and (iii) the Supplier shall have the right to assign its right to receive due payment of any Total Charges to a third party and the Supplier shall inform the Customer of the identity of such third party if and when such assignment takes place. Subject to the other provisions of this Clause 17, this Contract is binding upon and shall ensure for the benefit of the parties' personal representatives, assigns and successors in title.

16. Waiver

The waiver by either Party of a breach or default of any of the provisions of this Contract by the other Party shall not be construed as a waiver of any succeeding breach of the same or other provisions nor shall any delay or omission on the part of either party to exercise or avail itself of any right, power or privilege that it has or may have hereunder operate a waiver of any breach or default by the other party.

17. Notices

Any notice or other communication required to be given pursuant to the Contract shall be in writing and given in English, delivered certified mail, unless otherwise required by Florida statutes.

18. Invalidity and Severability

If any provision of the Contract shall be found by any court to be invalid or unenforceable to the invalidity or unenforceability of such provision shall not affect the other provisions of the Contract and all provisions not affected

by such invalidity or unenforceability shall remain in full force and effect. The Parties hereby agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible to economic legal and commercial objectives of the invalid or unenforceable provision.

19. Agency Partnership or Joint Venture

The Contract shall not operate so as to create or recognize an agency, partnership or joint venture of any kind between the parties hereto.

20. Whole Agreement

Unless otherwise agreed in writing the Contract supersedes and invalidates all other commitments, representations and warranties relating to the subject matter hereof which may have been made by the Parties either orally or in writing prior to the date hereof, save in respect of statements made fraudulently. The Contract may only be amended by written document signed by the Parties' authorized representatives.

21. Governing Law

This Contract shall be governed by and shall be construed in accordance with the laws of the State of Florida, without giving effect to choice of law or conflicts of law provisions. Any dispute arising out of this Contract shall be adjudicated solely in the applicable federal or state courts within the State of Florida. The Parties each agree that they are subject to the personal jurisdiction of those courts, and each waives the right to challenge the personal jurisdiction of those courts over it.

22. Third Party Rights

A person who is not a party to this Contract has no right to enforce any term of this Contract.

23. Attorneys' Fees

If litigation is required to enforce any provision of this Contract, the prevailing Party shall be entitled to recover expenses, costs and attorneys' fees, including post judgment interest and appellate expenses, costs, and attorneys' fees including post judgment interest.

24. Indemnity

Supplier agrees to defend, indemnify and hold Customer harmless of and from any and all claims, demands, losses, damages, injury, death, penalties, Suits, judgments, liens and encumbrances and liabilities, costs, expenses, and fees, including, without limitation, reasonable attorney's fees, costs and expenses of litigation (claims) approximately caused by the negligent performance by Supplier, or its officers, employees, authorized agents or representatives of Supplier's duties and responsibilities of this agreement or Supplier's other breach of this Agreement.

SCHEDULE A

SERVICES

Supplier's Duties

1. **Project Manager:** Prior to the commencement of services, the Supplier will designate a duly experienced, qualified and authorized employee, to be its Project manager (the "Supplier Project Manager"), to whom all of the Customer's communications will be addressed.
2. **Project Management:** Supplier will provide direction and control of Project Personnel, and a framework for Project communications, reporting, and procedural and contractual activities, including the following:
 - 2.1. Maintaining Project communication with the Customer's Project Manager;
 - 2.2. "Green Light Document" management to achieve milestones of the Project Plan to be approved by Customer before proceeding with the next step of the Project Plan.
 - 2.3. "Red Light Document" management and amendments to the Project Plan for any issues that may arise (either Customer or Supplier related) that may slow the progression of the Project Plan; and
 - 2.4. Coordinating and managing the technical activities of Project Personnel.
3. **Project Management Deliverables:**
 - 3.1. Supplier will create and maintain a Project Plan and provide monthly status reports to Customer in an organized fashion, for the purpose of assisting the Customer in setting the expectations of the Users and the Customer's Project Manager.
4. **Records Archiving Solution:**

BlueGEM will provide a totally functional system providing for the digitization of Brevard County current and historical documents ("Documents") per Florida statutes. This system will be the result of finely tuned testing at several levels including unit, system, integration, stress, and parallel procedures. All process will be in compliance with applicable local, state and federal regulations.

- 4.1 Documents are recorded as having arrived and accepted by BlueGEM staff;
- 4.2 Documents are securely stored until ready for digitization;
- 4.3 Documents are prepped for digitization;
- 4.4 Documents are indexed and scanned with scanner hardware;
- 4.5 Quality check performed on preset percentage of files;
- 4.6 Electronic files sent to the designated data center for redaction service;
- 4.7 Electronic files are processed via redaction services;
- 4.8 Redacted files sent back to BlueGEM for quality control process;
- 4.9 Approved redacted files and original digitized files are sent electronically to Brevard County;
- 4.10 Confirm with Brevard County staff original scanned images and redacted images meet quality assurance standards;
- 4.11 Upon acceptance and approval, original digitized files and redacted digitized files are imported into the Brevard County Clerk of Court document management system per interface specifications; and
- 4.12 Original hard copies of the digitized records are released by Brevard County Clerk of Court staff for destruction.

5 Record Archiving Solution Deliverables:

BlueGEM will work with the County to create a final project plan that delineates each step of the document management process, each deliverable and the specifications required to meet the goals of the County within the budget established by the County.

- 5.1 Clerk-specific end-user training:

- 5.2. A project timeline and budget;
- 5.3. Scanning capabilities (300 dpi minimum, multi-page, TIFF format);
- 5.4. Redaction services with 95%+ accuracy;
- 5.5. Process-specific end-user training documentation (delivered prior to start of training);
- 5.6. Complete and robust procedural documentation for Clerk functional staff; and
- 5.7. Documentation detailing disaster recovery systems, plans and failover testing.

Within the BlueGEM system, all documentation will be captured at the point of scanning at our scanning facility. Simultaneously, a copy of the scanned document is transmitted to the designated data center to be held for redaction to create redundancy that serves to preserve each scanned document while the original paper document remains held in secure storage.

In the event that either system goes offline, all scanned documents will remain stored within the systems that are geographically isolated for safety. At BlueGEM's scanning facility we intend to also provide redundant scanning capability in the form of multiple scanners with 24x7, 365, same-day service and support. Backups for both scanning and redaction services will be performed automatically at close of business each day.

- 6. **Digital Pen Solution Pilot Implementation:** This will be a 90-day Pilot project to begin upon written notification from Customer in which BlueGEM will provide the server and printer on loan. The Digital Pen Solution allows instantaneous capture of written data. To implement the Digital Pen Solution, the following steps need to be performed:

Design and review scope of the pilot project

- 6.1.1. Maximum of twenty Documents;
- 6.1.2. Deliver ten digital pens for use in the pilot;
- 6.1.3. Determine the success and completion criteria;

6.2. Installation of hardware and software for the digital pen solution;

6.3. Validation of usability of digital pen solution;

6.4. Train users on digital pen usage per scope of pilot implementation;

6.5. Implement digital pen solution to production;

6.5.1 Change Control Procedures will be implemented if Digital Pen goes to full production

Customer's Duties

1. Project Manager. Prior to the commencement of services, Customer will designate a duly experienced, qualified and authorized employee, to be its Project manager (the "Customer Project Manager"), to whom all of the Supplier's communications will be addressed;
2. Customer shall pay Eight Million Five Hundred Twenty Thousand Dollars (\$8,520,000.00) as described in Schedule B.
3. Customer shall pay One Hundred Twenty Thousand Dollars (\$120,000.00) as described in Schedule C.
4. Customer will provide six (6) current employees of Customer for a ninety (90) day transition period; during this period Customer will continue to assume all responsibilities for these employees' salaries and benefits;
5. Customer shall package and transport Documents to Supplier.
6. Customer shall diligently make documents available to Supplier in a manner that makes the timely accomplishment of the Project Plan feasible;
7. Customer agrees to:
 - 7.1. Host Site Visits for Supplier;
 - 7.2. Customer will be a Referral site; and
 - 7.3. Customer will allow for Supplier to reference Customer in Press Releases

Term of the Contract:

1. The Services performed under this Contract shall commence immediately upon execution of this Contract. Supplier shall have five (5) years during which to perform its duties under this Contract ("Contract Term"). Unless the Contract is extended in writing, Supplier shall have no responsibility to scan any documents filed or created or produced to Supplier after April 30, 2017.

2. As there are significant upfront costs to Supplier in performing this Contract, this Contract cannot be terminated by Customer unless Customer pays Supplier the entire remaining balance of the Contract amount not yet paid and signs a full release of Supplier from any and all liability arising out of this Contract and releases Supplier from any other performance of the remaining work under this Contract.
3. Customer has an option to extend the terms of this Contract by two (2) years at the same monthly rate paid during the final year of this Contract.

Early Termination:

1. If for any reason, this Contract is terminated by Customer prior to the five (5) year Contract Term, the entire balance of the contract price of Eight Million Five Hundred Twenty Thousand Dollars (\$8,520,000.00) not yet paid shall become immediately due and payable without further notice;
2. In the event that Customer terminates this contract prior to the five (5) year Contract Term, Customer shall waive any and all claims against Supplier for work performed under this Contract or for work not yet performed under this Contract; and
3. If Customer terminates this contract prior to the five (5) year Contract Term, Customer shall pay all fees and costs of Supplier incurred in collecting the remaining unpaid balance of the Contract amount of Eight Million Five Hundred Twenty Thousand Dollars (\$8,520,000.00), including but not limited to attorneys' fees, costs, and interests, inclusive of appellate attorneys' fees and costs and prejudgment and post judgment interest.

Exclusions and Limitations:

1. Secure Shredding/Destruction will be negotiated through a separate contract;
2. The Supplier cannot be held responsible for the correct configuration and support of any hardware or software that is not sourced directly from the Supplier;
3. If the Customer requires the provision of support on items that are not sourced from the Supplier, then the Supplier shall be entitled to Additional Total Charges;
4. The Services will be performed during normal business hours (being 8:00 am to 5:00 pm) on weekdays and not on weekends or public holidays unless the Parties agree otherwise (acting reasonably and promptly);

5. The Customer shall be fully responsible for the transition and implementation of the Deliverables to all of its production and other systems;
6. If for any reason a software or hardware defect within the Deliverables, the Customer shall inform the Supplier promptly, and the Supplier shall, without delay, apply all of its available resources to the resolution of that defect, and shall suspend the performance of all other Services until the defect has been satisfactorily resolved. The Customer shall not be liable for any such suspension; and.
7. Travel and Living Expenses are to be paid in addition to the pricing discussed in Schedule B and Schedule C and shall be paid within forty-five (45) days of receipt of invoices for such costs as allowed by Florida Statutes.

Schedule B

Historical Records Scanning Project

Pricing Schedule

Customer will pay Eight Million Five Hundred Twenty Thousand Dollars (\$8,520,000.00) under this Contract. Payment in full is nonrefundable and fully earned upon execution of this Contract. For financing purposes, payments will be made as described below:

Total Contract Amount	\$ 8,520,000.00	
Contract Guaranty Payment		\$ 500,000.00
Initial payment on contract signing of \$50,000.00 and Five (5) monthly payments of \$40,000.00 beginning on July 1, 2012 through November 1, 2012.		\$ 250,000.00
Twelve (12) Monthly Payments starting on Dec 1, 2012 going through Nov 1, 2013 of \$120,000.00 each		\$ 1,440,000.00
Eighteen (18) Monthly Payments starting on Dec 1, 2013 going through May 1, 2015 of \$145,000.00 each.		\$ 2,610,000.00
Twenty Four (24) Monthly Payments starting on June 1, 2015 going through May 1, 2017 of \$155,000.00 each.		\$ 3,720,000.00
Total (both columns should be equal)	\$ 8,520,000.00	\$ 8,520,000.00

5 Year Fixed Term. Customer has the option to sign a two (2) year extension at the same Monthly rate as the final year of this Contract.

In the event Supplier falls to meet any deliverable deadline established for implementation of the project, the Customer may withhold five percent (5%) of the next scheduled payment until the deliverable is completed.

Travel and Living expenses are to be billed to customer as incurred in accordance with Florida Statutes.

Schedule C
Digital Pen Pilot Project
Pricing Schedule

Pricing Schedule

Customer will pay One Hundred Twenty Thousand Dollars [\$120,000.00] under this Contract. Payment in full is nonrefundable and fully earned upon execution of this Contract. For financing purposes, payments will be made as described below:

Total Contract Amount:	\$ 120,000.00	
Initial payment due upon contract signing		\$ 40,000.00
Second payment due November 1, 2012 of \$40,000.00		\$ 40,000.00
Third payment due December 1, 2012 of \$40,000.00		\$ 40,000.00
Total (both columns should be equal);	\$ 120,000.00	\$ 120,000.00

Travel and Living expenses are to be billed to customer as incurred in accordance with Florida Statutes.