

SARASOTA COUNTY
HOSTED APPLICATION SERVICE and LICENSE AGREEMENT

THIS HOSTED APPLICATION SERVICE and LICENSE AGREEMENT made and entered into this ___ day of _____ 200_, by and between _____, hereafter referred to as “**LICENSEE**”, and Sarasota County, a political subdivision of the State of Florida, hereinafter referred to as “**LICENSOR**”.

WITNESSETH:

WHEREAS, Licensor wishes to grant to Licensee a non-exclusive and non-transferable Hosted Application Service and Agreement, hereinafter referred to as “Agreement” to use the Governmental Management System, hereinafter referred to as “GOVMAX”.

NOW, THEREFORE, in consideration of the covenants, representations and warranties set forth herein and other good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, the parties, by their authorized signatures below, hereby agree as follows:

A. Scope

This Agreement applies to version (5.0) of GOVMAX and updates as defined below, and related hosting services, which comply with current ITIL (Information Technology Infrastructure Library) standards.

B. Definitions

1. The term “GOVMAX” as used in this Agreement includes the Strategic Planning, Business Planning, Performance Management and Financial Planning systems integrated in GOVMAX and the user guides and administrators manual for GOVMAX.
2. The term “Software Enhancement” shall mean additional software functionality or software modules which are optional and which may be purchased by Licensee at an additional fee to be set by Licensor.
3. The term “Update” shall include mandatory bug fixes and shall mean mandatory mid-version releases of GOVMAX where the primary version number does not change; for example, an upgrade from version 4.0 to version 4.1, or, a minor change which does not require any update to the version identifier.
4. The term “Upgrades” shall mean mandatory full version releases of GOVMAX where the primary version number is increased by one or more; for example, an upgrade from version 4.0 to version 5.0.

C. Access and Services Provided:

1. Licensor agrees to provide access to GOVMAX to Licensee and such access shall be deemed to have occurred when connection is made by Licensee by electronic connection via the Internet. Licensee shall be

entirely responsible for establishing and maintaining an Internet connection. Licensor shall not be responsible for connection failures, degraded service speed or outages as they relate to Licensee's Internet Service Provider or internet connection.

2. Licensor will provide the use of the following equipment, software and services.
 - a. Coordinate the initial setup process to configure GOVMAX to meet Licensee's individual requirements in the areas of organizational structure and planning, backend systems integration, custom reporting, and any other unique configurable settings to match GOVMAX's operational capabilities to the specific business goals identified by Licensee. The specific hosting services to be provided by the Licensor are itemized herein. Implementation, customization, and training services will be purchased separately from Licensor's designated installer and service provider ("Service Provider", which is currently MethodFactory Inc. but which may be any firm designated by Licensor to perform the services specified.
 - b. Provide Hardware platform, operating system, system application and database maintenance; and
 - c. Perform maintenance and operations control on GOVMAX; and
 - d. Store data and conduct daily backups of database; and
 - e. Provide security of GOVMAX and data; and
 - f. Provide, through Licensor's Service Provider, one 8-hour training session, intended for Licensee's system administration-level users. Additional user training is available at Licensee's site, at Licensor's or its Service Provider's then-current daily rate, plus travel and living expenses. All travel expenses for trainers will be reimbursed in accordance with Florida Statutes Section 112.061 or Sarasota County Resolution #2008-013, as applicable. Potential participants in training sessions shall have, at minimum, a functional understanding of personal computers and a working knowledge of Microsoft Office products.
 - g. Provide help desk support to Licensee's Representative or his designee and up to three (3) system administrators during normal working hours (Monday through Friday, 8:00 a.m. to 5:00 p.m., Eastern Time, excluding Licensor's holidays). The parties understand that any support, services, or products will be requested only by persons authorized by the Licensee's Representative to do so.
 - h. Provide access for maximum of ____ active users and a maximum of ____ named users. An active user is a user logged into the system more than 24 hours per year. A named user is user defined in the system.

- i. For those services provided to Licensee by Licensor's Service Provider, Licensee shall make payment directly to Service Provider. It shall be Licensee's sole responsibility to ensure that the providing of such services and the payment for same are in accordance with Licensee's applicable policies and procedures. It shall not be Licensor's responsibility to directly provide any services for which it has designated a Service Provider.
3. Any additional related services including ad-hoc reports will be available from Licensor's Service Provider, once specific requirements are provided by Licensee. Estimates for any additional related services will be provided at Licensor's then-current rates. All travel expenses will be reimbursed in accordance with Florida Statutes Section 112.061 or Sarasota County Resolution #2008-013, as applicable.
4. Availability and Support. GOVMAX will be available on a supported basis (with help desk support as provided in Paragraph 2.g.) and with the additional hosting support described in this Paragraph 4, during normal working hours. GOVMAX will be available outside of normal working hours on an unsupported basis. Service requests that arise outside of normal working hours shall be addressed the following business day. Additional support can be made available outside of normal working hours with reasonable advance notice upon mutual agreement of Licensor's Administrative Agent and Licensee's Representative. Additional fees may apply to this service. Licensor's Data Center hosting support includes:
 - a. Operations and Monitoring Services - GOVMAX is supported by an on-site operations team providing 24 x 7 continuous system monitoring; basic problem identification and resolution; escalation and notification; change and problem management; operating system security; data restores; vendor management; and batch scheduling and monitoring within the Licensor's data center ("Data Center"). Support is accessed by telephone at (941) 861-7100.
 - b. System Administration Services - Systems are supported at the Licensor's Data Center by an on-call system administration team providing hardware/operating system installation, maintenance, updates and upgrades, backup and recovery, hardware security, performance tuning and capacity planning, configuration management and data backup and restoration.
 - c. Database Administration Services – On-call database administration teams will support systems located within the Licensor's Data Center. Services included by this team are: hardware and software review (memory, disk volumes, operating system levels and any additional software required); compatibility review with existing software; and technical support; MS SQL Server software installation; support and recovery documentation patch support; database backup software resolution; creation of database backup scripts; automatic notification of event conditions; automatic action on selected events (software failures); security reporting, and capacity planning monitoring (disk,

memory, CPU, MS SQL Server licensing, etc.). Licensor will also perform upgrades and patches to the MS SQL Server Relational Database Management System, as published by MS SQL Server if determined to be appropriate by the System Administrator. Licensor shall continually measure and report disk utilization for average utilization during 15-minute intervals over a 24-hour period of time. Should average disk utilization exceed 90% over a 24-hour period of time a performance problem will be identified and appropriate problem management procedures evoked by Licensor.

- d. Standard System Recovery Services – Licensor shall provide the following data and system recovery services:
 - i. Use disk mirroring and off-site storage (currently provided by Iron Mountain Incorporated, but subject to change at the sole discretion of Licensor) of backup tapes to enable the restoration of service in the event the application database is corrupted and/or damaged. The high-availability architecture enables business continuance at degraded performance levels. In the event that the primary computing resources are made inoperable, GOVMAX will be available at a degraded level of performance.
 - ii. Daily backup of Licensee’s data. Licensor stores copies of all backup tapes in an off-site, environmentally controlled, secure archive. Off-site storage is cycled on a daily basis. This service is provided as a means to protect Licensee from total loss of data in the event of a significant site failure.
 - iii. Ensure that all systems purchased by Licensor for use in the performance of the services specified hereunder are equipped with dual power supplies and are provided with commercial power supported by separate uninterrupted power supplies. The Uninterrupted Power Supply (UPS) facilities are composed of battery back-up and diesel generators. The battery back-up services are sufficient to support power transition from primary power to the secondary power provided by the diesel generators.

5. Grant of License and Permitted Uses. GOVMAX (including but not limited to the source code and all intellectual property that is created, modified, or reduced to a tangible medium of expression during any services provided or any activities conducted by Licensor pursuant to this Agreement) shall at all times remain the property of Licensor. Licensor hereby states that the Licensor owns GOVMAX free of liens and encumbrances. Licensor grants, and Licensee accepts, a non-exclusive, non-transferable license (“the License”) to use GOVMAX in accordance with the provisions of this Agreement. GOVMAX may only be used by Licensee’s own personnel for the development of Licensee’s operating

and/or capital budget(s) and for management use. Licensee agrees to take reasonable precautions to provide adequate security to use and provide access to GOVMAX only as permitted by this Agreement.

6. Prohibited Uses. Licensee recognizes that GOVMAX was developed by Licensor and that Licensor claims copyright protections in GOVMAX to the fullest extent provided by law and Licensee agrees that it will not infringe upon or otherwise violate Licensor's copyright. Licensee shall not sell, assign, license, sublicense, transfer, allow the use of, or otherwise convey any of its rights to GOVMAX provided under this Agreement to any third party, any other governmental, or non-governmental entity without Licensor's prior written consent, which consent Licensor shall have the right to either grant or deny in its sole discretion.

7. Software and Licensing Requirements. In order to operate GOVMAX, additional third party software licenses may be required. It is the responsibility of Licensee to acquire all necessary third party licenses and to maintain sufficient numbers of such licenses to operate GOVMAX and to satisfy all Agreement requirements by third parties. The following represent the minimum requirements of Licensee:
 - Desktop computers and/or terminals with power and network capacities sufficient to support high-speed internet access for Licensee's users;
 - Security at the desktop or terminal location;
 - All table data in Licensor's required format and mediaIn the event Licensee intends or endeavors to create or design reports separate from those created or designed by Licensor, Licensee must have properly-licensed, updated and maintained versions of the necessary third-party software (currently Crystal Developer). Specific information regarding technical requirements for user-designed reports should be requested from Licensor prior to Licensee's undertaking the report creation and design.

8. Data Ownership. Licensee is the sole owner of its data and as such will be provided with access to all databases as requested. Licensor recognizes that such data may contain material exempt from disclosure under State of Florida public records laws and will turn over to Licensee for response any request from a third party for access to or copies of said data.

9. Term: The term of this Agreement shall commence upon execution of the Agreement by both parties and shall continue for three (3) years thereafter, or until such earlier date on which this Agreement is terminated as provided herein. Provided the Licensee is not in default under the terms of this Agreement, the Agreement shall automatically renew for one-year periods. These automatic renewals shall continue until the Agreement is terminated by either party in accordance with Section E hereunder. The

terms and conditions during any renewal periods shall be as stated herein unless modified through the execution of a written Amendment to this Agreement, signed by the duly authorized representatives of both parties.

D. Fees:

1. Annual Fee. The initial annual fee ("Fee") of \$_____ for this Agreement shall be due upon the successful production implementation of GOVMAX and training of Licensee by the Licensor. In subsequent years, the Fee shall be due on the anniversary date of final contract signature date of Sarasota County unless otherwise agreed in writing by the parties.

2. Fee Adjustment: The Fee shall be increased annually in direct proportion to the percentage increase in the cost of living as determined by the Consumer Price Index, U.S. City Average, all items (1967 = 100), published by the U.S. Bureau of Labor Statistics of the U.S. Department of Labor, or any revision equivalent thereto published by the Bureau; or three percent (3%) of the preceding year's base Fee cost, whichever is greater. In no event shall the annual Fee for any year decrease below the annual Fee for the preceding year.

3. From time to time Licensor may add Updates or Upgrades to GOVMAX. The fee for Updates is included in Licensee's Fee. Upgrades represent major changes and may require, at Licensor's sole discretion, a separate implementation charge and/or an increase in the Fee as specified hereunder. Upgrades and Updates are mandatory once made available by Licensor and their implementation may only be waived at the sole discretion of Licensor. Upgrades will be implemented by Licensor on a date to be mutually agreed between the parties, but not more than twenty-four(24) months from the date the Upgrade is first made available to Licensee. Within forty-five (45) days of implementation of an Upgrade, an invoice will be issued to the Licensee for a one time implementation fee, if deemed applicable by Licensor, and the annual price of the Upgrade on a prorated basis to cover the remainder of the Fee for the current year. The Fee in subsequent years will be adjusted to include the price of the Upgrade.

Should Licensee refuse the implementation of a mandatory Upgrade, Licensor shall continue full support under the terms of this Agreement for a twenty-four (24) month period following the date the Upgrade is first made available to Licensee. At the conclusion of the twenty-four (24) month period, Licensor, at its sole option, shall determine whether to continue offering support or to terminate this Agreement in accordance with Section E below. Should Licensor opt to continue offering support under this Agreement to Licensee, the Fee specified hereunder may be increased by such additional amount as Licensor in its sole discretion deems reasonable, and all other provisions of this Agreement shall apply. Licensor's choice to continue supporting Licensee's un-upgraded version of GOVMAX shall apply only to the then-current term of the Agreement and shall not obligate Licensor to continue offering said support in subsequent renewal terms.

E. Termination of Agreement:

1. If the Licensee is in material breach or default, including non-payment of any Fees, which is not cured within thirty (30) days after receipt of the written notice of breach or default, then Licensor's Administrative Agent may terminate this Agreement upon thirty (30) days prior written notice.
2. If the Licensor is in material breach or default, including failure to perform as provided in Section C "Access and Services Provided" which is not cured within thirty (30) days after receipt of the written notice of breach or default, then Licensee may terminate this Agreement upon thirty (30) days prior written notice. Licensee may also terminate this Agreement for its convenience and without cause upon sixty (60) days prior written notice.
3. In the event GOVMAX is no longer available at any cost through Licensor or any other entity, public or private, Licensee may elect to purchase a copy of the system code described in this Agreement, for the sole use of the Licensee, for a purchase price in an amount equal to the then-market value of the applicable version of GOVMAX as determined by an independent appraiser to be hired by Licensor and approved by Licensee, which approval shall not be unreasonably withheld. Regardless of appraised value, the purchase price shall not be less than \$350,000 (three hundred fifty thousand dollars). Licensee's option for purchase will extend only to the version of GOVMAX in use by Licensor at the time the purchase option is exercised. The option to purchase must be exercised within thirty (30) days of the date Licensee is notified that GOVMAX will no longer be available, and paid within thirty (30) days from the date the purchase option is exercised. Such a purchase is payable within thirty (30) days from the date the purchase option is exercised. The system code will be delivered to Licensee within sixty (60) days of the date on which payment is received by Licensor.
4. Immediately following termination of this Agreement, Licensee shall return all manuals, templates and product software to Licensor. Licensee further agrees that it shall not disclose any trade secrets, proprietary contents or protected intellectual property of Licensor's GOVMAX software system to any person in accordance with section 119.071(1)(f), Florida Statutes at any time while such materials are in Licensee's possession. If Licensor notifies the Licensee that it does not want such materials returned at the termination or expiration of this Agreement, Licensee shall retain such confidential, protected materials for the duration of the public records retention requirements and at the expiration thereof, shall then destroy them and shall then certify the occurrence of such event to Licensor. If Licensor is in possession of any backup tapes of Licensee's data at the time of termination, they shall be returned to Licensee at its sole expense. Licensor shall be responsible for storage, disposition and applicable confidentiality (if any) of any additional copies of such backup tapes it may have produced for its own purposes and if Licensor so elects, it may destroy such additional copies at

the time allowed by State public records retention requirements. Licensee shall be required to print hard copies of for retention of its own confidential materials of data files to avoid costs of data retrievals from Licensor.

- F. Limited Warranty. Licensor certifies that it has a proprietary right and authority to license GOVMAX and that GOVMAX is the copyrighted product of Licensor. Licensor shall be solely responsible for, and Licensee shall incur no liability in connection with, any claim that GOVMAX infringes a U.S. patent or copyright or a third party's trade secrets, provided that:
1. Licensee promptly notifies Licensor in writing of the claim;
 2. Licensor has sole control of the settlement or defense of any action against Licensee as to which this indemnity relates (provided that there is no finding of fault against the Licensee and that the Licensee is not required to contribute to any settlement); and
 3. Licensee reasonably cooperates with Licensor to facilitate such defense. Other than the certification and Limited Warranty expressly stated in this Section F, there are no express or implied warranties relating to GOVMAX covered by this Agreement, including but not limited to warranties of merchantability or fitness for a particular purpose.
- G. If GOVMAX or any portion thereof is held to constitute an infringing product, Licensor shall allow Licensee to immediately terminate this Agreement and refund Fees to Licensee on a prorated basis for the period of time that Licensee was unable to use GOVMAX due to an infringement claim.
- H. Limitation of Liabilities: Licensor shall have no liability for any loss or liabilities resulting from any application of GOVMAX, or results, of such application by Licensee or any other party. Licensor's sole obligation and liability, if GOVMAX is defective or fails to conform to specifications, shall be to correct software-coding errors in the original code. In any event, Licensor's liability for any losses or damages which arise out of or in connection with GOVMAX services provided under this Agreement, whether the claim is in contract or otherwise, shall not exceed the annual amount paid by Licensee pursuant to this Agreement. Under no circumstances shall Licensor be liable for special, incidental or consequential damages, including, but not limited to, loss of anticipated income or loss resulting from business disruption, even if Licensor has been advised of the possibility of such damages.
- I. Applicable Law and Venue:
1. This Agreement shall be deemed to be a Florida agreement and shall be governed as to all matters of validity, interpretation, obligations, performance, or otherwise, exclusively by the laws of the State of Florida, and all questions arising with respect thereto shall be determined in accordance with such laws. Regardless of where actually delivered and accepted, this Agreement shall be deemed to have been delivered and accepted by the parties in the State of Florida.

2. Any and all suits or any claims for any and every breach or dispute arising out of this Agreement shall be maintained in the appropriate court of competent jurisdiction in Sarasota County, Florida.

J. Licensor's Administrative Agent and Licensee's Representative: The Licensor's Administrative Agent is designated to act on behalf of the Licensor and to administer the terms and conditions of this Agreement. If necessary, a specific Administrator may be authorized to perform the duties and responsibilities of the Administrative Agent. Licensor's Administrative Agent and Licensee's Representative are named below, and may be changed at any time by providing five business days' written notice to the other party.

Licensee's Representative: Name: _____ Title: _____ Address: _____ Telephone: _____ Facsimile: _____ E-mail: _____	Licensor's Administrative Agent: Name: _____ Title: _____ Address: _____ Telephone: _____ Facsimile: _____ E-Mail: _____
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K. Notices: Except as otherwise provided herein, all notices required or permitted under this Agreement shall be made in writing and shall be deemed given and served five (5) days after deposited in the United States Mail, postage prepaid and certified, directed as follows:

If to Licensor:	Sarasota County Government 1660 Ringling Boulevard Sarasota, Florida 34236 Attn: James Ferguson, General Manager
With copies to:	Sarasota County Government 1660 Ringling Boulevard Sarasota, Florida 34236 Attn: Stephen D. DeMarsh Esq. County Attorney
If to Licensee:	_____ _____ _____ Attn: _____
With Copies to:	_____ _____ _____ Attn: _____
Either party may change its address by giving written notice of such change.	

L. Non-appropriation: The performance of obligations of either party under the agreement is subject to lawfully available appropriations.

M. Miscellaneous:

1. This Agreement constitutes the entire agreement between the parties with respect to GOVMAX and the matters discussed herein and no prior contracts, representation, condition, understanding, or agreement of any kind, oral or written, shall be binding upon the parties unless incorporated into this Agreement in writing. This Agreement may not be modified or amended except in writing by mutual agreement by both parties.
2. Force Majeure: Neither party shall be in default by reason of any failure in the performance of this Agreement if such failure arises out of causes beyond its reasonable control. Such causes may include, but are not limited to, acts of God, acts of the public enemy, acts of government in either its sovereign or contractual capacity, acts of the party whose performance is not sought to be excused, fires, flood, weather, epidemics, quarantine restrictions, strikes, freight embargoes, failure of transmission or power supply, mechanical difficulties with equipment which could not have been reasonably forecasted or provided for, or other causes beyond its sole control. The party so affected will resume performance as soon as practicable after the force majeure event terminates.
3. Assignment: Licensee may not assign this Agreement without the prior written consent of Licensor. Licensor may assign this Agreement to another entity or agency in the event ownership of GOVMAX is transferred, or in the event Licensor in its sole discretion deems such an assignment necessary in connection with the performance of its obligations hereunder.
4. Modifications to the Agreement: Except as provided herein, the terms of this Agreement may only be amended or modified through the execution of an Amendment by the duly authorized representatives of each party.
5. If any provision of this Agreement is deemed invalid or unenforceable, the remaining provisions shall not be affected thereby. The terms and conditions of this Agreement shall prevail over any printed provision of any purchase order form used by Licensee to order GOVMAX.
6. This Agreement contains and embodies all the representations, covenants and promises made by the parties hereto, and no modifications or amendments hereof shall be valid unless in writing and executed by the parties hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

WITNESS:

Print Name: _____

Signed By: _____

Date: _____

Licensee:

Signed By: _____

Title: _____

Date: _____

ATTEST:

Witness:

Print Name: _____

Signed By: _____

Date: _____

Licensor

Sarasota County

By: _____

COUNTY ADMINISTRATOR

Date: _____

*Executed by the County Administrator
Pursuant to Sarasota County Ordinance
No. 2003-084.*

APPROVED AS TO FORM AND CORRECTNESS:

By: _____
COUNTY ATTORNEY