

**EMERGENCY RESOLUTION NO. 10-2016**

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT BY AND BETWEEN THE CITY OF MONROE AND UPLAND SOFTWARE, INC. FOR A DOCUMENT MANAGEMENT SYSTEM FOR MAYOR'S COURT AND DECLARING AN EMERGENCY.

WHEREAS, the current document management system for Mayor's Court is outdated; and

WHEREAS, updated document management software is necessary to allow for the scanning of court cases, court files, dockets, and other miscellaneous court files.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF MONROE, STATE OF OHIO, THAT:

SECTION 1: The City Manager is hereby authorized to enter into an agreement by and between the City of Monroe and Upland Software, Inc. for a document management system for Mayor's Court pursuant to the terms and conditions set forth on Exhibit "A" attached hereto and made a part hereof.

SECTION 2: This measure is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare and further for the reason that Council desires to purchase the software at the earliest possible date to avoid any interruption in the management of Mayor's Court documents. Therefore, this measure shall take effect and be in full force from and after its passage.

PASSED: February 23, 2016

ATTEST:

  
Clerk of Council

APPROVED:

  
Mayor

"I, the undersigned Clerk of Council of the city of Monroe, Ohio, hereby certify the foregoing (ordinance or resolution) was published as required by Section 7.16 of the Charter of the City of Monroe.

This legislation was enacted in an open meeting pursuant to the terms and conditions of the Sunshine Law, Section 121.22 of the Ohio Revised Code.



Clerk of Council  
City of Monroe, Ohio

Exhibit "A" E Res No. 10-2016

\_\_\_\_\_, 20\_\_

**Upland Software, INC.**

and

**FILEBOUND HOSTING AGREEMENT**

**Please complete and return to:**  
Upland Software, Inc.  
1701 Cushman Drive, Unit 1  
Lincoln, NE 68512  
Ph: 402.436.3060  
Fax: 402.421.2524

THIS AGREEMENT is made on \_\_\_\_\_, 20\_\_ ("the Effective Date")

**PARTIES:**

- (1) Upland Software, Inc., a company located at 1701 Cushman Drive, Unit 1, Lincoln, NE 68512 ("UPLAND SOFTWARE"); and
- (2) \_\_\_\_\_ ("CUSTOMER").

**RECITALS:**

Upland Software has agreed to provide to Customer the services of FileBound.com to facilitate the process of tracking, scanning, indexing, warehousing and retrieving its documents and/or files on the terms and conditions hereinafter contained.

**NOW IT IS HEREBY AGREED** as follows:

**1. Services**

- 1.1 Upland Software shall provide Customer with access to an Internet site(s) (the "WEBSITE") owned, operated and hosted by Upland Software and accessible through the Uniform Resource Locator <http://> or such other URL designated by Upland Software from which Customer may access and retrieve its Content and shall provide such other services (collectively, the "SERVICES") as described and for the fees specified on attached hereto as Schedule 1. In addition, Customer may order additional hosting related services at Upland Software's then current price or agreed-upon price.

**2. Hosting Services**

- 2.1 Upland Software shall provide all industry standard hosting related maintenance including, without limitation, server maintenance and trouble-shooting at the same fees as listed on Schedule 1. This maintenance shall include software updates, storage additions, security patches, hardware diagnostics, virus protection, and firewall updates.
- 2.2 Upland Software shall use commercially reasonable efforts to provide the Website with (a) continuous, full and unrestricted connection to the Internet for approximately twenty-four (24) hours each day, excluding periods of time necessary for website maintenance and Internet performance issues outside the reasonable control of Upland Software, and (b) regular routine and other systems administration and support services. Upland Software shall conduct its standard Website maintenance and other standard systems administration services during non-business hours (business hours are Monday through Friday, 7:00 a.m. to 8:00 p.m. CST) and on weekends. Upland Software shall provide Customer with one (1) day notice prior to service interruptions due to maintenance during business hours. Any service interruption for maintenance shall not exceed the time reasonably necessary to complete such maintenance. Upland Software shall credit Customer for the percentage of down time experienced in any month during regular business hours that was the direct result of Upland Software's system being unavailable.
- 2.3 Upland Software shall take commercially reasonable measures to prevent unauthorized access to the Website, including, without limitation, any Content thereon, and any data bases or other sensitive material generated from or used in conjunction with the Website, provided that Upland Software shall use at least the same security measures it uses to protect its own proprietary information. Upland Software shall notify a Customer designated contact immediately of any known security breaches or holes, which are reasonably likely to impact the Website or any

## Content.

- 2.4 As between Upland Software and Customer, all Customer records, data and information (the "RECORDS") collected, stored, distributed or otherwise made available by or through Upland Software shall be and remain the exclusive property of Customer. Upland Software shall treat such Records in a confidential manner, and shall not use, sell or intentionally or inadvertently disclose to third parties or otherwise distribute such Records, including extracted, derived or summarized Records, without Customer's prior written consent. Upland Software will only access and disclose Records subject to this Agreement as necessary to comply with applicable laws and government orders or requests (so long as Upland Software provides Customer with reasonable prior written notice of such order or request and a reasonable opportunity under the circumstances to contest such order or request and provided further that the disclosure is in accordance with all applicable law and regulations) and will only access Records to provide the Service and to operate or maintain its systems. In the event that Customer is obligated to (re-)produce, access and/or disclose Records in Upland Software's care, custody or control on Customer's behalf or at Customer's request, Customer shall then be responsible for reimbursing Upland Software for reasonable reproduction costs and professional services time at the prevailing professional service fees.
- 2.5 Upland Software owns the exclusive right, title and interest in and to the Website (including, without limitation, all meta tags and URLs for the Website) and all other materials and information used in connection with providing the Services, including, without limitation, all materials therein, trademarks or Confidential Information.
- 3. Payments**
- 3.1 Upland Software has appointed GBS CORP ("RESELLER") as Upland Software's authorized Reseller for the invoicing and collection of all fees and payments payable under this Agreement on behalf of Upland Software. All required payments and fees payable under this Agreement are exclusive of any and all sales/use, gross receipts, value added, GST personal pricing or other taxes (including interest and penalties imposed thereon) arising from the transactions contemplated herein, except for any income taxes levied on Upland Software. All fees and payments payable by Customer hereunder, shall be paid to Reseller within thirty (30) days after the receipt by the Custom of each Reseller invoice.
- 3.2 Reseller shall provide Customer with a monthly invoice for Services at the fees set forth in Schedule 1. Payment is due within thirty (30) days of receipt of Reseller's invoice. Any amounts not paid when due shall be subject to Reseller's cost of collection (including reasonable legal fees and costs) and shall bear interest at the rate of one and one-half percent (1.5%) per month or part thereof (or if lower, the highest rate permitted under applicable law) until paid. All applicable fees do not include, and Customer shall pay, indemnify and hold harmless Upland Software and its Reseller from any and all sales/use, gross receipts, value added GST personal pricing or other taxes (including interest and penalties imposed thereon) arising from the transactions contemplated herein, except for income taxes levied on Upland Software. Customer acknowledges that, after the Initial Term, Upland Software may adjust the fees due under this Agreement by instructing Reseller to provide Customer with thirty (30) days prior written notice of such adjustment.
- 3.3 If any dispute between Customer and Upland Software (or Upland Software's Reseller) arises and/or Customer disputes any charge or amount on any invoice and such dispute cannot be resolved promptly through good-faith discussions between the parties, Customer shall pay the amount due under the Agreement less the disputed amount, and the parties shall diligently work to resolve such disputed amount. An amount will be considered disputed in good faith if (i) Customer delivers a written statement to Upland Software describing in detail the basis of the

dispute and the amount being withheld by Customer; and (ii) all other amounts due from Customer that are not in dispute have been paid in accordance with the terms of this Agreement. The dispute period shall be limited to sixty (60) days after payment of non-disputed charges. Upland Software will make available, provide or otherwise transfer any and all such Records to Customer upon Customer request, at any time, whether or not any dispute arises, including but not limited to, a dispute regarding any charge or any invoice. If Upland Software refuses to make available, provide or otherwise transfer any and all Records to Customer, at any time, during the performance of the Contract, the Contract will be deemed to have been breached by Upland Software and the Contract may be deemed null and void at Customer's sole discretion.

- 3.4 Customer expressly acknowledges and agrees that Reseller is not a party to this Agreement, and that Customer shall have no rights or claims against Reseller (including without limitation, any express or implied warranty claims, such as implied warranty of merchantability or fitness for a particular purpose) against Reseller relating to the products and service to be provided by Upland Software to Customer under this Agreement.

#### 4. Terms and Termination

- 4.1 The initial term of this Agreement shall be one (1) years from the Effective Date ("TERM"). The Agreement shall be automatically renewed for additional one (1) year periods (each a "RENEWAL TERM") unless either party gives written notice of termination no less than ninety (90) days prior to the expiration of the Term or Renewal Term, as applicable.

- 4.2 Either party may terminate this Agreement upon the material breach of the other party, if such breach remains uncured for thirty (30) days following written notice of such breach to the breaching party; provided, that if such breach cannot reasonably be cured within such thirty day period using commercially reasonable efforts, the non-breaching party's right to terminate this Agreement shall not arise until the expiration of such period reasonably sufficient to allow the opportunity to cure the breach (assuming commercially reasonable efforts diligently pursued).

- 4.3 In the event of termination or expiration of this Agreement arising from a breach of this Agreement by Customer, the following shall occur:

- (a) The licenses granted shall immediately terminate.
- (b) Upland Software shall notify Customer of the termination, and make appropriate transition plans within 30 days of the notification to provide all content in a format such that continuous access to such content may be maintained. Customer shall bear the cost of continued access to the website during the transition period at the regular scheduled pricing, and bear the cost of any required format conversion of the content, including database records and images, necessary for importing into any new system at a rate of \$156.25 per hours.
- (c) All payments due hereunder shall become immediately due and payable.

- 4.4 In the event of termination of this Agreement not arising from a breach by Customer, the following shall occur:

Upland Software shall provide commercially reasonable support to assist Customer in the retrieval of any and all applicable Records. Upon Customer's written request, Upland Software shall continue to provide Services to Customer for up to 180 days after the effective date of such termination of the Agreement at the current rate schedule to the extent that Customer requests assistance that is beyond the scope of the Agreement, such Services will be documented in a Statement of Work, provided at prevailing professional service fees. During the Post Termination period, Customer's use of the Upland Software Services shall be governed by the terms and conditions defined within this Agreement.

In any event, Upland Software will make accessible or otherwise available to Customer its records on CD storage media, and shall provide any information about the hardware and software necessary to make the Records accessible, searchable, retrievable, viewable and reproducible or will otherwise make any necessary special, proprietary or unique index, template, software or hardware available to allow Customer access to Records as described above, at a commercially reasonable cost.

Upland Software shall back up any and all Customer Records, directory data, and indexes regularly and shall follow disaster recovery best practices to make best efforts to protect Customer Records. any and all Customer Records along with the back-up media containing such Records shall be provided to Customer at its request, and no later than upon the termination of the Agreement.

Any service not specifically provided for by this Agreement shall be provided to Customer and accomplished on a time and material basis at the rate of no more than prevailing professional service fees.

## **5. Limitation of Liability**

- 5.1 Upland Software shall perform the Services in a competent and workmanlike manner. Upland Software warrants that the Services provided hereunder, provided that Customer has not made any alterations or modifications thereto, do not constitute defamation of any third party or violate or infringe the copyright, trademark, trade secret, privacy or publicity rights of a third party and that, to the best of its knowledge, do not violate or infringe the patent rights of a third party. Except for the previous two sentences, Upland Software provides the Services hereunder "AS-IS." NEITHER UPLAND SOFTWARE, NOR ANY OF ITS EMPLOYEES OR RESELLERS, WARRANTS THAT THE SERVICES SHALL BE UNINTERRUPTED, ERROR FREE OR FREE FROM SECURITY BREACHES. UPLAND SOFTWARE IS NOT RESPONSIBLE FOR AND CAN MAKE NO WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, REGARDING THE QUALITY, ACCURACY OR VALIDITY OF THE CONTENT OR THE DATA AND/OR INFORMATION AVAILABLE ON ITS SYSTEMS, OR RESIDING ON OR PASSING THROUGH ITS INTERCONNECTING NETWORKS. IN NO EVENT SHALL UPLAND SOFTWARE BE LIABLE TO RESELLER, CUSTOMER OR ANY OTHER PERSON FOR ANY LOSS OR DAMAGE CAUSED BY RESELLER'S AND CUSTOMER'S RELIANCE ON THE CONTENT, DATA OR INFORMATION AVAILABLE ON ITS SYSTEMS OR WEBSITE OR OBTAINED THROUGH ITS SERVICES. UPLAND SOFTWARE EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES AND REPRESENTATIONS, WHETHER EXPRESS OR IMPLIED, WHETHER ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USAGE OF TRADE, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE IN CONNECTION WITH THE SERVICES, SOFTWARE OR DELIVERABLES PROVIDED HEREUNDER OR ANY THIRD PARTY PRODUCTS.
- 5.2 IN NO EVENT SHALL UPLAND SOFTWARE'S LIABILITY FOR ACTUAL AND DIRECT DAMAGES RESULTING FROM CLAIMS ARISING UNDER THIS AGREEMENT EXCEED THE FEES CUSTOMER PAID TO UPLAND SOFTWARE IN THE PREVIOUS TWELVE (12) MONTH PERIOD FOR SERVICES PURSUANT TO THIS AGREEMENT. IN NO EVENT SHALL UPLAND SOFTWARE BE LIABLE FOR ANY INDIRECT, INCIDENTAL, PUNITIVE OR OTHER CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS) ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR CUSTOMER'S USE OR INABILITY TO USE THE SERVICES. NOTHING IN THIS SECTION SHALL BE CONSTRUED AS ALLEVIATING CUSTOMER'S OBLIGATION TO PAY ALL FEES DUE AND PAYABLE FOR THE SERVICES.

- 5.3 Customer shall indemnify and defend Upland Software from any third party claims, losses or damages (including without limitation, penalties, punitive damages and lost profits) together with all costs and expenses related thereto (including without limitation, reasonable attorney's fees), arising out of or in connection with: (a) Reseller's or Customer's breach of this Agreement; (b) any claim that the Content infringes the intellectual property rights or other proprietary rights of a third party; or (c) any claim that the Content constitutes defamation or a violation of the right to privacy or publicity of a third party.
- 5.4 Upland Software shall indemnify and defend Customer against any third party claims, losses or damages (including, without limitation, penalties, punitive damages and lost profits) together with all costs and expenses related thereto (including, without limitation, reasonable attorney's fees), arising out of or in connection with: (a) any claim that the Services, excluding the Content, infringe the intellectual property rights or other proprietary rights of a third party, provided that Customer has not modified or altered the Services in any way.
- 5.5 This Article 5 states Customer's sole and exclusive remedy and Upland Software's sole and exclusive liability for damages arising out of or in connection with this Agreement.

## **6. Warranty**

- 6.1 Customer warrants that it shall not provide or distribute any Content that: (a) infringes on the intellectual property rights or any rights of publicity or privacy of any third party; (b) violates any law, statute, ordinance or regulation (including, without limitation, laws and regulations governing export control, unfair competition, anti-discrimination or false advertising); (c) is defamatory, libelous, unlawfully threatening or unlawfully harassing; (d) is obscene, child pornographic or harmful to minors; or (e) contains any viruses, Trojan horses, worms, time bombs, cancelbots or other computer programming routines that are intended to damage, interfere with, surreptitiously intercept or expropriate any system, data or personal information. Violations of this Section 6.1 shall constitute a material breach of this Agreement and trigger the policy described in Sec. 6.2.
- 6.2 Customer shall use the Services only for lawful purposes, in compliance with all applicable laws. Customer shall be responsible for all use of the Website, regardless of whether such use is known to or authorized by Customer. The Services are provided for use in conformance with the terms and conditions of this Agreement.
- 6.3 Customer may download the Content from or to the Website. Customer may re-distribute the Content in the public domain provided that Customer assumes all risks associated with such re-distribution, including, without limitation, the determination of whether the Content is in the public domain.
- 6.4 The Services provided by Upland Software shall be for Customer's use only. Customer shall be solely responsible for the security of its passwords.

## **7. Confidentiality**

- 7.1 Each party (the "Recipient") acknowledges that it has or may be exposed to confidential and proprietary information of the other party (the "Disclosing Party"), whether or not the Disclosing Party expressly designates any such information to be Confidential Information.
- 7.2 Upland Software acknowledges that all content including database records, reports, and document images are the exclusive property of Customer. Except as expressly authorized herein or in a separate writing signed by the Disclosing Party, the Recipient shall not use, commercialize or disclose any Confidential Information to any person or entity, except to its own employees having a "need to know" (and who themselves are bound by similar non-disclosure restrictions), and to such other recipients as the Disclosing Party may approve in writing in advance, provided that all such other recipients shall have first executed a confidentiality agreement in a form reasonably acceptable to the Disclosing Party.

## **8. Miscellaneous**

- 8.1 Neither party hereto shall have any liability for delay or non-fulfillment of any terms of this Agreement caused by any cause not within such party's direct control (but excluding financial inability) such as an act of God, war, riots or civil disturbance, strikes, accident, fire, transportation conditions, labor and/or material shortages, governmental controls, regulations and permits and/or embargoes.
- 8.2 In the event that Upland Software ceased business operation, changes legal ownership, voluntarily or involuntarily files any petition for Bankruptcy Court protection, or Upland Software's financial strength changed thereby impacting its ability to function as an on-going business, Upland Software will immediately terminate the contract. Customer shall be responsible for paying any sums due and owing on the contract through the date of termination. Upland Software shall have no recourse if Customer seeks to terminate the contract pursuant to this

section. If no notice is provided as delineated above in this part, Customer will be relieved from any obligation under the contract and will be entitled to immediate return of any and all Records.

- 8.3 Any notice required or permitted to be given by either party under this Agreement shall be in writing and shall be either personally delivered or sent by telecopy (confirmed by registered or certified letter), by reputable overnight courier, or by registered or certified letter to the other party at its address set forth below, or such new address as may from time to time be supplied hereunder by the parties.
- 8.4 No waiver by either of the parties hereto of any failure by the other party to keep or perform any covenant or condition of this Agreement shall be deemed a waiver of any preceding or succeeding breach of the same or any other covenant or condition. Except for those remedies denominated as sole and exclusive remedies in this Agreement, the remedies herein provided shall be deemed cumulative, and the exercise of one shall not preclude the exercise of any other remedy nor shall the specifications of remedies herein exclude any rights or remedies at law or in equity which may be available.
- 8.5 Customer shall not assign, transfer or encumber the rights granted under this Agreement nor delegate the obligations imposed on it by this Agreement, in whole or in part, without obtaining the prior written consent of Upland Software, which can not be reasonably withheld.
- 8.6 This Agreement shall be construed and interpreted and its performance shall be governed by the laws of the State of Nebraska without regard to conflicts of law principles of any jurisdiction.
- 8.7 This Agreement may not be modified or amended except in a writing executed by authorized representatives of both parties.
- 8.8 This Agreement, together with the Exhibits, contains the entire agreement between the parties hereto, and supersedes all other oral or written representations, statements, promises, agreements and letters or other expressions of intent of any kind with respect to the subject matter hereof between them.

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EXECUTED on \_\_\_\_\_, 20\_\_

**SIGNED for and on behalf of:  
Customer**

By: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

**SIGNED for and on behalf of:  
Upland Software, Inc.**

By: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_