



776 N.E. 125 Street, North Miami, Florida 33161

## Council Report

To: The Honorable Mayor and City Council

From: Jeff P. H. Cazeau, City Attorney

Date: August 23, 2016

RE: Proposed Resolution Approving ProLaw Software Agreement

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**A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, AUTHORIZING THE CITY MANAGER AND CITY ATTORNEY TO EXECUTE A CUSTOMER AGREEMENT, IN SUBSTANTIALLY THE ATTACHED FORM, WITH WEST PUBLISHING CORPORATION, D/B/A THOMPSON REUTERS ELITE, FOR THE INSTALLATION AND MAINTENANCE OF A SOFTWARE LICENSE PACKAGE KNOWN AS PROLAW TO ENSURE PROPER AND EFFICIENT STORAGE, RETRIEVAL AND DISPOSITION OF LEGAL AND RISK MANAGEMENT CASE FILES, AT AN APPROXIMATE COST OF FORTY SEVEN THOUSAND DOLLARS (\$47,000.00), IN ACCORDANCE WITH SECTION 7-143 OF THE CITY OF NORTH MIAMI CODE OF ORDINANCES; PROVIDING FOR AN EFFECTIVE DATE AND FOR ALL OTHER PURPOSES.**

### **RECOMMENDATION**

It is recommended that the City Council adopt the proposed Resolution which authorizes the execution of a Customer Agreement with West Publishing Corporation, d/b/a Thompson Reuters Elite, for the installation and maintenance of a software license package ("ProLaw") to ensure proper and efficient storage, retrieval and disposition of legal and risk management case files, built entirely on the Microsoft.NET platform.

### **BACKGROUND**

The Office of the City Attorney and the Division of Risk Management are in need of the ProLaw software license package in order to increase overall efficiency, accuracy and productivity by facilitating document production, reducing data input errors, and building a repository of critical documents, while mitigating legal, regulatory and compliance risks.



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The use of ProLaw is well known and commonly used by local government offices on a national scale. In this case, our office conducted a review of the use of ProLaw by the City of Miami; allowing us to establish a basis of comparison and to carefully consider the application of ProLaw prior to the decision of procuring the software.

### **Attachments**

1. Proposed Resolution.
2. Customer Agreement.

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, AUTHORIZING THE CITY MANAGER AND CITY ATTORNEY TO EXECUTE A CUSTOMER AGREEMENT, IN SUBSTANTIALLY THE ATTACHED FORM, WITH WEST PUBLISHING CORPORATION, D/B/A THOMPSON REUTERS ELITE, FOR THE INSTALLATION AND MAINTENANCE OF A SOFTWARE LICENSE PACKAGE KNOWN AS PROLAW TO ENSURE PROPER AND EFFICIENT STORAGE, RETRIEVAL AND DISPOSITION OF LEGAL AND RISK MANAGEMENT CASE FILES, AT AN APPROXIMATE COST OF FORTY-SEVEN THOUSAND DOLLARS (\$47,000.00), IN ACCORDANCE WITH SECTION 7-143 OF THE CITY OF NORTH MIAMI CODE OF ORDINANCES; PROVIDING FOR AN EFFECTIVE DATE AND FOR ALL OTHER PURPOSES.**

**WHEREAS**, the City of North Miami (“City”) Office of the City Attorney and the Division of Risk Management, have identified the need for the installation and maintenance of a software license package to ensure proper and efficient storage, retrieval and disposition of legal and risk management case files, built entirely on the Microsoft.NET platform (“ProLaw”); and

**WHEREAS**, ProLaw will integrate and coordinate the functions of both City offices, from the commencement of a matter to its final disposition, including the storage of all related contacts, research, emails, court docketing and calendaring; and

**WHEREAS**, ProLaw will simplify document production, reduce data input errors, and build a repository of critical documents, while mitigating legal, regulatory and compliance risks; and

**WHEREAS**, West Publishing Corporation, d/b/a Thompson Reuters Elite (“Elite”), is the sole-source licensor and maintenance provider of ProLaw; and

**WHEREAS**, Section 7-143, City Code of Ordinances, allows for the purchase of goods and services without the necessity of competitive bids or proposals when only one (1) reasonable source of supply is available; and

**WHEREAS**, City administration respectfully requests that the Mayor and City Council authorize the purchase and maintenance of ProLaw to streamline the document management capabilities of the Office of the City Attorney and the Division of Risk Management; and

**WHEREAS**, the Mayor and City Council find the execution of the Customer Agreement, in accordance with Section 7-143 of the City of North Miami Code of Ordinances, to be in the best interest of the City.

**NOW THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA:**

**Section 1.**     **Authority of City Manager and City Attorney.** The Mayor and City Council of the City of North Miami, Florida, hereby authorize the City Manager and City Attorney to execute a Customer Agreement, in substantially the attached form, with West Publishing Corporation, d/b/a Thompson Reuters Elite, for the installation and maintenance of a software license package known as ProLaw to ensure proper and efficient storage, retrieval and disposition of legal and risk management case files, at an approximate cost of Forty-Seven Thousand Dollars (\$47,000.00), in accordance with Section 7-143 of the City of North Miami Code of Ordinances.

**Section 2.**     **Effective Date.** This Resolution shall become effective immediately upon adoption.

**PASSED AND ADOPTED** by a \_\_\_\_\_ vote of the Mayor and City Council of the City of North Miami, Florida, this \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
DR. SMITH JOSEPH  
MAYOR

ATTEST:

\_\_\_\_\_  
MICHAEL A. ETIENNE, ESQ.  
CITY CLERK

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY:

\_\_\_\_\_  
JEFF P. H. CAZEAU, ESQ.  
CITY ATTORNEY

SPONSORED BY: CITY ADMINISTRATION

Moved by: \_\_\_\_\_

Seconded by: \_\_\_\_\_

**Vote:**

Mayor Smith Joseph, D.O., Pharm. D.  
Vice Mayor Alix Desulme  
Councilman Scott Galvin  
Councilwoman Carol Keys, Esq.  
Councilman Philippe Bien-Aime

\_\_\_\_\_ (Yes) \_\_\_\_\_ (No)  
\_\_\_\_\_ (Yes) \_\_\_\_\_ (No)  
\_\_\_\_\_ (Yes) \_\_\_\_\_ (No)  
\_\_\_\_\_ (Yes) \_\_\_\_\_ (No)  
\_\_\_\_\_ (Yes) \_\_\_\_\_ (No)

## CUSTOMER AGREEMENT

### CUSTOMER AGREEMENT

This Customer Agreement ("Agreement") is entered into this \_\_\_ day of \_\_\_\_\_, 2016 (the "Effective Date"), by and between **West Publishing Corporation** doing business as **Thomson Reuters Elite ("Elite")**, with its principal place of business at 800 Corporate Pointe, Suite 150, Culver City, CA 90230 and **City of North Miami ("Customer" or "City")**, a State of Florida municipal corporation with its principal place of business at 776 NE 125 Street, North Miami, FL 33161.

#### 1. Scope of Agreement.

Except to the extent expressly provided otherwise, this Agreement shall apply to all products and services that are provided by Elite to Customer during the term of this Agreement including software that is owned by Elite or third parties and licensed by Elite to Customer. This Agreement includes the following exhibits and addenda which are attached hereto and incorporated herein:

- Software and Fees Schedule (the "Fees Schedule")
- Maintenance Addendum
- Exhibit A – Notice Contacts
- Exhibit B – City of North Miami Additional Contract Provisions
- Exhibit C – Certificates of Insurance

#### 2. Definitions.

2.1 Definitions. As used in this Agreement, the following terms shall have the meanings set forth below:

"Annual Maintenance Charge" shall have the meaning set forth in Section 3.2 of the Maintenance Addendum.

"Competitor" shall mean a third party that is regularly engaged in the business of developing or marketing software that performs the same or similar functions as one or more of the modules of the Elite Software implemented by Customer.

"Customizations" shall mean customizations, configurations or other modifications made in or to the application layer of the Software.

"Documentation" shall mean the documentation (provided in electronic form with the Software) that sets out the operating descriptions for the Software and provides instructions for end users on use of the Software. The Documentation does not include any representation, warranty or condition made by a representative of Elite which is in addition to or inconsistent with the Documentation.

"Excluded Item" shall have the meaning set forth in Section 7.2.

"Fees" shall mean License Fees, Service Fees, Subscription Fees and Annual Maintenance Charges.

"Initial Term" shall have the meaning set forth in Section 10.1.1.

"Installation" shall mean the installation of the unmodified Software by Elite in Customer's environment following Customer's verification that the environment conforms to the PSR and prior to any Customizations to the Software.

"License Fees" shall mean the fees for the Software set forth in the Fees Schedule.

"Live Operation" shall mean the first date when Customer commences production use of any of the Elite Software.

"Named User" shall mean an individual employee of Customer authorized by Customer to use the Software, regardless of whether the individual is actively using the Software at any given time. The Fees Schedule will set forth the number of Named Users allowed and each Named User must be registered with Elite and have a unique log-in.

"Production Server" shall mean the server(s) on which the production instance of the Software operates.

"Project Documents" shall mean a project plan, statement of work, change order or addendum executed by the parties that describes services to be performed hereunder. Upon execution, a Project Document becomes part of this Agreement and may not be modified except by written agreement of the parties.

"PSR" shall mean the current Product System Requirements document applicable to the version of the Elite Software in use by Customer.

"Service Fees" shall mean the fees payable to Elite for conversion, implementation, training or other services, other than Maintenance Services, provided under this Agreement.

"Software" shall mean the software listed in the Fees Schedule. The Software consists of software owned by Elite ("Elite Software"). If indicated on the Fees Schedule, the Software also includes software that is owned by third parties that is sublicensed by Elite to Customer pursuant to this Agreement under rights granted by third parties to Elite ("Third Party Software"). Software includes Subscription Software, which Subscription Software may be either Elite Software or Third Party Software as indicated in the Fees Schedule.

"Subscription Fees" shall mean the fees for the Subscription Software set forth in the Fees Schedule.

"Subscription Software" shall mean the software listed under the Subscription Software section of the Fees Schedule.

"Subscription Term" shall be as defined in Section 10.1.1.

"Timekeeper" shall mean any person whose time is entered into the database accessed by the Software and who enters time of at least ten (10) hours per month on an annualised basis.

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A "User" or "Seat" is defined as an active log-in or concurrent active log-in or concurrent user of the Software. References in this Agreement to "User(s)" shall include "Seat(s)".

"Warranty Period" shall mean the ninety (90) day period following Live Operation during which the warranties made by Elite under this Agreement (except the warranties under Section 8 and warranties with respect to Subscription Software) are in effect. The warranties in Section 8, Indemnification, shall be in effect throughout the term of this Agreement. With respect to Subscription Software only, the Warranty Period shall begin on the first day of the Initial Term.

"Written Deliverables" shall mean technical specifications, design documents, and any other documents provided by Elite hereunder.

### 3. Fees and Payment.

3.1 Fees. The Software and Services are listed in the Fees Schedule attached hereto. Customer agrees to pay Elite the Fees set forth in the Fees Schedule as provided in this Agreement.

3.2 All invoices are due thirty (30) days from date of issuance of invoice. In the event that Customer in good faith disputes all or any portion of any invoice that Elite submits to Customer, Customer may withhold such amount but in such case shall notify Elite in writing of the amount disputed and its reason for disputing such amount within thirty (30) days of receipt of an invoice and shall immediately pay any amount which is undisputed. Elite may withhold and or delay delivery of Software or services if Customer fails to comply with this Section 3.2. Elite reserves the right to charge interest at the rate of 1% per month, or the highest rate allowed by law, whichever is lower, for any amount which is not disputed as provided in this paragraph and which remains unpaid more than thirty (30) days from issuance of invoice. Invoices may be delivered by electronic mail or other electronic means to Customer and Customer hereby consents to such delivery.

3.3 All taxes and duties attributable to this Agreement, including sales, use and any other tax assessed by local, state or federal authorities, except taxes relating to Elite's income, shall be borne by Customer. Customer shall reimburse Elite for any such taxes and duties payable by Elite.

3.4 All reimbursable costs consisting of but not limited to reasonable travel, accommodation and related incidental expenses are the responsibility of Customer and will be invoiced monthly and due thirty (30) days from date of issuance of invoice. Elite will provide copies of receipts for expenses that exceed (USA) \$50.00 upon request of Customer.

3.5 Customer is exempt from Federal Excise and State of Florida taxes. The applicable tax exemption number or certificate shall be made available upon request.

### 4. License.

4.1 Grant of License and Delivery.

4.1.1 Grant of License – Software. In consideration of the License Fees payable hereunder, Elite hereby grants to Customer, and Customer hereby accepts from Elite, subject to the terms and conditions of this Agreement, a nonexclusive, nontransferable (except as provided in Section 11.7) right and license to use object code copies of the Software (including the Documentation), which Software Elite shall deliver to Customer. For purposes of this Section 4.1.1 only, Software shall not include Subscription Software.

4.1.2 Grant of License – Subscription Software. In consideration of the Subscription Fees payable hereunder, Elite hereby grants to Customer, and Customer hereby accepts from Elite, subject to the terms and conditions of the Agreement, a nonexclusive, nontransferable (except as provided in Section 11.7) right and license to use object code copies of the Subscription Software (including its Documentation) solely during the Subscription Term, which Subscription Software Elite shall deliver to Customer. The foregoing license shall end upon expiration or termination of the Subscription Term.

4.1.3 Customer is entitled solely to a non-exclusive use of the Software under the terms and conditions of this Agreement. Customer acknowledges that there is no transfer of title or ownership of the Software to Customer. Customer hereby acknowledges and agrees that title to the Software and the Documentation and any copies, modifications, alterations or derivative works thereof, and title to any existing or future copyrights, trade secrets, and other proprietary rights embodied therein shall vest and/or remain exclusively with Elite and the third party owners thereof.

4.2 Restrictions on Use.

4.2.1 If a total number of Timekeepers or Users is indicated in the Fees Schedule for the Software, then the Software may not be used by more than such specified number of Timekeepers or Users, as applicable. If the Fees Schedule indicates that the Software is licensed on a Named User basis, then the license granted herein is limited to use by the Named Users. Concurrent usage or sharing of a Named User log-in by multiple users is not permitted and Customer is responsible for ensuring that the Named Users are maintained for the Software and that all actual users are licensed Named Users. However, Customer can transfer a log-in from one Named User to another Named User by notifying Elite of the new Named User.

4.2.2 Customer may not use the Software to provide data management or processing services for third parties nor allow third parties to use the Software. Customer shall not transfer, sublicense or otherwise assign its rights in the Software to any third party except pursuant to an assignment of this Agreement pursuant to Section 11.7. In the event that Customer exports the Software outside of the U.S.A., Customer will be responsible for complying with U.S.A. export law.

4.2.3 Software may not be copied, duplicated or otherwise reproduced, in whole or in part, except that Customer may make copies for back-up purposes as necessary. Customer

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may reproduce the Documentation for internal use only. Customer shall reproduce and include the copyright notice indicating Elite's, or the respective third party's, ownership on any copy or portion of the Software or Documentation.

4.2.4 Customer shall not attempt, by decompilation, reverse-engineering, disassembly, or any other method, to create or derive the source programs or any part thereof from the object program or from other information made available under this Agreement.

### 5. Confidentiality.

5.1 Customer acknowledges and agrees that the Software and the Documentation constitute a valuable proprietary product and trade secret of Elite embodying substantial creative efforts and confidential information, ideas, and expressions. Subject to Chapter 119, Florida Statutes, as amended from time to time, the Software and Documentation, together with the terms of this Agreement and such other information as Elite may designate in writing as confidential, as provided below, shall be referred to as the "Elite Confidential Information". Any information, other than the Software and Documentation designated by Elite as confidential shall not be deemed to be Elite Confidential Information, however, to the extent that such information consists of information that: (a) Customer already possesses without obligation of confidentiality, (b) Customer develops independently, (c) Customer receives without obligation of confidentiality from a third party, or (d) an authorized representative of Elite makes publicly available. Notwithstanding the preceding sentence, nothing in this subsection shall operate to exclude the Elite Software or Documentation from Elite Confidential Information. Customer will take reasonable steps to ensure that the Elite Confidential Information is not used or disclosed except as expressly permitted by this Agreement. Customer will not permit any third party access to, in any manner, the Elite Confidential Information, except as provided in this Agreement. Customer may permit its independent contractors access to the Elite Confidential Information to the extent necessary for such contractor's provision of services to Customer if such contractor executes a confidentiality agreement with Customer or Elite which prohibits the contractor from using or disclosing the Elite Confidential Information; provided, however, that such independent contractors may not include any Competitor. Customer agrees to ensure that Customer's employees are prohibited from taking any action otherwise prohibited to Customer under this Agreement, and to notify Elite promptly and in writing of the circumstances surrounding any possession, use or knowledge of the Elite Information or any part thereof known to Customer that is prohibited hereunder.

5.2 Customer will not alter or remove any copyright or proprietary rights notice or identification which indicates Elite's or the third party's ownership from any part of the Software, it being expressly understood and agreed that the existence of such copyright notice shall not be construed as an admission or presumption that publication of the Software has occurred.

5.3 Elite acknowledges in the course of providing services at Customer's site(s) that Elite may have access to Customer's

client list, information of or pertaining to Customer's clients, Customer's billing information and practices and financial records that constitute Customer's confidential information ("Customer Confidential Information"). Elite will take reasonable steps to ensure that Customer Confidential Information, received by Elite pursuant to this Agreement, is not disclosed or used except as necessary for the performance of this Agreement. Elite agrees to ensure that Elite's employees, agents, independent contractors and guests are prohibited from taking any action otherwise prohibited to Elite under this Agreement, and to notify Customer promptly and in writing of the circumstances surrounding any possession, use or knowledge of Customer Confidential Information or any part thereof which is prohibited hereunder known to Elite. Customer Confidential Information shall not include information which: (a) consists of ideas, concepts, know-how or techniques relating to the installation, configuration, implementation, enhancement, modification or improvement of the Software; (b) Elite already possesses without obligation of confidentiality, (c) Elite develops independently, (d) Elite receives without obligation of confidentiality from a third party, or (e) becomes publicly available without breach of this Agreement.

5.4 Each party acknowledges that should it breach its obligations under this Section 5 the other party may suffer harm which may not be adequately compensated by monetary damages. In such event, the non-breaching party may, in addition to seeking monetary damages, seek equitable relief to enjoin such breach.

5.5 Elite agrees that all documents and information generated hereto shall be subject to the applicable provisions of the Public Records Law, under Chapter 119, Florida Statutes, as amended from time to time.

### 6. Services.

6.1 Description of Services. Any services to be provided by Elite to Customer are set forth in the Fees Schedule. A detailed breakdown of those services may be set forth in a separate Project Document. Elite has no obligation to provide services except as specifically set forth in this Agreement or a Project Document.

6.2 Customer Obligations. When Elite performs any services at Customer's facility, Customer shall be responsible for providing a safe and appropriate work space and access to all equipment, materials and related resources that may be reasonably required by Elite for timely performance of its obligations under this Agreement. Customer will make remote access to the Software available, using the current Elite approved remote access method(s), in order to allow Elite to provide services hereunder. Customer shall provide to Elite, in a timely manner, any information, assistance, review, feedback or approvals that are the responsibility of Customer.

6.3 Project Managers. Each party shall inform the other of the individual appointed to serve as its project manager ("Project Manager"). The Project Managers shall serve as the primary contact for the services to be provided hereunder. Each party

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shall be responsible for ensuring that its Project Manager dedicates sufficient time to fulfill that party's respective obligation under this Agreement. Customer acknowledges that a change of Project Managers by Customer may result in delays in the services.

6.4 Customizations and Written Deliverables shall be deemed incorporated into the Elite Software for the purposes of the provisions of the Agreement regarding license, restrictions on use, confidentiality and infringement indemnification but not for purposes of Maintenance Services.

6.5 Non-solicitation of Employees. Elite and Customer each agree that it will not induce any employee of the other to terminate his or her employment relationship with the other party. In addition, Elite and Customer each agree that it will not knowingly employ or offer employment to any employee of the other who has performed any services related to this Agreement within one year of the provision of such services.

### 7. Warranties and Remedies.

7.1 Warranty. Elite warrants that during the Warranty Period the Software will substantially conform to the Documentation when operated in the environment specified by Elite in the PSR.

7.1.1 Warranty – Services. Elite warrants that (i) it will provide the services set forth in this Agreement or a Project Document hereunder consistent with industry standards and in accordance with this Agreement or Project Document, and (ii) that any Customizations provided hereunder will conform in all material respects to the specifications for such Customizations contained in this Agreement or a Project Document for a period of ninety (90) days following the first date of production use of such Customizations.

7.2 Exclusions. Elite will not be responsible to the extent that the Software fails to operate as warranted nor for any other breach hereof due to one or more of the following "Excluded Items:" (1) the failure of software not provided by Elite (for example, operating system software) to perform in accordance with its specifications, (2) failure of hardware to perform in accordance with its specifications, (3) Customer's negligence or fault, (4) Customer's failure to follow the instructions set forth in the Documentation (5) Customer's failure to comply with the PSR, (6) material changes in the operating environment not authorized by Elite, (7) modifications to or changes in the Software not made by Elite, including without limitation those made by Customer using tools provided by Elite, or (8) Customer's failure to implement, maintain and validate a proper and adequate backup and recovery system for the Elite database or user files. It is Customer's responsibility to implement, maintain and validate a proper and adequate backup and recovery system. If a reported failure or breach is caused by an Excluded Item, Elite reserves the right to charge Customer for its work in investigating such failure or breach. Customer may thereafter engage Elite at its discretion to assist Customer in resolving such failure or breach on a time and materials basis.

7.3 THE LIMITED WARRANTIES IN SECTIONS 7.1 AND 8.1 ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES. ELITE MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED. ANY IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY EXCLUDED.

7.4 Remedies. Customer shall have the following remedies:

7.4.1 Services Remedies. To the extent permitted by law and subject to Section 7.3, Customer's sole remedy for Elite's material breach of its obligations under this Agreement or a Project Document will be to have Elite reperform the defective services and correct the defective Customizations so that they conform to the warranties provided herein. If Elite is unable after a reasonable time to provide conforming services or Customizations, and the services or Customizations relate to the initial implementation of the Software, Customer may terminate the Agreement pursuant to this Section 7.4 if such defective services or Customizations cause the Software to fail to conform to the warranties provided herein.

7.4.2 Termination for Breach. In the event that Elite materially breaches any of its obligations under this Agreement prior to or during the Warranty Period, including breach of a warranty or warranties provided herein, Customer may terminate this Agreement as provided in this Section 7.4.2. No termination shall occur unless Customer has given written notice in accordance with Section 11.3 hereof to Elite specifying the breach in reasonable detail, and Elite fails to cure the breach, or to submit, to Customer's reasonable satisfaction, a plan for cure, within ninety (90) days of receipt of such notice. Upon such termination, Elite shall provide a refund as provided in Section 7.4.3. This termination right shall extend up to ninety (90) days after the end of the Warranty Period so long as the breach has been reported during the Warranty Period.

7.4.3 Refund Upon Termination. Upon termination by Customer pursuant to this Section 7.4, Elite will refund to Customer all License Fees received by Elite as of the date of termination upon Customer's compliance with Section 10.4.

7.4.4 Refund Upon Termination – Subscription Software. Upon termination by Customer pursuant to this Section 7.4, Customer will receive a refund of the Subscription Fees paid upon Customer's compliance with Section 10.4.

7.5 Exclusive Remedies. The remedies in Sections 5.4, 7.4 and 8.1 (and, if attached hereto, in the Maintenance Addendum) are Customer's exclusive remedies and are in lieu of all other legal or equitable remedies and all liabilities or obligations on the part of Elite for damages (except for bodily injury) arising out of, relating to, or in connection with this Agreement, including, but not limited to, the licensing, delivery, installation, use or performance of the Software or the integration of the Software with other software or hardware.

### 8. Indemnification.

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8.1 Infringement Claims. Elite represents and warrants that it has sufficient right and interest to grant the rights herein. At its sole expense, Elite shall defend, indemnify and hold Customer harmless from copyright, trade secret and U.S. patent infringement claims based upon the Software in the form delivered by Elite, including paying any judgment, attorney fees, costs and expenses associated with such claim.

8.2 Without limiting its obligations under Section 8.1, in the event a claim of infringement or misappropriation is made against Elite or Customer with respect to the Software, Elite, for the purpose of settling such claim, may, at its option, in respect of such allegedly infringing Software:

- (i) substitute fully equivalent non-infringing software; or
- (ii) modify such Software so that it no longer infringes but remains functionally equivalent.

If, as a result of such claim, Customer or Elite is permanently enjoined from using the Software by a final, non-appealable decree from a court of competent jurisdiction, Elite will take one or both of the actions set forth in (i) and (ii) above or will obtain for Customer at Elite's expense the right to continue to use the Software. If none of these options can be accomplished in a reasonable time or are not commercially reasonable, Elite will refund to Customer the License Fees paid as amortized over a sixty (60) month period from Live Operation upon return of the Software, and, with respect to Subscription Software, Elite will refund the unused prepaid portion of the Subscription Fees, if any, upon return of the Subscription Software.

8.3 Elite's obligation to indemnify Customer pursuant to this Section 8 is contingent upon Elite being given prompt notice and control of, and detailed information with regard to, any such claim, suit or proceeding. Customer shall have the right to participate at its own cost in the defense of any such claim or action through legal counsel of its choosing. Customer shall not settle any such claim or action without Elite's prior written consent.

8.4 This Section 8 contains the entire warranty by Elite and the exclusive remedies of Customer with regard to any claimed infringement arising out of or based upon the Software.

### **9. Limitation of Liability and Exclusion of Consequential or Incidental Damages.**

9.1 Limitation of Liability. Except for liability arising out of or relating to the Maintenance Addendum, in no event shall Elite's, or its officers', employees', suppliers', directors', parent's, or subsidiaries', liability to Customer arising out of or related to this Agreement, or the licensing, delivery, use or performance of the Software or services provided under this Agreement or any breach of this Agreement, whether based on an action or claim in contract or tort, including negligence, strict liability or warranty, except liability for bodily injury, exceed the License Fees paid hereunder; provided, however, that with respect to liability arising out of or relating to an amendment or addendum under this Agreement entered after the Effective Date, such liability shall not exceed the fees paid pursuant to such amendment or addendum. For the purposes of this

Section 9.1 only, "License Fees" shall include any Subscription Fees paid in the one year period preceding the claim.

9.2 Exclusion of Certain Damages. In no event whatsoever shall Elite or its officers, employees or suppliers be liable for consequential, incidental, indirect, or special damages, including, but not limited to, lost profits, lost revenue, lost data, loss of use, failure to realize expected savings, or other commercial or economic loss of any kind or for any claim against Customer by any other party arising out of or in connection with the licensing, delivery, use or performance of the Software provided under this Agreement or the services provided under this Agreement or any breach of this Agreement, even if Elite or its dealer or representative has been advised of the possibility of such damages.

9.3 Allocation of Risks. Customer acknowledges and agrees that the Fees set forth in this Agreement reflect the allocation of risk between the parties, including the exclusion of warranties in Section 7.3 and the limitation and exclusion of damages in this Section 9. Modification of the allocation of risks would affect the fees that Elite charges, and, in consideration thereof, Customer agrees to the stated allocation of risk. The parties agree that the limitation and exclusion of damages in this section should specifically continue to apply in the event a court or arbitrator determines that the sole and exclusive remedies provided in Sections 5.4, 7.4 and 8.1 (and if attached hereto, in the Maintenance Addendum) fail in their essential purpose.

### **10. Term.**

10.1 This Agreement is effective from the Effective Date and continues until terminated as provided herein. Termination of the Maintenance Addendum and/or a Subscription Term by either party shall not terminate this Agreement.

10.1.1 Subscription Software Term. The initial subscription term for the Subscription Software, for any Subscription Software listed on the Software and Fees Schedule, shall commence on the date specified in the Fees Schedule (and if no date is specified, on the Effective Date) and shall continue for the period indicated in the Fees Schedule (the "Initial Term"). The subscription shall thereafter automatically renew for successive one (1) year terms unless either party gives notice of termination no later than thirty (30) days prior to the end of the then-existing term (the "Renewal Term"). Sixty (60) days prior to the end of the Initial Term or any Renewal Term, Elite shall invoice Customer for the following year, which shall serve as notice of any increase in Subscription Fees for any subsequent Renewal Term. The Initial Term together with any Renewal Term(s) shall be the "Subscription Term." Elite reserves the right to increase the Subscription Fees for Renewal Terms.

10.2 Customer may terminate this Agreement for cause only as provided in Section 7. Customer may terminate this Agreement for convenience at any time on thirty (30) days notice, provided, however, in such event, to the extent that the License Fees, and the Subscription Fees for the then-current Subscription Term, have not been paid in full, such fees

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become due in full upon such termination and Customer will also pay for all Services rendered up to the effective date of such termination.

10.3 Elite may terminate this Agreement in the event of Customer's material breach if such breach has not been cured within ninety (90) days following written notice from Elite to Customer.

10.4 Upon the termination of this Agreement for any reason, Customer's license and right to use the Software or any part thereof shall end immediately unless the applicable License Fees have been paid in full (and are not subject to refund hereunder) and Customer shall return to Elite the Software and any other documents, manuals, data, information or materials furnished by Elite, as well as any copies thereof and shall destroy any embodiments of these materials stored in or on a reusable electronic or similar medium, including but not limited to memory, disk packs, tape, and other peripheral devices, and document in writing such destruction. Upon termination of the Subscription Term, if any, Customer's license and right to use the Subscription Software or any part thereof shall end immediately and Customer shall return to Elite the Subscription Software and any related materials and destroy any embodiments of such materials.

### 11. General Provisions.

11.1 Waivers and Limitation of Actions. No delay or omission in the exercise of any power or remedy available hereunder shall impair or affect either party's right to the exercise thereof. No action, regardless of form, arising out of the transactions contemplated herein may be brought by either party more than one (1) year after the cause of action has accrued. For the purpose of this Section 11.1, an action by Elite for monies due from Customer shall accrue on the last date of supply of services or products by Elite hereunder.

11.2 Force Majeure. If either party shall be delayed in its performance of any obligation hereunder or be prevented entirely from performing any such obligation due to causes or events beyond its control, including without limitation any act of God, terrorism, fire, strike or other labor problem, present or future law, government order, rule or regulation, such delay or non-performance shall be excused and the time for performance shall be extended to include the period of such delay or non-performance.

11.3 Notices. All notices shall be made in writing signed by the party making the same and shall be deemed given or made on the date delivered if delivered in person, on the date delivered by an overnight courier service or on the third (3rd) business day after it is mailed to the parties at the addresses indicated above (or at such other addresses as shall be given in writing by either of the parties to the other).

All notices will be routed to the appropriate persons as listed on Exhibit A – Notice Contacts.

11.4 Invalid Provision. In the event that any provision hereof is found invalid or unenforceable, the remainder of this

Agreement shall remain valid and enforceable according to its terms.

11.5 Governing Law. This Agreement shall be construed and enforced in accordance with the substantive laws of the State of Florida. Venue in any proceedings between the parties shall be in the Southern District of Florida or in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida.

11.6 Dispute Resolution. The following procedures will be adhered to in all disputes arising under this Agreement, provided, however, that nothing in this Section 11.6 shall limit either party's right to seek equitable relief for breach by the other party of Sections 4 or 5 hereof:

11.6.1 Informal Resolution Procedure. The aggrieved party shall notify the other party in writing of the nature of the dispute with as much detail as possible about the deficient performance of the other party. The designated representatives of each party ("Designated Representatives") shall meet in person or by telephone within five (5) business days of the date of the written notification to reach an agreement about the nature of the deficiency and the corrective action to be taken by the respective parties. If the Designated Representatives are unable to agree on corrective action, Customer's senior partner or executive and Elite's managing director shall meet in person or by telephone to facilitate an agreement. If the parties cannot resolve the dispute or agree upon a written plan of corrective action to do so within fifteen (15) business days of the initial written notification, or if the agreed-upon completion dates in a written plan of corrective action are exceeded, the parties will submit the matter to arbitration as provided below.

11.7 Assignment. This Agreement, and the rights granted to Customer by this Agreement or any duty or obligation of performance hereunder, may not be assigned, sublicensed, or otherwise transferred by Customer, either voluntarily or by operation of law, except upon compliance with all of the following conditions: (a) assignment is made to a single transferee which is a successor to Customer by merger, acquisition or dissolution (the "Transferee"), (b) the License Fee and Service Fees have been fully paid to Elite, (c) Customer transfers all copies of the Software and Documentation to the Transferee or destroys any copies not transferred, including any copies embodying modifications or alterations made by Customer, (d) Transferee agrees in writing with Elite to be bound by the terms and conditions of this Agreement, and (e) Customer gives Elite written notice of such assignment accompanied by a certificate of compliance with clauses (a) and (c) above. Any attempt by Customer to assign, sublicense, or transfer any of the rights, duties, or obligations hereunder except as expressly provided by this Agreement is null and void. This Agreement shall be binding upon the respective parties hereto and their successors and permitted assignees.

## CUSTOMER AGREEMENT

11.8 Section Headings. The section and subsection headings used herein are for reference and convenience only and shall not enter into the interpretation hereof.

11.9 Required Insurance Coverage. Elite will, for so long as the Maintenance Addendum is in effect, maintain insurance coverage of the types and in the amounts listed in the sample insurance certificates attached as Exhibit C hereto with a reputable insurance carrier or carriers.

11.10 Entire Agreement. No representations, warranties, covenants, conditions or agreements, oral or written, express or implied, have been made to any party hereto, except as expressly provided herein. This Agreement, and the Addenda hereto, contain the entire agreement between Elite and Customer with respect to the subject matter hereof and supersedes and cancels any and all prior or contemporaneous oral or written understandings, negotiations and agreements between Elite and Customer with respect hereto. No amendment or modification to this Agreement or to either party's rights or obligations hereunder may be made in any manner (including without limitation by reference to usage of trade or other regular practice or method of dealing either within the computer industry or between the parties hereto) other than in a writing signed by both parties hereto.

11.11 Survival. Sections 2, 3.2, 5, 7.4, 7.5, 8, 9, 10.4 and 11 shall survive any termination of this Agreement.

### Elite

Michael Goddard  
Name (Print)

\_\_\_\_\_  
Signature

VP, Finance  
Title

\_\_\_\_\_  
Date

### Attest:

By: \_\_\_\_\_  
Michael A. Etienne, Esq.  
City Clerk

### City of North Miami, a Florida municipal corporation "Customer" or "City"

Larry M. Spring, Jr.  
Name (Print)

\_\_\_\_\_  
Signature

City Manager  
Title

\_\_\_\_\_  
Date

Approved as to Form and Legal Sufficiency:

By: \_\_\_\_\_  
Jeff P. H. Cazeau, Esq.  
City Attorney

## FEES SCHEDULE - Software, License Fees and Service Fees

### Payment Terms

#### Licensed Software

100% of the License Fees will be invoiced upon the Effective Date.

#### Maintenance Services

Invoiced upon Installation.

#### Conversion

50% will be invoiced upon the Effective Date.

25% invoiced upon completion of 1st test conversion.

25% invoiced upon completion of final conversion.

#### Fixed Fee Services

50% will be invoiced upon the Effective Date.

50% invoiced upon completion of Services.

#### Hourly Services

Invoiced monthly as performed.

All reimbursable costs will be invoiced monthly from Elite.

Service dates that are cancelled by Customer less than ten (10) business days prior to its scheduled date will be invoiced to Customer at 50% of Elite's price. In addition, any non-refundable travel expenses associated with such cancellation will be charged to Customer.

Should Customer delay start of Services one (1) year beyond original project plan, Elite reserves the right to adjust Customer's Service Fees to Elite's then current service rate.

**City of North Miami**

August 12, 2016  
 ("Fees Schedule Date")

Pricing valid for 90 days from Fees Schedule Date

**Licensed Software**

	Qty	Rate	Total	Annual Maint.
<b>ProLaw Software</b>				
<b>9 Seat License</b>				
<b>(3 Seat Licences for the Risk Dept)</b>				
ProLaw Enterprise Front Office	9	889	8,001	1,600
Case Management				
Contact Management				
DMS Integration <sup>1</sup>				
Docketing				
Document Assembly				
Document Management				
Marketing				
Records Management				
Task Management				
Relationship Management				
Time Entry				
Drag & Drop Customization				
Conflicts				
Groupware Integration <sup>1</sup>				
ProLaw Reporting				
(powered by Microsoft SQL Reporting Services)				
Elite Mobile <sup>2,3,4</sup>			N/C	N/C
<b>Licensed Software Total</b>			<b>8,001</b>	<b>1,600</b>

<b>Conversion</b>	<b>Total</b>
<b>Data Conversion</b>	
<b>Front Office</b>	
Clients and Matters	1,300
Matter Records - up to 50,000 records with field-to-field mapping	
Matter Client Contact Records - up to 20,000 records from the same matter sources <sup>5</sup>	
Professionals - basic setup from a single source	
<b>Custom Tabs<sup>6</sup></b>	
50 Custom Fields	1,560
Includes up to 50 fields on no more than 5 custom tabs	
<b>Front Office - Single Test Conversion</b>	4,290
<b>Conversion Total</b>	<b>7,150</b>

## CUSTOMER AGREEMENT

### Services

	Hours	Rate	Total
<b>Implementation/Training/Consulting - ESTIMATED</b>			
<b>Front Office</b>			
Application Training	28	180.00	5,040
Remote:			
Product Overview (via WebEx) - Fixed Fee			1,600
Project Scoping and Plan Development	21	180.00	3,780
Consulting, Configuration and Setup	52	180.00	9,360
<b>Conversion Services - Remote</b>			
Data Analysis, Mapping and Validation - Test	21.0	180.00	3,780
Data Analysis, Mapping and Validation - Final	14.0	180.00	2,520
<b>Additional Services</b>			
Risk Dept Consulting and Configuration	48	180.00	8,640
		<b>Services Total</b>	<b>34,720</b>
	Total T&M Hours: 184.0		
	<b>Grand Total</b>		<b>44,884 USD</b>
	Licensed Software	8,001	
	Conversion	7,150	
	Services	34,720	
	Less Westlaw Incentive	(4,987)	
	<b>Annual Maintenance Services</b>		<b>1,600 USD</b>
	Licensed Software	1,600	

## Endnotes

Pricing listed herein is exclusive of taxes and duties which will be determined at time of sale.

All Software (including Elite Software, Subscription Software, and Third Party Software) and future Updates are provided electronically to Customer.

### SOFTWARE

Elite will install and support the Software in configured hardware/software environments, including but not limited to those maintained by Managed Hosting Service Providers ("MHSP"), pursuant to specifications mutually agreed upon by Elite and the Customer. Elite will support functionality within the Software. MHSP responsibilities shall include, but not limited to, its own and any related MHSP hardware and software environment(s), configuration and troubleshooting of MHSP hardware, MHSP performance, MHSP availability and connectivity issues, and any Software issues arising from MHSP and/or applicable MHSP entities.

Microsoft SQL Server database software is required. Elite will not provide any software except as expressly listed herein. Any software required to comply with the PSR that is not listed herein, including SQL Server Database software, is the responsibility of Customer.

Microsoft is a third party beneficiary of this Agreement to the extent it applies to the license of Microsoft software. Microsoft disclaims all warranties and liabilities (whether direct, indirect, incidental or consequential), to the maximum extent allowed by governing law, arising from the use or installation of a Microsoft product provided hereunder.

- 1 ProLaw application integration information is available at: <http://www.elite.com/prolaw/application-integration/>.
- 2 Elite Mobile is provided for the Apple iPad and iPhone supporting iOS 8.0 and higher, and Google Android supporting OS 5.0 and higher. ProLaw 2016.2 is required to support Android.
- 3 The mobile capabilities are accessed via the Elite Mobile application. Customer's Elite Mobile experience will depend on the product(s) actually licensed by Customer. References to specific product names (e.g., ProLaw Mobile), shall mean the Elite Mobile application. Product-specific branding will be displayed within the application following an Elite Mobile login screen. Elite Mobile requirements are contained in Product Systems Requirements for the Elite Integration Framework (Elite Knowledge Base article 131472). This document is available from Customer's Elite Sales Representative.
- 4 Elite Mobile application specific support is available for up to five (5) named Customer contacts for mobile devices which will be provided at the time of agreement by Customer. Prior to contacting Support, Customer is responsible for running preliminary testing on the mobile device(s). Customer is responsible for the security of Elite Mobile and the database accessed by the Elite Mobile Server, including any connections to such server and/or database from a mobile device running Elite Mobile. For ongoing use of Elite Mobile, Customer must continue to subscribe to Maintenance Services.

### CONVERSION

Customer is responsible for providing Customer's data in an accurate form in a mutually agreed format and shall provide verification and technical assistance to the extent reasonably possible. Live Operation must occur within ninety (90) days of the test conversion (if applicable) or Customer may be charged additional fees.

Data conversion is from ASCII files and includes data manipulation. Conversion includes up to 2 source reports, unless otherwise indicated. Additional source reports / conversion services can be provided upon request.

- 5 Vendors are not included in this conversion.
- 6 May not include a contact link field without a Contacts conversion.

### SERVICES

Fees listed herein do not include 1) reimbursable expenses (which are payable according to the terms of the Agreement) or 2) charges for travel time. Elite will only charge Customer for actual travel time incurred, not to exceed (8) hours per round trip.

Normal business hours (Monday-Friday, excluding holidays) for services provided are between 8:30am and 5:30pm at the location where the Elite employees providing the services are located at the time of the provision of such services. After hours services are available from Elite for an additional fee.

The Fees listed herein are based upon similar sized Customers and the Software listed in the Fees Schedule. Additional Fees may be required depending upon the final implementation of the Software and any other services not provided for under the Agreement. Services beyond Live Operation may require additional project management services as well as consulting/training services. Additional Fees not listed herein will be mutually agreed in writing by the parties before provision of such services.

The price listed herein is based on a single implementation. Multiple implementation phases are available for an additional charge.

Training is provided on-site at Customer's facility (if applicable), with a maximum of 8 people per class. This can either be "Train-the-Trainer" or "End User" training.

The minimum charge for any hourly services performed outside the scope of initial implementation is two (2) hours.

If a consultant is required on site for remote services (defined in the Fees Schedule), Customer will be charged for travel time, which is billable by Elite. Elite will only charge Customer for actual travel time incurred, not to exceed (8) hours per round trip.

### SOFTWARE ACCESS

Gatekeeper (SecureLink VSN (Virtual Support Network)) (hereinafter "Gatekeeper"), which is developed and supported by SecureLink, Inc. ("SecureLink"), is Elite's exclusive method for connecting to Customer (for the provision of any services, including Maintenance Services), except as otherwise provided below.

Gatekeeper is provided to Customer by SecureLink under license. SecureLink is solely responsible for Gatekeeper. Elite MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO GATEKEEPER. ANY IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY EXCLUDED.

Should Customer opt not to install Gatekeeper, Customer will pay an additional annual fee equal to fifteen percent (15%) of its Annual Maintenance Charge to cover Elite's costs of connection by a method other than Gatekeeper. If Elite is unable to use Gatekeeper due to circumstances beyond its control, or if the Customer has installed but is unable to use Gatekeeper due to circumstances beyond its control, Elite will connect to Customer's Elite Software using WebEx or a similar tool at no charge to Customer.

### SERVER GUIDELINES

Recommended Server/Client Configurations (including SQL Server) for the ProLaw system are available at: <http://www.elite.com/prolaw/system-requirements/>. Customer is responsible for purchasing all hardware and third party software required to run the Software. At Customer's request, Elite will discuss hardware specifications with Customer's third party hardware vendor.

## CUSTOMER AGREEMENT

### MAINTENANCE ADDENDUM

#### 1. Scope of Addendum.

1.1 This Maintenance Services Addendum ("Maintenance Addendum") is part of the Customer Agreement between the parties which is incorporated as if fully set forth herein.

#### 2. Definitions.

2.1 Definitions. As used in this Maintenance Addendum, the following terms shall have the meanings set forth below. Capitalized terms not otherwise defined shall have the meanings set forth in the Agreement.

"Business Day" shall mean Monday through Friday of each week, excluding holidays.

"Business Hours" shall mean the hours from 6:00am to 5:30pm, Pacific Time, during a Business Day.

"Critical Problem" shall mean a Problem that causes an adverse and material effect on Customer's ability to utilize the Software according to the Documentation. Critical Problems are handled in accordance with Section 4.3 of this Maintenance Addendum.

"Major Release" shall mean an Update signified by a change in the numeral to the immediate right of the decimal in the version number e.g. v2.6 to v2.7.

"Maintenance Services" shall mean the services provided pursuant to this Maintenance Addendum as described herein.

"Non-Critical Problem" shall mean a Problem that does not meet the definition of a Critical Problem. Non-Critical Problems are handled in accordance with Section 4.4 of this Maintenance Addendum.

"Problem" shall mean any failure of the Software to perform in accordance with the Documentation. Problems are classified as either Critical Problems or Non-Critical Problems depending on the impact of such Problem on Customer's operations.

"Updates" shall mean any periodic software releases and any release notes provided by Elite to correct Critical or Non-Critical Problems in the Software.

#### 3. Term and Fees.

3.1 Term and Renewal. The initial term of this Maintenance Addendum shall commence upon Installation and shall continue for a period of one year. This Maintenance Addendum shall automatically renew for successive one year terms, unless terminated by either party by giving the other party thirty (30) days written notice prior to the end of the existing term. Notwithstanding the foregoing, with respect to Subscription Software, the Maintenance Services are provided only during the Subscription Term.

3.2 Annual Maintenance Charge. The Annual Maintenance Charge for the first term hereof is set forth in the Fees Schedule and is payable as provided therein. Elite reserves the right to withhold delivery of Maintenance Services if Customer fails to pay the Annual Maintenance Charge in accordance with this Agreement. For subsequent terms, the Annual Maintenance Charge shall be payable annually in advance. Elite reserves the right to increase the Annual Maintenance Charge for subsequent terms. The Annual Maintenance Charge for Subscription Software is included in the Subscription Fee.

#### 4. Maintenance Services.

While this Maintenance Addendum is in effect Elite will provide the Maintenance Services set forth in this Section 4 to Customer:

4.1 Updates. Elite will provide all Updates for the Software that it releases during the term of this Maintenance Addendum to Customer at no additional charge. Upon delivery to Customer the Update will be deemed part of the Software for which it is provided for purposes of the Agreement; provided, however, that the provision of Updates pursuant to this Maintenance Addendum shall not extend the Warranty Period or create a new Warranty Period. Depending on the complexity of the Update Elite may offer installation services as part of Maintenance Services in which event Elite shall be responsible for installing such Update as part of the Maintenance Services being provided in consideration of the Annual Maintenance Charge. Elite, however, reserves the right to charge separately on a time and materials basis for the installation of more complex Updates such as Major Releases.

4.2 Remote Support. Elite shall provide remote support during Business Hours for the reporting of Problems and for the handling of Customer questions relating to the operation of the Software. Remote support shall only be provided for the Production Server and one copy of the production instance used for testing purposes. Elite will provide support for other instances of the Software for an additional fee.

4.3 Critical Problems. Elite shall respond to a report of a Critical Problem as follows:

4.3.1 Elite shall respond to Customer's report of a Critical Problem within two (2) Business Hours. Elite will determine whether the Critical Problem is due to a defect in the Software or whether it is due to an Excluded Item. If the Critical Problem is due to a defect, Elite shall use its best efforts to correct the defect, or provide Customer with a way to temporarily work around the defect if able to do so, or notify Customer on a regular basis as to the progress of the corrective efforts until such time as a correction can be made.

4.3.2 If Elite fails to respond to a Critical Problem as provided in Section 4.3.1, Customer may escalate the matter to the attention of the following individuals, in order: (i) Elite's Support

## **CUSTOMER AGREEMENT**

Manager; (ii) Elite's Senior Director, Support; (iii) Elite's Managing Director.

4.4 Non-Critical Problems. In response to a report of a Non-Critical Problem, Elite will determine whether the Non-Critical Problem is due to a defect in the Software or whether it is due to an Excluded Item. If the Non-Critical Problem is due to a defect, Elite shall use reasonable efforts on a time available basis to correct such defect, but the correction may await the release of an Update.

4.5 Access. Customer will make remote access to the Software available to Elite via a remote access method approved by Elite in order to allow Elite to review system setups, configuration, software (including version) in use, hardware information, Timekeeper and/or User count and other information as necessary for Elite to provide the Maintenance Services.

4.6 Customer Obligations. Customer shall insure that Elite's personnel are provided with such information under Customer control as is reasonably necessary to enable Elite to comply with its obligations hereunder.

4.7 Third Party Software. Maintenance Services for the Software will include Maintenance Services for Third Party Software for so long as Elite remains an authorized remarketer for such Third Party Software. Should Elite cease to be a remarketer for any of the Third Party Software and thus be unable to fulfill the then current annual maintenance term, Elite will refund the unused portion of the Annual Maintenance Charge for such Third Party Software. In such event Elite will use reasonable efforts to assist Customer in obtaining support for such Third Party Software directly from the owner thereof or another authorized provider.

### **5. Exclusions.**

5.1 Elite's obligations hereunder shall extend only to:

5.1.1 the latest Major Release of the Software made available to Customer by Elite, and

5.1.2 the Production Server and one copy of the production instance used for testing purposes.

5.2 Maintenance Services shall not include investigation or resolution of Problems resulting from Excluded Items. Elite will make assistance to Customer available for resolution of Problems resulting from Excluded Items on a time and materials basis.

5.3 The Annual Maintenance Charge does not include on-site service calls made at Customer's request (or travel expenses associated with such calls), or the costs of any other services not specifically set forth herein.

### **6. Remedies and Liability.**

6.1 If Elite materially breaches this Maintenance Addendum and fails to correct such breach within thirty (30) days of written

notice thereof, Customer may terminate this Maintenance Addendum and receive a pro rata refund of the Annual Maintenance Charge for the then current term.

6.2 The foregoing remedy is exclusive and is in lieu of all liabilities or obligations for damages arising out of or in connection with this Maintenance Addendum. Elite shall have no other liability to Customer whatsoever arising under this Maintenance Addendum.

6.3 In no event shall Elite's, or its officers', employees', suppliers', directors', parent's, or subsidiaries', liability to Customer arising out of or related to this Maintenance Agreement, or the services provided under this Maintenance Agreement or any breach of this Agreement, whether based on an action or claim in contract or tort, including negligence, strict liability or warranty, except liability for bodily injury, exceed the Annual Maintenance Charge paid in the then current year.

### **7. General Provisions.**

7.1 Survival. Sections 2 and 6 of this Maintenance Addendum shall survive any termination of this Maintenance Addendum.

Exhibit A – Notice Contacts

**Elite Contact Information:**

Attn: Contracts  
 Thomson Reuters Elite  
 800 Corporate Pointe, Suite 150  
 Culver City, CA 90230 USA  
 elite.contracts@thomsonreuters.com  
 Fax: 323-417-3030

**Customer Contact Information:**

Project contact and telephone number:

Name:	
Telephone:	
Email:	

Invoices to be addressed to:

Name:	
Telephone:	
Email:	

Customer's Securelink Contact:

Name:	
Telephone:	
Email:	

Named Mobile Device Support Contacts (Up to 5):

Name:		Name:	
Telephone:		Telephone:	
Email:		Email:	
Name:		Name:	
Telephone:		Telephone:	
Email:		Email:	
Name:			
Telephone:			
Email:			

**Exhibit B – City of North Miami Additional Contract Provisions**

Should any provision, paragraph, sentence, word or phrase contained in this Agreement be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under the laws of the State of Florida, such provision, paragraph, sentence, word or phrase shall be deemed modified to the extent necessary in order to conform with such laws, or if not modifiable, then same shall be deemed severable, and in either event, the remaining terms and provisions of this Agreement shall remain unmodified and in full force and effect or limitation of its use.

Elite agrees to comply with and observe all applicable federal, state, and local laws, rules, regulations, codes and ordinances, as they may be amended from time to time.

Services shall not be subcontracted, transferred, conveyed, or assigned under this Agreement in whole or in part to any other person, firm or corporation without the prior written consent of the Customer, except pursuant to a merger or sale of substantially all of its assets relating to the performance of the Agreement.

Nothing contained in this Agreement is any way intended to be a waiver of the limitation placed upon Customer's liability as set forth in Chapter 768, Florida Statutes (2016). Additionally, Customer does not waive sovereign immunity, and no claim or award against Customer shall include attorney's fees, investigative costs or pre-judgment interest.

Services to be provided by Contractor pursuant to this Agreement shall be non-exclusive, and nothing herein shall preclude Customer from engaging other firms to perform services.

In the event of any dispute arising under or related to this Agreement, the prevailing Party shall be entitled to recover all actual attorney fees, costs and expenses incurred by it in connection with that dispute and/or the enforcement of this Agreement, including all such actual attorney fees, costs and expenses at all judicial levels, including appeal, until such dispute is resolved with finality.

This Agreement may be executed in two or more counterparts, each of which shall constitute an original but all of which, when taken together, shall constitute one and the same Agreement.

Exhibit C – Certificates of Insurance

(Page intentionally left blank – two (2) pages to follow)



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
08/05/2016

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Marsh USA, Inc. 1166 Avenue of the Americas New York, NY 10036 Attn: NewYork.Certs@marsh.com Fax: 212-345-3695	<b>CONTACT NAME:</b> PHONE (A/C, No, Ext): E-MAIL ADDRESS:		<b>FAX (A/C, No):</b>
	<b>INSURER(S) AFFORDING COVERAGE</b>		<b>NAIC #</b>
<b>INSURED</b> Thomson Reuters 3 Times Square New York, NY 10036	<b>INSURER A:</b> ACE American Insurance Company		22667
	<b>INSURER B:</b> ACE Property and Casualty Insurance Company		20699
	<b>INSURER C:</b> ACE Fire Underwriters Ins. Co.		20702
	<b>INSURER D:</b>		
	<b>INSURER F:</b>		

**COVERAGES**      **CERTIFICATE NUMBER:** NYC-008528792-01      **REVISION NUMBER:** 4

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			HDO G27405125	03/31/2016	03/31/2017	EACH OCCURRENCE	\$ 1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 500,000
							MED EXP (Any one person)	\$ 5,000
							PERSONAL & ADV INJURY	\$ 1,000,000
							GENERAL AGGREGATE	\$ 2,000,000
							PRODUCTS - COM/OP AGG	\$ 2,000,000
								\$
A	<input checked="" type="checkbox"/> <b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS			ISA H09040705	03/31/2016	03/31/2017	COMBINED SINGLE LIMIT (Ea accident)	\$ 3,000,000
							BODILY INJURY (Per person)	\$
							BODILY INJURY (Per accident)	\$
							PROPERTY DAMAGE (Per accident)	\$
								\$
B	<input checked="" type="checkbox"/> <b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED      RETENTION \$			XOO G27963675 001	03/31/2016	03/31/2017	EACH OCCURRENCE	\$ 5,000,000
							AGGREGATE	\$ 5,000,000
								\$
A	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below			WLR C48601650 (AOS)	03/31/2016	03/31/2017	<input checked="" type="checkbox"/> PER STATUTE	<input type="checkbox"/> OTH-ER
C				RSC C48601662 (WI)	03/31/2016	03/31/2017	E.L. EACH ACCIDENT	\$ 1,000,000
							E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000
							E.L. DISEASE - POLICY LIMIT	\$ 1,000,000

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES** (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Re: ProLaw quote  
The city is included as an additional insured (except workers' compensation) where required by written contract.

### CERTIFICATE HOLDER

### CANCELLATION

City of North Miami 776 NE 125 Street North Miami, FL 33161	<b>SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.</b>
	<b>AUTHORIZED REPRESENTATIVE</b> of Marsh USA Inc.  Michaela Grasshoff <i>Michaela Grasshoff</i>

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# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
08/05/2016

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Marsh USA, Inc. 1166 Avenue of the Americas New York, NY 10036 Attn: NewYork.Certs@marsh.com Fax: 212-345-3695	<b>CONTACT NAME:</b> _____	
	<b>PHONE (A/C, No. Ext):</b> _____	<b>FAX (A/C, No.):</b> _____
<b>E-MAIL ADDRESS:</b> _____		
<b>INSURER(S) AFFORDING COVERAGE</b>		<b>NAIC #</b>
<b>INSURER A:</b> ACE American Insurance Company		22667
<b>INSURER B:</b> _____		
<b>INSURER C:</b> _____		
<b>INSURER D:</b> _____		
<b>INSURER E:</b> _____		
<b>INSURER F:</b> _____		

**COVERAGES**                      **CERTIFICATE NUMBER:** NYC-008528794-01                      **REVISION NUMBER:** 1

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
	<b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER: _____						EACH OCCURRENCE \$ _____ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ _____ MED EXP (Any one person) \$ _____ PERSONAL & ADV INJURY \$ _____ GENERAL AGGREGATE \$ _____ PRODUCTS - COMP/OP AGG \$ _____ _____ \$ _____	
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) \$ _____ BODILY INJURY (Per person) \$ _____ BODILY INJURY (Per accident) \$ _____ PROPERTY DAMAGE (Per accident) \$ _____ _____ \$ _____	
	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED: _____ RETENTION \$ _____						EACH OCCURRENCE \$ _____ AGGREGATE \$ _____ _____ \$ _____	
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory In NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A				PER STATUTE    OTH-ER E.L. EACH ACCIDENT \$ _____ E.L. DISEASE - EA EMPLOYEE \$ _____ E.L. DISEASE - POLICY LIMIT \$ _____	
A	Prof Liab, E & O			EON G21635029 015	03/31/2016	03/31/2017	Limits	5,000,000
							SIR	1,500,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
 Re: ProLaw quote

<b>CERTIFICATE HOLDER</b> City of North Miami 776 NE 125 Street North Miami, FL 33161	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE of Marsh USA Inc. Morgan Frick <i>Morgan Frick</i>
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