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**INFORMATION TECHNOLOGY AGREEMENT**

**Government Records Services, Inc.  
and  
Polk County, Texas**

This is an agreement for information technology products and services ("Agreement") by and between **Government Records Services, Inc. ("ACS")**, a Delaware corporation, **Polk County, TX**, a government entity ("Client"). ACS and Client (each individually a "party" and collectively the "parties") agree as follows:

**1. SERVICES** ACS agrees to provide to the Client the information technology products ("Products") and perform for Client the services ("Services") described in the Statement of Work (collectively; the "System"), which is attached to and incorporated by reference in this Agreement as Schedule A, in accordance with the terms and conditions set forth in this Agreement.

**2. TERM** This Agreement shall become effective on the date that the last party executes this Agreement by affixing and dating its signature and shall remain in effect for a period of five (5) years from the date installation and training are completed and live operation of the system by the County commences, unless otherwise extended or terminated by the parties in accordance with the provisions of this Agreement (the "Term"). At the end of the Term, the parties agree that this Agreement shall automatically be renewed for an additional five (5) years (the "Extended Term"), subject to the termination provisions of this Agreement.

**3. PAYMENT** Client agrees to pay ACS for the System in accordance with the provisions for payment set forth in Schedule A. ACS shall submit an invoice to Client for each payment due, and Client agrees to pay each invoice within thirty (30) calendar days after receipt. The date of payment shall be the date the check is mailed, as evidenced by the postmark. Client also agrees to pay late charges of one and one half percent (1.5 %) of any balance due to ACS that is outstanding for more than thirty (30) calendar days.

**4. EXPENSES** Specific types of expenses that will be reimbursed by Client are listed in Schedule A and are subject to any limits set forth in Schedule A. ACS will bear sole responsibility for all other expenses incurred by ACS in connection with delivery of the Products and performance of the Services. Expenses will be listed in each invoice. Upon request, ACS will support a request for reimbursement of expenses (other than *per diem* allowances) with receipts or other reasonable documentation.

**5. SALES AND USE TAXES** If Client is by law exempt from property taxes or sales and use taxes, those taxes will not be included in invoices submitted to the Client under to this Agreement. ACS may be considered a limited agent of the Client for the sole purpose of purchasing goods or services on behalf of the Client without payment of taxes from which Client is exempt. If ACS is required to pay taxes by determination of a proper taxing authority having jurisdiction over the Products or Services provided under this Agreement, Client agrees to reimburse the ACS for payment of those taxes.

**6. DELIVERY AND ACCEPTANCE** ACS will arrange for delivery of any hardware to the appropriate Client installation site(s), as set forth in Schedule A. Shipment of the hardware shall be F.O.B. to the receiving point at each installation site. ACS will pay reasonable transportation and insurance charges for hardware delivered to the receiving point at each installation site. All requirements for acceptance and testing of the System or any System components shall be set forth in Schedule A.

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**7. PROPRIETARY INFORMATION** Contractor acknowledges that, in the course of performing the Services, the Contractor will have access to proprietary and confidential information of Client. Therefore, the parties have signed (or will sign contemporaneous with execution of this Agreement) and will be bound throughout the Term of this Agreement by a standard ACS Nondisclosure Agreement, which is attached to and incorporated in this Agreement by reference as Schedule B.

**8. RELATIONSHIP OF THE PARTIES** This Agreement shall not constitute, create, give effect to, or otherwise imply a joint venture, partnership, or business organization of any kind. ACS and Client are independent parties, and neither party shall act as an agent for or partner of the other for any purpose. Nothing in this Agreement shall grant to either party any right to make any commitments of any kind for or on behalf of the other party without the prior written consent of the other party. ACS shall not be restricted from providing products or performing services for others and shall not be bound to Client except as provided under this Agreement.

**9. PRODUCT AND SYSTEM OWNERSHIP AND RIGHTS** The System provided under this Agreement includes technical information, software programs for computers or other apparatus, designs, specifications, drawings, records, documentation, reports, materials, concepts, plans, inventions, data, discoveries or adaptations, creative works, trade names or trade marks, and works of authorship or other creative works (written, oral, or otherwise expressed) that are delivered to Client or developed, conceived, or acquired by ACS, ACS employees, or by the authorized agents or subcontractors of ACS as a part of the Services, including derivative works (individually and collectively "ACS Intellectual Property"). The Services shall not be considered a "work for hire" under United States copyright laws or other intellectual property laws, and all rights, title, and interest in ACS Intellectual Property shall vest solely in ACS. Client understands and agrees that all ACS Intellectual Property (including all software upgrades, modifications, and customizations) provided under this Agreement shall at all times remain the property of ACS. The provisions of this Section shall survive termination of this Agreement.

**10. LIMITED LICENSE TO USE ACS SOFTWARE** To the extent required for the use of any ACS software included in the System delivered to Client under this Agreement, ACS grants to Client a limited, non-exclusive, non-transferable, revocable license to configure and use the ACS software included in the System solely for the internal operations of Client. ACS represents and warrants that ACS possesses all rights necessary to effectuate the license set forth in this Section. The license granted under this Section does not include the right to grant sublicenses for the ACS software to any third party, including other persons, agencies, or other governmental entities that are not parties to this Agreement unless specifically set forth in Schedule A. Client and its employees and agents will not cause or permit reverse engineering of all or any portion of the System; will not distribute, disclose, loan, market, rent, lease, or otherwise transfer to any third party any portion of the System without prior written authorization by ACS; and will not export the software products in violation of federal export laws or regulations. The provisions of this Section shall survive termination of this Agreement.

**11. OWNERSHIP, USE, AND RETURN OF DATA** All information, records, documents, files, data, and other items relating to the business of Client (including indexes, film, and other data created or acquired by use of the System), whether prepared by Client or ACS or otherwise coming into the possession of ACS in connection with performing the Services or otherwise during the term of this Agreement shall remain the exclusive property of Client. Client may duplicate on electronic media the data entered into the System. Client will retain ownership of all data created by the use of the System. Any requirement for data conversion shall be included in the Services set forth in Schedule A.



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**12. RESPONSIBILITY FOR DATA BACKUP** Prior to ACS providing the System, Client shall prepare and safeguard back-up copies of all data that will be used in connection with the System. Throughout the Term, Client will be responsible for backing up all software and data contained in the System on a regular basis (and in all cases, immediately prior to the provision of any warranty or maintenance Services) in accordance with standard industry back-up procedures, as modified by any instructions for data back-up provided by ACS. Under no circumstances will ACS be responsible for the loss of Client data or software.

**13. THIRD PARTY HARDWARE AND SOFTWARE** All hardware and third-party software components provided by ACS as part of the System are listed in Schedule A. Rights to commercial off-the-shelf software any other hardware or software provided by third-party software vendors are subject to the provisions the software licenses provided by those third-party software vendors, and Client understands and agrees that acceptance and use of this hardware and third-party software shall be deemed acceptance of the terms and conditions of the licenses. Client further agrees to use the third party software in accordance with the terms of those licenses. For "shrink wrap" or "click-wrap" software, Client authorizes ACS to accept the terms of each license on behalf of the Client when the software is installed.

To the maximum extent allowable by each of the third-party commercial hardware and software vendors, Client shall be entitled to all standard manufacturers warranties, guarantees, or exchange policies for defective items, which are offered by the third-party hardware and commercial off-the-shelf software manufacturers and vendors for items furnished under this Agreement. ACS makes no other express or implied warranties whatsoever with regard to any items or components of third-party hardware or commercial off-the-shelf software. ACS explicitly disclaims all warranties of merchantability and fitness for a particular purpose.

**14. PERFORMANCE AND PRODUCT WARRANTIES** ACS warrants that: (a) performance of the Services will not violate any agreement or obligation between ACS and any third party; (b) the System delivered by ACS will not infringe on any copyright, patent, trade secret, or other intellectual property rights or proprietary rights of any third party; and that (c) the Services will be performed in a professional and workmanlike manner in accordance with generally applicable industry standards. Neither party shall be responsible for delays or failures in performance as a result of limitations or problems inherent in the use of the Internet and electronic communications; *force majeure* events, including but not limited to Acts of God, war, terrorism, civil disturbance, labor dispute, weather, or climate change; or other cause beyond the reasonable control of a party. The provisions of this Section shall survive termination of this Agreement.

THE LIMITED WARRANTIES SET FORTH IN THIS SECTION AND THE WARRANTIES SET FORTH IN SECTIONS 13 AND 15 OF THIS AGREEMENT ARE MADE TO CLIENT EXCLUSIVELY AND ARE IN LIEU OF ALL OTHER WARRANTIES. ACS MAKES NO OTHER WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, WITH REGARD TO ANY HARDWARE, SOFTWARE OR THE SERVICES PROVIDED UNDER THIS AGREEMENT, IN WHOLE OR IN PART. ACS EXPLICITLY DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. ACS EXPRESSLY DOES NOT WARRANT THAT THE SYSTEM OR ANY HARDWARE OR SOFTWARE COMPONENT OF THE SYSTEM WILL BE ERROR-FREE, OR WILL OPERATE WITHOUT INTERRUPTION. CLIENT WAIVES ANY CLAIM THAT ANY OF THESE WARRANTIES OR THE REMEDIES PROVIDED UNDER THIS AGREEMENT FAIL OF THE ESSENTIAL PURPOSE FOR WHICH THE WARRANTIES OR REMEDIES ARE PROVIDED.



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**15. ACS SOFTWARE WARRANTY** ACS warrants that during the Term any application software components of the System that are developed and owned by ACS (including customized software components) and furnished to Client by ACS under this Agreement will be free from material errors that would prevent the documented operational features of the System from functioning when used properly under normal conditions and in accordance with the documentation and instructions for use provided by ACS. The provisions of this Section shall survive termination of this Agreement.

The limited warranty provided for ACS software under this Section shall not cover, and shall be void as to (a) any third party hardware or software (including commercial off-the-shelf hardware and software) provided to or used by Client in connection with the System; (b) any component on which maintenance has been performed by a third party that has not been authorized in writing by ACS; (c) any component that has been altered or modified by Client or any third party that has not been authorized in writing by ACS; (d) any component that is damaged due to the negligence or misconduct of Client or any third party; (e) any component that has been damaged as a result of failure to operate the System in accordance with documentation or operating instructions provided by ACS; or (f) any failure due to *force majeure* or exposure to unusual physical or electrical stress.

**16. REMEDIES UNDER SOFTWARE WARRANTIES** If any component of the System covered by the limited warranty provided under Section 15 of this Agreement is believed to be defective, Client shall give ACS prompt written notice that identifies each defect with specificity. ACS will investigate and verify each reported defect. Upon verification by ACS of a reported defect, ACS shall (as determined by ACS in the sole discretion of ACS) repair, replace, or otherwise correct each verified defect at no cost to Client. The parties understand and agree that the remedy determined and applied by ACS shall constitute a complete and satisfactory remedy for each covered defect. The remedies provide under this Section shall constitute the sole and exclusive remedies available to Client for any defects in System components. The provisions of this Section shall survive termination of this Agreement.

**17. NOTICE OF DELIVERY OR PERFORMANCE PROBLEMS** If the ACS encounters or anticipates difficulty in meeting any deadlines, providing any deliverables, performing any of the Services under Schedule A, or meeting any other performance obligations under this Agreement or in complying with the terms or conditions of this Agreement, or has knowledge that any actual or potential situation or event will or is reasonably likely to cause interference with or delay the timely performance of the Agreement, ACS will notify Client immediately, identifying the problem(s) and the corrective action(s) that will be taken. Client agrees to cooperate with ACS in addressing any difficulties or delays caused in whole or in part by circumstances in control of Client or any third party, including delay in the agreement to specifications for Services or change orders required to meet Client requirements.

**18. TORT AND PROPERTY DAMAGE CLAIMS** Each party shall defend, indemnify, and hold harmless the other party (and its successors, officers, directors, and employees) from any and all liabilities, claims, and expenses of whatever kind and nature for injury to or death of any person or persons and for loss of or damage to any real or tangible personal property occurring in connection with or in any way incident to or arising under this Agreement, resulting in whole or in part from the negligent acts or omissions of the indemnifying party. The indemnified party shall promptly notify the indemnifying party, in writing, of any claim and shall reasonably cooperate with the indemnifying party in the defense and settlement of the claim. The provisions of this Section shall survive termination of this Agreement.

**19. INSURANCE** If ACS performs any of the Services on Client premises, ACS agrees to maintain standard insurance coverage in accordance with its corporate policy. Upon request, ACS will provide evidence of coverage on a standard ACORD form certificate of insurance.

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**20. RISK OF LOSS OR DAMAGE TO HARDWARE** ACS will bear the risk of loss or damage to any hardware while in transit to Client installation site(s). Client will bear all risk of loss or damage to hardware after delivery to the installation site(s), unless the loss or damage is due to the negligence or willful acts of ACS, its employees, agents, representatives, or subcontractors.

**21. LIMITATIONS OF LIABILITY** NEITHER PARTY SHALL BE LIABLE, UNDER ANY CIRCUMSTANCES FOR ANY SPECIAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY, INCIDENTAL, OR INDIRECT DAMAGES OF ANY KIND RESULTING FROM THE PERFORMANCE OR NON-PERFORMANCE OF OBLIGATIONS UNDER THIS AGREEMENT EVEN IF THOSE DAMAGES ARE ATTRIBUTED TO BREACH OF THIS AGREEMENT, TORT, NEGLIGENCE, OR OTHER CAUSE OF ACTION. THE PARTIES AGREE THAT THIS LIMITATION SHALL APPLY EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF NON-DIRECT DAMAGES OR IF, UNDER APPLICABLE LAW, NON-DIRECT DAMAGES ARE CONSIDERED TO BE DIRECT DAMAGES. ACS SHALL NOT BE LIABLE FOR ANY FAILURE TO REALIZE SAVINGS OR OTHER BENEFITS FROM THE SYSTEM OR SERVICES PROVIDED UNDER THIS AGREEMENT.

CLIENT ACKNOWLEDGES THAT CONTRACTOR HAS SET ITS PRICING AND ENTERED INTO THIS AGREEMENT IN RELIANCE UPON THE LIMITATIONS OF LIABILITY AND THE DISCLAIMERS OF WARRANTY AND DAMAGES SET FORTH IN THIS AGREEMENT, AND THAT THESE LIMITATIONS AND DISCLAIMERS FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES. EXCEPT FOR SERVICE FEES AND AMOUNTS EXPRESSLY DUE AND PAYABLE TO CONTRACTOR UNDER THIS AGREEMENT, IN NO EVENT SHALL EITHER PARTY TO THIS AGREEMENT BE LIABLE TO THE OTHER PARTY FOR ANY CLAIMS, PENALTIES OR DAMAGES, WHETHER IN CONTRACT, TORT, OR BY WAY OF INDEMNIFICATION, IN AN AMOUNT EXCEEDING TWENTY FIVE PERCENT (25%) OF THE FULL PRICE OF THE SYSTEM.

**22. TERMINATION FOR BREACH OR DEFAULT BY ACS** If ACS materially breaches any of the terms and conditions set forth in this Agreement or fails to perform the obligations set forth in this Agreement and fails to cure the breach or failure within forty-five (45) calendar days (or other reasonable period stated in the notice) after receipt of written notice specifying the basis for the breach or failure to perform, Client may terminate this Agreement. Termination by Client shall be effective upon delivery of final payment to ACS of all sums due under this Agreement to the effective date of the termination. Client agrees to discontinue use of all hardware, software, and other ACS-owned materials no later than the effective date of termination and return the hardware, software, and other ACS-owned materials to ACS within thirty (30) calendar days after termination.

**23. TERMINATION FOR BREACH OR DEFAULT BY CLIENT** If Client materially breaches any of the terms and conditions set forth in this Agreement or fails to perform the obligations set forth in this Agreement and fails to cure the breach or failure within forty-five (45) calendar days (or other reasonable period stated in the notice) after receipt of written notice specifying the basis for the breach or failure to perform, ACS may terminate this Agreement for breach. Termination by ACS shall be effective upon written notice to Client. Client agrees to discontinue use of all hardware, software, and other ACS-owned materials no later than the effective date of termination and return the hardware, software, and other ACS-owned materials to ACS within thirty (30) calendar days after termination.

**24. TERMINATION WITH NOTICE** Either party may terminate this Agreement at the end of the Term or any Extended Term by providing ninety (90) calendar days written prior notice to the other party of the non-renewal of the Agreement.

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**25. TERMINATION FOR LOSS OF FUNDING** This Agreement is subject to termination for convenience upon not less than thirty (30) days written notice to ACS if Client has failed to receive funds for the continued procurement of the Products or Services after every reasonable effort has been made by Client to secure the necessary funding and if no substitute arrangement is made by Client to obtain the same or similar Products or Services from another source.

**26. NOTICES TO PARTIES** Unless otherwise specified in this Agreement, all notices, requests, or consents required under this Agreement to be given in writing shall be transmitted by facsimile, hand delivered, or mailed (first class postage prepaid) to the person indicated below. Each party shall notify the other, in writing, of any change in the designated addressee or related information.

**To ACS:** Government Records Services, Inc.  
2800 W. Mockingbird Lane  
Dallas, Texas 75235  
Attn: Contracts

Telephone: 800-782-5652  
Facsimile: 214-902-5058

**To Client:** Polk County District Clerk  
101 W. Church St., Ste. 205  
Livingston, TX 77351  
Attn: Honorable Kathy Clifton

Telephone: 936-327-6814  
Facsimile: 936-327-6851

**27. DISPUTE RESOLUTION** It is the intent of the parties that any disputes arising under this Agreement be resolved expeditiously, amicably, and at the level within each party's organization that is most knowledgeable about the relevant issues. The parties understand and agree that the procedures outlined in this Section are not intended to supplant the routine handling of inquiries and complaints through informal contact of the parties. Accordingly, for purposes of the procedures set forth in this Section, a "dispute" is a disagreement that the parties have been unable to resolve by the normal and routine channels ordinarily used for resolving problems. Pending the final disposition of a dispute other than a dispute arising out of the termination of this Agreement by either party, the parties shall, at all times, proceed diligently with the performance of this Agreement. Before either party seeks any remedies available at law, the parties shall sequentially follow the procedures set forth below:

- (a) The complaining party will notify the other party in writing of the reasons for the dispute, and the parties will work together to resolve the matter as expeditiously as possible. A formal written response will not be required, but the responding party may put its position in writing in order to clarify the issues or suggest possible solutions.
- (b) If the dispute remains unresolved fifteen (15) calendar days after the delivery of the complaining party's written notice, a senior representative of ACS and the Client (or a representative of Client who has authority to act to resolve the dispute) shall meet or participate in a telephone conference call within ten (10) business days of a request for the meeting or conference call by either party to resolve the dispute.
- (c) If the parties are unable to reach a resolution of the dispute after following these procedures, or if either party fails to participate when requested, then the parties may pursue any remedies available under this Agreement.

**28. HEADINGS** The section HEADINGS used in this Agreement are merely for reference and have no independent legal meaning and impose no obligations or conditions on the parties.

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**29. NON-SOLICITATION OF EMPLOYEES** Neither party shall, without the prior written consent of the other party, knowingly solicit, recruit, hire, or otherwise employ or retain any employee of the other party who is performing or has performed any of the Services under this Agreement during the Term of this Agreement. This restriction includes former employees of ACS and the Contractor who have performed any of the Services during the term of this Agreement. This restriction shall survive the termination or expiration of this Agreement for a period of one (1) year. The provisions of this Section shall not restrict in any way the right of either party to solicit or recruit generally in the media, and shall not prohibit either party from hiring an employee or former employee of the other party who responds to any public advertisement or who otherwise voluntarily applies for hire without having been personally solicited or recruited by the hiring party.

**30. SEVERABILITY** If all or part of any term or condition of this Agreement, or the application of any term or condition of this Agreement, is determined by any court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of the terms and conditions of this Agreement (other than those portions determined to be invalid or unenforceable) shall not be affected, and the remaining terms and conditions (or portions of terms or conditions) shall be valid and enforceable to the fullest extent permitted by law. If a judicial determination prevents the accomplishment of the purpose of this Agreement, the invalid term or condition (or portions of terms or conditions) shall be restated to conform to applicable law and to reflect as nearly as possible the original intention of the parties.

**31. ASSIGNMENT AND SUBCONTRACTING** This Agreement shall be binding on the parties and each party's successors and assigns. ACS may assign or otherwise transfer this Agreement and any rights, duties, or obligations under this Agreement to a corporate parent, subsidiary, or affiliate of ACS. Any other attempt to make an assignment without prior written consent of the Client shall be void. ACS may provide for the delivery of all or part of the Services through the use of subcontractors. ACS shall notify Client of work being performed by any subcontractor who performs work on the premises of Client and shall ensure that the same insurance requirements that apply to ACS under this Agreement apply to and are complied with by that subcontractor.

**32. WAIVER OR FOREBEARANCE** Any delay or failure of either party to insist upon strict performance of any obligation under this Agreement or to exercise any right or remedy provided under this Agreement shall not be a waiver of that party's right to demand strict compliance, irrespective of the number or duration of any delay(s) or failure(s). No term or condition imposed on either party under this Agreement shall be waived and no breach by either party shall be excused unless that waiver or excuse of a breach has been put in writing and signed by both parties. No waiver in any instance of any right or remedy shall constitute waiver of any other right or remedy under this Agreement. No consent to or forbearance of any breach or substandard performance of any obligation under this Agreement shall constitute consent to modification or reduction of the other obligations or forbearance of any other breach.

**33. INJUNCTIVE RELIEF** The parties recognize that a remedy at law for a breach of the provisions of this Agreement relating to proprietary and confidential information; the unauthorized use of any trademark, copyright, or other intellectual property of ACS; or solicitation of ACS employees or business customers may not be adequate for protection of ACS, and accordingly ACS shall have the right to seek injunctive relief to enforce the provisions of this Agreement, in addition to any other relief and remedies available.

**34. CUMULATIVE REMEDIES** All remedies available to either party for breach of this Agreement by the other party are and shall be deemed cumulative and may be exercised separately or concurrently. The exercise of a remedy shall not be an election of that remedy to the exclusion of other remedies available at law or in equity. If any legal action is necessary to enforce the terms of this Agreement, the



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prevailing party shall be entitled to reasonable attorney fees in addition to any other relief to which that party may be entitled.

35. GOVERNING LAW This Agreement shall be governed by, interpreted, construed, and enforced in accordance with the laws of the State of Texas, without reference to the principles of conflict of laws. Lawsuits brought solely for injunctive relief may be brought in any court of competent jurisdiction.

36. ENTIRE AGREEMENT The contents of this Agreement (including the Statement of Work, the Nondisclosure Agreement, and any other schedules or attachments to this Agreement that are referred to and incorporated in this Agreement by reference) constitute the entire understanding and agreement between the parties and supersede any prior agreements, written or oral, that are not specifically referenced and incorporated in this Agreement. The terms and conditions of this Agreement shall not be changed or modified except by written agreement signed by both parties.

IN WITNESS WHEREOF, the undersigned authorized representatives of ACS and the Client have executed this Agreement.

Government Records Services, Inc.  
By: [Signature]  
Printed Name: Hubert P. Auburn  
Title: Vice President  
Date: 7/28/09

Polk County, Texas  
By: [Signature]  
Printed Name: John P. Thompson  
Title: County Judge  
Date: 2/23/2010





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## SCHEDULE A STATEMENT OF WORK

This Statement of Work is incorporated in the Agreement for Products and Services ("Agreement") by and between Government Records Services ("ACS") and Polk County, Texas ("Client").

### A. SCOPE OF SERVICES

#### ACS RESPONSIBILITIES

1. ACS shall perform the following Services for Client:

Install and implement the current version of the **20/20 Perfect Vision Imaging System**, (the "System"), at the Client's site located at 101 W. Church St., Ste. 205, Livingston, TX 77351.

ACS will be responsible for the design, development, management, installation, training, acceptance, and support of the Software.

The installation will be customized to include the following System modules and functions:

- Recording
- Indexing
- Imaging
- Searching
- Retrieval
- Reporting
- Local public access
- Add new office function for Adoptions
- Workflow functions (ACS will adjust workflow parameters, as appropriate).
- All other existing system functionality and operation.

ACS will convert all existing Client index data and image data to the System as part of the installation services.

ACS will be responsible for the initial education and training on the System. Initial education and training shall include on-site education training of all Client employees who will work with the System. The education and training will be adapted to the reasonable needs of the Client employees to ensure each employee is fully prepared to use the system.

ACS will perform all on-going support of the System, including hardware and software, during the term of this Agreement.

ACS will be responsible for replacing any damaged ACS-owned equipment or providing insurance to cover the cost of replacing the equipment.

ACS will install, service, and maintain all ACS-owned equipment (listed in the table below) and software installed at the Client's site during the term of this Agreement.

ACS will receive monthly image transfers from Client and create 16mm microfilm.



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ACS will provide archival and disaster recovery services for the term of the Agreement.

### HARDWARE CONFIGURATION

Component	Quantity	Description
Dell PowerEdge T300 Tower	1	Image and Data Base Server
APC SmartUPS 1500 LCD	1	UPS for Server
Dell OptiPlex 960 Estar Desktop w/ 22" LCD	1	Scanning Workstation
Fujitsu fi-6670	1	Duplex Scanner
Dell OptiPlex 960 Estar SFF w/ 22" LCD	3	Imaging Workstation
Dell P2210 LC Monitor	1	22" LCD Monitor for County owned Workstation
Hewlett Packard LaserJet 4015x	1	Networked Duplex Laser Printer
APC Back-UPS 550	4	UPS for Scanning and Imaging Workstations
APC SurgeArrest Performance	2	Power Strips for Firewall and Network Switch
Dell PowerConnect 2716 Switch	1	Network Switch
Cisco ASA 5505	1	Firewall
Seagate GO Station	2	Docking Station for Backup Drives
Seagate GO Drives – 320 GB	5	Backup USB Drives

### Software

Microsoft Windows 2003 Server Standard  
 ACS Imaging Software  
 Microsoft SQL Server 2005  
 Microsoft Windows XP SP3  
 McAfee Anti-Virus  
 Symantec Ghost  
 Kofax Adrenaline Image Processing Engine (Scanning)  
 PDF Factory Pro Server (Server)

*Equipment configurations are subject to technology advances and changes in vendor availability.*

### CLIENT RESPONSIBILITIES

Client understands and agrees that successful implementation of the Software requires the Client to assign a high priority to the successful implementation. To that end, Client agrees to make all reasonable efforts to have Client personnel available to assist in the implementation efforts and to be trained at the appropriate times.

Client agrees to be responsible for purchasing, installing and managing all necessary anti-virus protection software and anti-virus software updates on the Client server and all Client networked PC workstations.

Client agrees to allow ACS to schedule an ACS support person to be on the Client site for all installations.

Client will provide printer ribbons, toner cartridges, printer paper, electricity, magnetic media for backups and image extractions, pick rollers and pad assemblies, cabling requirements, Internet access, and other miscellaneous supplies not specifically provided by ACS.



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Client will provide document reception and preparation and will input all instruments for imaging purposes.

Client will package and deliver to ACS the necessary backup media and other forms. Client will pay the freight costs associated with this requirement.

Client will provide a medium speed connection to the internet (DSL, Cable, etc.) of sufficient bandwidth to do database replication and support.

ACS will allow Client to interconnect the Client PC network and the ACS system network in order to extend public access to additional Client workstations on the existing Client computer network, or to install email or general internet access services on Contractor workstations for Client employees, or for other purposes. If interconnectivity is established, the following shall apply:

Client agrees to be fully responsible for restoring the System in the event of virus disruption.

In the event of downtime determined by ACS to have been caused by virus contamination of the System or traceable by ACS to Client-installed software, Client agrees to pay ACS for restoration of the system at the current ACS hourly labor rate (\$150 per hour on the Effective Date of the Agreement and subject to change to reflect increased costs of labor and materials).

**B. ACCEPTANCE AND TESTING**

Client shall have ten (10) business days after notification by ACS that the System is ready for acceptance to inspect and accept the System delivered and installed by ACS or decline to accept the System. If Client declines to accept all or any part of the System, Client will provide ACS a written description of the deficiencies and a reasonable opportunity to cure those deficiencies.

Client will indicate acceptance of the System in writing. However, if client fails to decline to accept the System and deliver a written list of deficiencies to ACS within ten (10) business days after receipt of notice of delivery, the System will be deemed to have been accepted by Client.

Client understands and agrees that minor defects (i.e, defects that do not inhibit the System from operating in substantial accordance with ACS specifications) shall not constitute grounds for declining to accept the System. Minor defects may be corrected in subsequent releases of the System provided by ACS as part of ongoing warranty or maintenance of the System.

**C. PAYMENT AND RATES**

ACS will invoice Polk County on a monthly basis for the identified services based on the following price schedule.

Service	Price
20/20 Perfect Vision Land Records Generic Imaging System	\$2,467.00 per month



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**D. OPTIONAL SERVICES**

<b>Service</b>	<b>Price</b>
ACS Perfect Vision License	\$800.00
License installation/training fee (includes travel)	\$500.00
Computerized Re-Indexing	\$1.90/case.
On site scanning services	\$0.15/image
Re-Creation and Digital Conversion	\$420.00
Microfilm to Image Conversion	\$0.15/image.



## INFORMATION TECHNOLOGY AGREEMENT

**SCHEDULE B  
NONDISCLOSURE AGREEMENT**

This mutual nondisclosure agreement ("Agreement") is made by and between **Government Records Services, Inc.**, 2800 W. Mockingbird Lane, Dallas, TX 75235 ("ACS") and **Polk County, Texas** ("Client").

During the Term of this Agreement, ACS and CLIENT (the "parties") understand and agree that either or both parties may disclose to the other party trade secrets or other information of a confidential and proprietary nature ("Proprietary Information") including, but not limited to, business plans, financial information, marketing and sales information, contractual information, technical data and concepts, and operational information related to:

**SCHEDULE A of this Agreement**

In consideration of the mutual covenants and obligations set forth in this Agreement, the parties agree as follows:

1. **TERM** This Agreement shall commence on the effective date and shall remain in effect for Five (5) Years ("Term"), unless extended or terminated earlier accordance with the provisions of this Agreement.
2. **CONTINUING OBLIGATIONS** The obligations of the parties under this Agreement shall remain in effect for three (3) years after the termination or expiration of this Agreement unless this Agreement is incorporated in a subsequent contract, subcontract, or other definitive agreement between the parties, in which case the obligations under this Agreement shall extend for three (3) years beyond the term of that subsequent agreement and any extension or amendment of that agreement.
3. **DISCUSSIONS CONFIDENTIAL** In addition to the content of disclosures made under this Agreement, the fact *per se* that the parties are communicating about the Proprietary Information shall be deemed to be Proprietary Information and neither party shall disclose this fact except in accordance with the terms of this Agreement, as modified by any subsequent teaming agreement or subcontract, or by mutual agreement.
4. **IDENTIFICATION OF PROPRIETARY INFORMATION** At the time of disclosure, the disclosing party shall clearly label any written or tangible material that is considered to be Proprietary Information by the disclosing party. Oral information shall not be subject to any nondisclosure obligation under this Agreement unless identified as proprietary or confidential at the time of disclosure, and unless that oral information (or a reasonable description or summary of the contents of the oral information) is reduced to writing within three (3) business days after disclosure. Those individuals identified in Section 18 of this Agreement ("Notices to Parties") shall be responsible for receipt of the written summary of oral Proprietary Information for their respective party.


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**5. OWNERSHIP OF PROPRIETARY INFORMATION** No title, license, intellectual property rights, or any other right of ownership or use shall be granted (expressly, by implication, or by estoppel) to the receiving party under any patent, trademark, copyright, or trade secret owned or controlled by the disclosing party by the disclosure of Proprietary Information.

**6. OBLIGATIONS OF THE RECEIVING PARTY** In addition to the duties imposed by criminal and civil statutes (including applicable state trade secrets laws, federal patent and copyright law, applicable import and export control laws and regulations, and the Economic Espionage Act), the party receiving Proprietary Information shall exercise all reasonable care to preserve and protect the Proprietary Information from any unauthorized use, disclosure, or theft. Proprietary Information shall not be reproduced in any form except as required to accomplish the intent of this Agreement.

For purposes of this Agreement, "reasonable care" shall be at least the same level of care and discretion that is used by the receiving party to protect its own trade secrets or other confidential information. In any event, the receiving party shall be non-negligent in handling the Proprietary Information disclosed by the other party. The receiving party shall restrict access to the Proprietary Information to only those personnel of the receiving party who directly participate in the activities covered by this Agreement. In addition, the receiving party shall take reasonable steps to ensure that access to the Proprietary Information is restricted to those persons who "need to know" the Proprietary Information in order to participate in the discussions or other activities covered by this Agreement.

The receiving party shall notify the disclosing party, in writing, promptly after the receiving party becomes aware of any unauthorized use, disclosure, or theft of the Proprietary Information and shall identify the receiving party's actions to contain and prevent further unauthorized use, disclosure, or theft of the Proprietary Information.

**7. RELIANCE ON PROPRIETARY INFORMATION** Each party understands and agrees that the provision of Proprietary Information by the other party under this Agreement does not include, establish, or otherwise provide any express or implied representation or warranty as to the accuracy or completeness of the disclosing party's Proprietary Information. Each party expressly disclaims any and all liability that may be based on the receipt or use of the Proprietary Information, including any errors or omissions, unless that Proprietary Information becomes subject to representations and warranties set forth in a teaming agreement, contract, subcontract, or other definitive agreement between the parties.

**8. LEGAL PROCESS** If a subpoena or other legal process concerning any Proprietary Information is served upon a receiving party, the receiving party shall notify, in writing, the disclosing party promptly upon receipt of the subpoena or other legal process. The receiving party shall cooperate with any lawful effort by the disclosing party to contest the validity of the subpoena, to seek a protective order, or to pursue other legal process to protect the Proprietary Information. The receiving party shall at all times limit the disclosure of Proprietary Information to that which is required by law or legal process.

**9. PUBLICLY AVAILABLE INFORMATION** The receiving party shall not be liable for use or disclosure of any Proprietary Information if that Proprietary Information was publicly known, was publicly disclosed in a patent or copyright issued to the disclosing party (subject to applicable intellectual or industrial property law rights and limitations), was provided to the government without restricted rights, was in the public domain as a matter of law, or was available through no breach of this Agreement by the receiving party.

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**10. INFORMATION KNOWN TO RECEIVING PARTY** The receiving party shall not be liable for use or disclosure of any Proprietary Information if that Proprietary Information was already legally known to the receiving party prior to receipt from the disclosing party.

**11. INDEPENDENTLY DEVELOPED INFORMATION** The receiving party shall not be liable for the use or disclosure of any Proprietary Information if that Proprietary Information was independently developed by the receiving party without breach of this Agreement.

**12. THIRD PARTY SOURCE** The receiving party shall not be liable for use or disclosure of any Proprietary Information if the Proprietary Information was obtained from a third party, and the third party had an unrestricted right to disclose the Proprietary Information at the time the information was disclosed.

**13. RETURN OR DESTRUCTION OF PROPRIETARY INFORMATION** Upon termination or expiration of this Agreement, or upon request of the disclosing party, the receiving party shall return to the disclosing party all Proprietary Information received during discussions or performance of work under this Agreement. The disclosing party may direct in writing that the receiving party destroy all copies and documentation of all or any part of the Proprietary Information and may require certification of the destruction by the receiving party. If a party makes or prepares notes or other written information while participating in activities under this Agreement, that party shall also give to the disclosing party or destroy all of the notes or other written information that contain or describe the other party's Proprietary Information.

**14. WAIVER** Any delay or failure by either party to insist upon strict performance of any obligation under this Agreement or exercise any right or remedy under this Agreement shall not be a waiver of that party's right to demand strict compliance in the future, irrespective of the length of time for which the delay or failure continues. No term or condition of this Agreement shall be waived and no breach excused unless the waiver or excuse of a breach is in writing and signed by the party claimed to have waived or excused. No consent or waiver to or of any right, remedy, or breach shall constitute a consent to or waiver of any other right, remedy, or breach in the performance of the same obligation or any other obligation under this Agreement.

**15. INDEPENDENT PARTIES** The parties to this Agreement are independent parties and neither shall act as an agent for or representative of the other party for any purpose. Nothing in this Agreement shall grant to either party any right to make commitments of any kind for or on behalf of the other without prior written consent of the other party. This Agreement shall not constitute, create, give effect to, or otherwise imply a joint venture, partnership, or business organization of any kind. Neither party shall have any obligation under this Agreement to purchase or otherwise acquire any service or item from the other party.

**16. SEVERABILITY** If all or part of any term or condition of this Agreement, or the application of any term or condition of this Agreement, is determined by any court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of the terms and conditions of this Agreement (other than those portions determined to be invalid or unenforceable) shall not be affected, and the remaining terms and conditions (or portions of terms or conditions) shall be valid and enforceable to the fullest extent permitted by law. If a judicial determination prevents the accomplishment of the purpose of this Agreement, the invalid term or condition (or portions of terms or conditions) shall be restated to conform to applicable law and to reflect as nearly as possible the original intention of the parties.

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17. HEADINGS The HEADINGS used in this Agreement are merely for reference, have no independent legal meaning, and impose no obligations or conditions on the parties.

18. NOTICES TO PARTIES Unless otherwise specified in this Agreement, all notices, requests, or consents required under this Agreement to be given in writing shall be delivered by hand or mailed (first class postage prepaid) to the person indicated below, unless either party notifies the other party, in writing, of a change in the designated addressee:

To ACS:  
Government Records Services, Inc.  
2800 W. Mockingbird Lane  
Dallas, Texas 75235  
Attn: GRS Contracts

To Client:  
Polk County District Clerk's Office  
101 W. Church St., Ste. 205  
Livingston, TX 77351  
Attn: Honorable Kathy Clifton

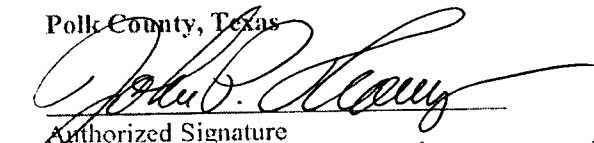
19. INJUNCTION AND OTHER REMEDIES Each party acknowledges that if the receiving party breaches its nondisclosure obligations under this Agreement, the disclosing party will not have an adequate remedy at law. Therefore, the disclosing party shall be entitled to seek an immediate injunction against an alleged breach or anticipated breach of this Agreement from any court of competent jurisdiction. The right to seek and obtain injunctive relief shall not limit the disclosing party's right to pursue other remedies. All remedies available to either party for breach of this Agreement by the other party are and shall be deemed cumulative and may be exercised separately or concurrently. The exercise of a remedy shall not be an election of that remedy to the exclusion of other remedies available at law or in equity.

20. GOVERNING LAW AND VENUE This Agreement shall be governed by, interpreted, construed, and enforced in accordance with the laws of the State of New York, without reference to the principles of conflict of laws or New York conflict of laws rules. Legal action solely for injunctive relief may be brought in any court of competent jurisdiction.

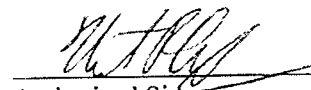
21. ENTIRE AGREEMENT AND ASSIGNMENT This Agreement shall be binding on the parties and their successors and assigns. Neither party may assign or otherwise transfer this Agreement or any rights, duties, or obligations under this Agreement without the prior written consent of the other party. The contents of this Agreement constitute the entire understanding and agreement between the Parties and supersede any prior agreements, written or oral, that are not specifically referenced and incorporated in this Agreement. The provisions of this Agreement shall not be amended except by written agreement signed by both parties.

IN WITNESS WHEREOF the authorized representatives of the parties execute this Agreement:

Polk County, Texas

  
Authorized Signature  
John P. Thompson, County Judge  
Name and Title (Type/Print)

Government Records Services, Inc.

  
Authorized Signature  
Hubert P. Auburn, Vice President