RESOLUTION No. 14-69

A RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, WAIVING THE CITY'S COMPETITIVE BIDDING PROCEDURES BASED ON THE CITY MANAGER'S FINDING OF IMPRACTICABILITY BASED ON SOLE SOURCE OF PRODUCT AND SERVICE; AUTHORIZING THE CITY MANAGER TO ENTER INTO A SOFTWARE LICENSE AND SUPPORT AGREEMENT, IN SUBSTANTIALLY THE FORM PROVIDED, WITH AVOLVE SOFTWARE FOR THE PROCUREMENT OF PROJECTDOX ELECTRONIC PLAN REVIEW SOLUTION SOFTWARE IN AN AMOUNT NOT TO EXCEED $230,000.00; AUTHORIZING THE CITY MANAGER TO ENTER INTO AN SUPPORT SERVICES AGREEMENT, IN SUBSTANTIALLY THE FORM PROVIDED, FOR THE PROVISION OF ANNUAL MAINTENANCE SERVICES, IN AN AMOUNT NOT TO EXCEED $26,260.00 PER YEAR; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City of Doral (the "City") has budgeted for the purchase of an electronic plans review software for Fiscal Year 2013-2014, so as to allow the City Building Department to provide more efficient plans review services to City residents and other patrons; and

WHEREAS, the Building Department currently uses a permitting software platform called CD-Plus, produced by Perconti Data Systems, Inc. ("Perconti"); and

WHEREAS, the only electronic plan review solution software with proven integrations and customers for Perconti's CD-Plus is ProjectDox Electronic Plan Review Solution Software ("ProjectDox"), produced exclusively by Avolve Software Corporation ("Avolve"); and

WHEREAS, Avolve is also the sole producer of "Brava!," which is the viewer component within ProjectDox; and

WHEREAS, Perconti has an existing partnership with Avolve, which neither has

this partnership with any other online plan review software vendor nor provides a CD-Plus interface with any other online plan review solution; and

WHEREAS, because Avolve is the sole source for the only plans review software (ProjectDox) that integrates with City's Perconti system, it would be commercially impracticable to attempt to accomplish electronic plans review through any other means; and

WHEREAS, Section 2-321 of the City Code of Ordinances allows the City Council, my majority vote, to waive the City's competitive bidding procedures upon the recommendation of the City Manager that it is in the City's best interest to do so because the good and services can not be acquired through normal purchasing process due to the nature of the good and services; and

WHEREAS, the Mayor and City Council find it in the City's best interest for the Building Department to have electronic plans capabilities and to have such software integrate seamlessly into the City's existing permitting system.

NOW THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, AS FOLLOWS:

Section 1. **Recitals.** The above recitals are confirmed, adopted and incorporated herein and made a part hereof by this reference.

Section 2. **Waiver.** Pursuant to Section 2-321 of the City's Code of Ordinances, the competitive bidding procedures are hereby waived for the procurement of ProjectDox Electronic Plans Review Solution Software licenses, support, implementation, training, and annual maintenance from Avolve Software Corporation, as well as of integration and customization services from Perconti Data Systems, Inc.,

based on the City Manager's recommendation that it is in the City's best interest to purchase the foregoing because the City's system will only integrate with ProjectDox, Avolve is the sole source of ProjectDox, and finding another electronic plans review software will be commercially impracticable.

Section 3. **Authorization for License and Related Services Agreements.**

A) The procurement of the ProjectDox Software licenses and support, implementation, training, including authorization for the provision of integration and customization services from Perconti Data Systems, Inc., in an amount not to exceed $230,000.00 is hereby authorized;

B) The City Manager is hereby authorized to enter into a software license and support agreement with Avolve Software Corporation, in substantially the form attached hereto as Exhibit "A", subject to approval by the City Attorney for legal sufficiency, for the procurement of licenses and support for ProjectDox for an amount not to exceed $230,000.00, for which funds are available from Account No. 001.70005.500640, Capital Outlay in the amount of $200,000.00, with remaining funding source available after a transfer of $29,345.00 from the IT Department's, Professional Services Account No. 001.22005.500310; and

C) The City Manager is hereby authorized to enter into a support services agreement with Avolve Software Corporation, in substantially the form attached hereto as Exhibit "B", subject to approval by City Attorney for legal sufficiency, for the provision of annual maintenance services, in an amount not to exceed $26,260.00 per year.
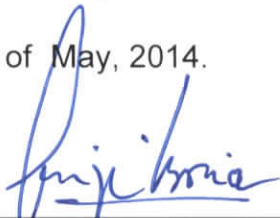
Section 4. **Implementation.** The City Manager is hereby authorized to execute any purchase orders, agreements, and/or such other documents, to expend approved, budgeted funds on behalf of the City, and to take such other action, as necessary to the procure the items approved herein and to carry out the purpose of this Resolution.

Section 5. **Effective Date.** This resolution shall take effect immediately upon adoption.

The foregoing Resolution was offered by Vice Mayor Fraga, who moved its adoption. The motion was seconded by Councilmember Rodriguez Aguilera and upon being put to a vote, the vote was as follows:

Mayor Luigi Boria	Yes
Vice Mayor Christi Fraga	Yes
Councilwoman Bettina Rodriguez Aguilera	Yes
Councilwoman Ana Maria Rodriguez	Yes
Councilwoman Sandra Ruiz	No

PASSED AND ADOPTED upon first reading the 14 day of May, 2014.

_____
LUIGI BORIA, MAYOR

ATTEST:

_____
BARBARA HERRERA, CITY CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY
FOR THE SOLE USE AND RELIANCE OF THE CITY OF DORAL:

_____
WEISS, SEROTA, HELFMAN, PASTORIZA COLE & BONISKE, PL
CITY ATTORNEY

EXHIBIT "A"

1.   DEFINITIONS.

1.1   "Add-on" means any custom application code authorized to be developed using Avolve APIs as set forth in the documentation accompanying such API and these GTCs.

1.2   "Agreement" means these GTCs, the Software Order Form, or other agreement referencing these GTCs. All such components are integral to the agreement, and collectively are referred to herein as the "Agreement".

1.3   "API" means Avolve's application programming interfaces, as well as other Avolve code and database elements that allow other software products to communicate with or call on Avolve Software provided under this Agreement.

1.4   "Avolve Materials" means any software, programs, tools, systems, data, or other materials made available by Avolve to Licensee in the course of the performance under this Agreement including, but not limited to, the API, Software and Documentation, as well as any information, materials or feedback provided by Licensee to Avolve relating to the Software and Documentation.

1.5   "Avolve Support" means Avolve's then-current Avolve support offerings, as described and updated from time to time on Avolve's website (www.avolve.com), which Avolve reserves the right to modify at any time at its sole discretion, and may be purchased for an additional fee. Avolve has no obligation to provide any Avolve Support and, in particular, no Avolve Support (including no bug fixes or updates) will be available after the end of life of the applicable Software version.

1.6   "Business Partner" means authorized third parties that require access to the Software in connection with Licensee's internal business operations, such as Licensee's administrators, contractors, reviewers, and applicants.

1.7   "Business Unit" means a logical element, or segment, of the Licensee representing a specific business function, as existing on the effective date of the license grant. Business Units may be referred to as a department, group, division or functional area.

1.8   "Confidential Information" means, with respect to Avolve, all information which Avolve protects against unrestricted disclosure to others, including but not limited to: (a) the Software and Documentation and other Avolve Materials, including without limitation the following information regarding the Software: (i) computer software (object and source codes), programming techniques and programming concepts, methods of processing, system designs embodied in the Software; (ii) benchmark results, manuals, program listings, data structures, flow charts, logic diagrams, functional specifications, file formats; and (iii) discoveries, inventions, concepts, designs, flow charts, documentation, product specifications, application program interface specifications, techniques and processes relating to the Software; (b) the research and development or investigations of Avolve; (c) product offerings, content partners, product pricing, product availability, technical drawings, algorithms, processes, ideas, techniques, formulas, data, schematics, trade secrets, know-how, improvements, marketing plans, forecasts and strategies; and (d) any information about or concerning any third party (which information was provided to Avolve subject to an applicable confidentiality obligation to such third party). With respect to Licensee, "Confidential Information" means all information which Licensee protects against unrestricted disclosure to others and which (i) if in tangible form, Licensee clearly identifies as confidential or proprieta ry at the time of disclosure; and (ii) if in intangible form (including disclosure made orally or visually), Licensee identifies as confidential at the time of disclosure, summarizes the Confidential Information in writing, and delivers such summary within thirty (30) calendar days of any such disclosure.

1.9   "Documentation" means Avolve's standard end user documentation which is delivered or made available to Licensee with the Software under this Agreement.

1.10   "Enterprise License" means a license authorizing the Licensee to Use with any number of unspecified Business Units.

1.11   "GIStream®" associates GIS features, map, and layer information contained in a GIS databases with ProjectDox information, allowing users to access GIS data and associated project information directly from both ProjectDox and the GIStream Viewer. GIStream's framework also supports custom configuration to exchange ProjectDox information with existing GIS map viewers.

1.12   "Intellectual Property Rights" means patents of any type, design rights, utility models or other similar invention rights, copyrights, mask work rights, trade secret or confidentiality rights, trademarks, trade names and service marks and any other intangible property rights, including applications and registrations for any of the foregoing, in any country, arising under statutory or common law or by contract and whether or not perfected, now existing or hereafter filed,

issued, or acquired.

1.13   "Licensee" means the specific legal entity set forth on the Order Form.

1.14   "Limited Enterprise License" means a license limited to Use only by the specified Business Unit(s) as expressly set forth on the Software Order Form.

1.15   "ProjectFlow® Module" means a programmatically controlled sequence of defined process steps through which a piece of specific work passes from initiation to completion via a series of programmatic processes, forms, user activities, policy enforcement, and tasks.

1.16   "ProjectDox® Instance" means Avolve's proprietary core application and software framework for enhanced document management, review and collaboration built upon a multi-tier cluster hardware architecture consisting of web server(s), application server(s), and job processor(s) that supports the processing of one or more ProcessFlow® Modules and the API, as well as facilitates the implementation of additional functional components such as reporting or interfacing with other Licensee systems. The number of web servers, application servers and job processors for each ProjectDox® Instance shall be as set forth on the Software Order Form.

1.17   "Software" means (i) the API, ProjectDox® Instances, VolumePak®, ProcessFlow® Modules, GIStream® and/or other software licensed to Licensee under this Agreement as specified on the applicable Software Order Forms, as developed by or for Avolve and/or any of their affiliated companies and delivered to Licensee hereunder; (ii) any new releases thereof made available to Licensee as part of Avolve Support and (iii) any complete or partial copies of any of the foregoing.

1.18   "Software Order Form" means the order form, sales agreement, purchase order or like conveyance document for the Software and related Avolve Support ordered by Licensee thereunder.

1.19   "Territory" means the world except for those countries prohibited by United States' export laws, and further subject to Section 12.4 of the GTC.

1.20   "Use" means to activate the processing capabilities of the Software, load, execute, access, employ the Software, or display information resulting from such capabilities.

1.21   "VolumePak®" is an incremental addition of Web Servers and Job Processors that may be licensed for an additional fee to provide extra resources within a ProjectDox Instance to support one or more Process Stream Modules.

2.   LICENSE GRANT.

2.1   License.

2.1.1   Software. Subject to Licensee's compliance with all the terms and conditions of this Agreement, Avolve grants to Licensee a non-exclusive, non-transferable, non-sublicensable (except for the limited right to allow Business Partners to Use set forth in this Section 2.1.1) perpetual (except for subscription based or term licenses) license to Use the Software, Documentation, and other Avolve Materials to run Licensee's internal business operations (including customer back-up and passive disaster recovery) and to provide internal training and testing for such internal business operations and as further set forth in the Software Order Form, unless terminated in accordance with Section 5 herein. If Licensee has purchased a Limited Enterprise License, Licensee's Use is restricted to only the specific Business Unit(s) set forth on the Software Orde r Form and should Licensee desire to reorganize any such Business Unit, it shall provide Avolve written notice as soon as possible following the determination of reorganization, so that Avolve may review the planned reorganization to determine if it is consistent with the Limited Enterprise License and, if not, what additional fees will be required due to Licensee's reorganization to include additional Business Units. This license does not permit Licensee (without being limited specifically to such restrictions) to: (i) use the Avolve Materials to provide services to third parties (e.g., business process outsourcing, service bureau applications or third party training); (ii) lease, loan, resell, sublicense or otherwise distribute the Avolve Materials; (iii) make any Use of or perform any acts with respect to the Avolve Materials other than as expressly permitted in accordance with the terms of this Agreement; or (iv) use Software components other than those specifically identified in the Software Order Form, even if it is also technically possible for Licensee to access other Software components; or (v) Licensee shall not modify, make derivative works of, disassemble, reverse compile, or reverse engineer any part of the e

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2.1.2   Copies. Licensee may make one copy of the Software for archival purposes only, if the copy contains all of the original Software's proprietary notices. For the avoidance of any doubt, such additional copy may not be run concurrently, either in production mode to increase performance or in a non-production mode, as a "hot" failover. Should Licensee desire to run additional copies of the Software concurrently, Licensee must purchase a VolumePak® for an additional fee which authorizes the Licensee to run two or more copies of the Software simultaneously, and may be used, at Licensee's option, either in production mode to increase performance or in a non-production mode, as a failover.

2.1.3   Ownership. Licensee acknowledges and agrees that Licensor owns all right, title, and interest in and to all intellectual property rights (including all derivatives or improvements thereof) in the Software and any suggestions, enhancements requests, feedback, recommendations or other information provided by Licensee or any of its User s related to the Software. Licensee's rights in the Software, updates (provided Licensee has purchased Avolve Support), and the related materials supplied by the Licensor pursuant to this Agreement are strictly limited to the right to use the proprietary rights in accordance with the terms of this Agreement. No right of ownership, expressed or implied, is granted under this Agreement.

2.1.4   API Use. Provided that Licensee has a current certification from Avolve University authorizing Licensee to build Add-Ons, Licensee may use the API to create custom Add-Ons solely as set forth in Section 6 below.

2.1.5   Approved Hardware. Licensee agrees to install the Software only on information technology devices (e.g. servers, hard disks, central processing units or other hardware) identified by Licensee pursuant to this Agreement and that has been previously approved by Avolve in writing or otherwise officially made known to the public by Avolve as appropriate for Use or interoperation with the Software (the "Designated Unit").

2.2   Outsourcing Services. With Avolve's prior written consent, Licensee may permit services providers to access the Software solely for the purpose of providing facility, implementation, systems, application management or disaster recovery services to Licensee in connection with the business of Licensee for which the Software is herein licensed provided: (i) Licensee and such services provider execute a written agreement that includes provisions requiring such services provider's compliance with the terms of this Agreement prior to such access, including without limitation non- disclosure of Avolve Confidential Information; (ii) such services provider shall be permitted to Use the Software solely to install and configure the Software in accordance with the business of Licensee as set forth herein (or in the case of a disaster recovery vendor, to provide disaster recovery services only); (iii) under no circumstances may such services provider Use the Software to operate or provide processing services to Licensee or any other party, or in connection with such services provider's own business operations; (iv) Licensee shall be responsible for any additional Software, migration tools, or third party software needed to effect such transition; and (v) Licensee expressly agrees to indemnify Avolve, its officers, employees, agents and subcontractors from and against all claims, liabilities, losses, damages and costs (including reasonable attorney fees) suffered by Avolve arising from a breach by the services provider of the conditions of this Agreement. Upon Avolve request, Licensee shall provide written confirmation to Avolve that items (i)-(iv) are fulfilled.

3.   <u>VERIFICATION</u>. Avolve shall be permitted to audit (at least once annually and in accordance with Avolve standard procedures, which may include on-site and/or remote audit) the usage of the Avolve Materials. Licensee shall cooperate reasonably in the conduct of such audits. In the event an audit reveals that (i) Licensee underpaid license fees and/or Avolve Support fees to Avolve and/or (ii) that Licensee has Used the Software in excess of the license quantities or levels stated in the Software Order Form, Licensee shall pay such underpaid fees and/or for such excess usage based on Avolve List of Prices and Conditions Software and Support governing use in effect at the time of the audit, and shall execute an additional Software Order Form in accordance with the terms of this Agreement to affect the required licensing of any

additional quantities or levels. Reasonable costs of Avolve's audit shall be paid by Licensee if the audit results indicate usage in excess of the licensed quantities or levels. Avolve reserves all rights at law and equity with respect to both Licensee's underpayment of License fees or Avolve Support fees and usage in excess of the license quantities or levels.

4.   PRICE, PAYMENT, AND DELIVERY.

4.1   Fees. Licensee shall pay to Avolve license fees for the Software and fees for Avolve Support as set forth on the Software Order Form(s) hereto. Any fees not paid when due shall, which unless otherwise specified will be thirty (30) calendar days from invoice, accrue interest at the rate of 18% (eighteen percent) per annum, but not to exceed the maximum amount as allowed by law. Fees paid by Licensee are paid in consideration of the licenses granted under this Agreement. The Fees constitute a flat rate payment for a license as determined by the Sales Order Form, such Fees being irrevocable and non-refundable (except as set forth otherwise in this Agreement). Licensee agrees to provide Licensor with complete and accurate billing and contact information. All payments from the Licensee shall be via electronic funds transfer (EFT) directly deposited into Avolve's designated checking or other bank account. Avolve shall promptly comply with directions and accurately complete forms provided by the Licensee required to process EFT payments. Avolve may engage a third party agent to expedite the payment to Licensor in advance of the actual invoice due date.   Upon notification Licensee will redirect invoice payments to any such third party designated by Avolve.

4.2   Taxes. Fees and other charges described in this Agreement do not include federal, state or local sales, foreign withholding, use, property, excise, service, or similar transaction taxes ("Tax(es)") now or hereafter levied, all of which shall be for Licensee's account. Any applicable direct pay permits or valid tax-exempt certificates must be provided to Avolve prior to the execution of this Agreement. If Avolve is required to pay Taxes, Licensee shall reimburse Avolve for such amounts. Licensee hereby agrees to indemnify Avolve for any Taxes and related costs, interest and penalties paid or payable by Avolve.

4.3   Delivery of the Software; Installation. Avolve will deliver the Software either by making it available for electronic download or by physical delivery of media to Licensee. Risk of loss passes at the time of such electronic or physical delivery. Licensee agrees and understands that the calculation of Taxes may be affected by the delivery method and delivery location of the Software and corresponding Avolve Support. Licensee agrees to promptly, following initial delivery of the Software, but in all cases within ninety (90) days, to provide Avolve with reasonable access to Licensee's facilities and systems in order for Avolve to initially install the Software (the "Initial Installation"). Unless agreed to in writing by Avolve, Licensee understands that it is not authorized to conduct the initial installation of the Software. For the avoidance of any doubt, all installation services are professional services provided by Avolve under a separate Professional Services Agreement.

5.   TERM.

5.1.   Term. This Agreement and the grant of the license granted hereunder shall become effective as of the date first set forth in the first Software Order Form issued under these GTCs, and this Agreement shall continue in effect thereafter unless this Agreement is terminated upon the earliest to occur of the following: (i) thirty days after Avolve gives Licensee notice of Licensee's material breach of any provision of the Agreement (other than Licensee's breach of its obligations under Sections 6, 10 or
11, which breach shall result in immediate termination), including more than thirty days delinquency in Licensee's payment of any money due hereunder, unless Licensee has cured such breach during such thirty day period; or (ii) immediately if Licensee files for bankruptcy, becomes insolvent, or makes an assignment for the benefit of creditors. For the avoidance of any doubt, termination of the Agreement shall strictly apply to all licenses under the Agreement. Nothing in this Section shall be construed to place a limit on the amount of time for which Licensee shall have the right to use the Software. The license contemplated herein is perpetual and shall not be revoked by the end of the term of this Agreement.

5.2   End of Term Duties. Upon any termination hereunder, Licensee shall no longer be entitled to any on-going services provided for herein, but it shall be entitled to continued possession and use of the Software. and its Business Partners shall immediately cease Use of all Avolve Materials and Confidential Information. Within thirty (30) days after any termination, Licensee shall irretrievably destroy or upon Avolve's request deliver to Avolve all copies of the Avolve Materials and Confidential Information in every form, except to the extent it is legally required to keep it for a longer period in which case such return or destruction shall occur at the end of such period. Licensee must certify to Avolve in writing that it has satisfied its obligations under this Section 5.2. Sections 3, 4, 5, 6, 7, 8, 9, 10, 12, and 12 shall survive such termination. In the event of any termination hereunder, Licensee shall not be entitled to any refund of any payments made by Licensee. Termination shall not relieve Licensee from its obligation to pay fees that remain unpaid.

6.   Add-Ons.

6.1   Conditioned on Licensee's compliance with the terms and conditions of this Agreement, Licensee may make Add -ons to the Software in furtherance of its permitted Use under this Agreement, and shall be permitted to use Add -ons with the Software in accordance with the License grant to the Software set forth in Section 2.1.1 herein. All Add-ons developed d

by Avolve (either independently or jointly with Licensee or other third parties) and all rights associated therewith shall be the exclusive property of Avolve. Licensee agrees to execute those documents reasonably necessary to secure Avolve's rights in the foregoing. All Add-ons developed by or on behalf of Licensee without Avolve's participation ("Licensee Add-on"), and all rights associated therewith, shall be the exclusive property of Licensee subject to Avolve's rights in and to the Software; provided, Licensee shall not commercialize, market, distribute, license, sublicense, transfer, assign or otherwise alienate any such Licensee Add-ons. Avolve retains the right to independently develop its own Add-ons to the Software, and Licensee agrees not to take any action that would limit Avolve's sale, assignment, licensing or use of its own Software or Add-ons thereto. In the event of termination, Licensee's perpetual use of the license contemplated herein includes any add-ons whether developed by Avolve or Licensee, provided that same were made in accordance with the terms of this Agreement.

6.2   Any Licensee Add-on must not (and subject to other limitations set forth herein): enable the bypassing or circumventing any of the restrictions set forth in this Agreement and/or provide Licensee with access to the Software to which Licensee is not directly licensed; nor permit mass data extraction from Software to any non-Avolve software, including use, modification saving or other processing of data in the non-Avolve software; nor unreasonably impair, degrade or reduce the performance or security of the Software; nor render or provide any informat ion concerning Avolve software license terms, Software, or any other information related to Avolve products.

7.   PERFORMANCE WARRANTY.

7.1   Warranty. Avolve warrants that the Software will substantially conform to the specifications contained in the Documentation for thirty (30) days following Initial Installation. The warranty shall not apply: (i) if the Software is not used in accordance with the Documentation; (ii) not initially installed within the time period set forth in Section 4.3 above due solely to the fault of Customer; or (iii) if the defect is caused by an Add-on (other than an Add-on made solely by Avolve and which is provided through Avolve Support or under warranty), Licensee or third-party software. Avolve does not warrant that the Software will operate uninterrupted or that it will be free from minor defects or errors, all of which that dodoes not materially affect such the Software's performance, or that the applications contained in the Software are designed to meet all of Licensee's business requirements. Provided Licensee notifies Avolve in writing with a specific description of the Software's nonconformance within the warranty period and Avolve validates the existence of such nonconformance, Avolve will, at its option: a) repair or replace the nonconforming Software, or b) refund the license fees paid for the applicable nonconforming Software in exchange for a return of such nonconforming Software. THIS IS LICENSEE'S SOLE AND EXCLUSIVE REMEDY UNDER THIS WARRANTY.

7.2   Express Disclaimer.   AVOLVE AND ITS LICENSORS DISCLAIM ALL OTHER WARRANTIES EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE EXCEPT TO THE EXTENT THAT ANY WARRANTIES IMPLIED BY LAW CANNOT BE VALIDLY WAIVED.

8.   INDEMNIFICATION.

8.1   General.   When Avolve Support or other service are provided on Licensee's premises or at another location designated by Licensee, each party will indemnify, defend and hold harmless the other party, its officers, directors, employees, agents and affiliates from and against any claims, demands, loss, damage or expense, including reasonable attorney's fees, (collectively, "Claims") relating to bodily injury or death of any person or damage to tangible personal property occurring at such location in connection with the performance of the Avolve Support or other services to the extent proximately caused by the gross negligence or willful acts or omissions of the indemnifying party, its officers, directors, employees, agents and affiliates.

8.2   Infringement and Defense of Licensee. Avolve shall defend Licensee against claims brought against Licensee in the Territory by any third party alleging that Licensee's Use of the Software, in accordance with the terms and conditions of this Agreement, constitutes a direct infringement or misappropriation of an U.S. patent claim(s), copyright or trade secret rights, and Avolve will pay damages finally awarded against Licensee (or the amount of any settlement Avolve enters into) with respect to such claims. This obligation of Avolve shall not apply if the alleged infringement or misappropriation results from Use of the Software in conjunction with any other software, an apparatus other than a Designated Unit, any Licensee Add-pn, failure to use an update promptly provided by Avolve if such infringement or misappropriation could have been avoided by use of the update, or unlicensed activities. This obligation of Avolve also shall not apply if Licensee fails to timely notify Avolve in writing of any such claim. Avolve is permitted to control fully the defense and any settlement

of any such claim as long as such settlement shall not include a financial obligation on Licensee. In the event Licensee declines Avolve's proffered defense, or otherwise fails to give full control of the defense to Avolve's designated

counsel, then Licensee waives Avolve's obligations under this Section 8.2. Licensee shall cooperate fully in the defense of such claim and may appear, at its own expense, through counsel reasonably acceptable to Avolve. Avolve expressly reserves the right to cease such defense of any claim(s) in the event the Software is no longer alleged to infringe or misappropriate, or is held not to infringe or misappropriate, the third party's rights. Avolve may settle or mitigate damages arising from any claim or potential claim, by substituting alternative substantially equivalent non-infringing programs and supporting documentation for the Software. Licensee shall not undertake any action in response to any infringement or misappropriation, or alleged infringement or misappropriation of the Software that is prejudicial to Avolve's rights.

8.3   THE PROVISIONS OF THIS SECTION 8 STATE THE SOLE, EXCLUSIVE, AND ENTIRE LIABILITY OF AVOLVE AND ITS LICENSORS TO LICENSEE, AND IS LICENSEE'S SOLE REMEDY, WITH RESPECT TO THE INFRINGEMENT OR MISAPPROPRIATION OF THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS.

9.   LIMITATIONS OF LIABILITY.

ANYTHING TO THE CONTRARY HEREIN NOTWITHSTANDING, EXCEPT FOR DAMAGES RESULTING FROM UNAUTHORIZED USE OR DISCLOSURE OF CONFIDENTIAL INFORMATION OR DEATH OR PERSONAL INJURY ARISING FROM EITHER PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, UNDER NO CIRCUMSTANCES AND REGARDLESS OF THE NATURE OF ANY CLAIM SHALL EITHER PARTY BE LIABLE TO THE OTHER OR ANY OTHER PERSON OR ENTITY FOR AN AMOUNT OF DAMAGES IN EXCESS OF THE FEES PAID OR OWED HEREUNDER IN THE TWELVE (12) MONTHS IMMEDIATELY PROCEEDING THE EVENT GIVING RISE TO THE CLAIM OR BE LIABLE IN ANY AMOUNT FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR INDIRECT DAMAGES, LOSS OF GOOD WILL OR BUSINESS PROFITS, WORK STOPPAGE, DATA LOSS, COMPUTER FAILURE OR MALFUNCTION, ATTORNEYS' FEES, COURT COSTS, INTEREST OR EXEMPLARY OR PUNITIVE DAMAGES. THE PROVISIONS OF THIS AGREEMENT ALLOCATE THE RISKS BETWEEN AVOLVE AND LICENSEE AND THE LIMITED REMEDIES SET FORTH IN THIS AGREEMENT SHALL APPLY NOTWITHSTANDING THE FAILURE OF THEIR ESSENTIAL PURPOSE.

10.   CONFIDENTIALITY.

10.1. Use of Confidential Information. Confidential Information shall not be reproduced in any form except as required to accomplish the intent of this Agreement. Any reproduction of any Confidential Information of the other shall remain the property of the disclosing party and shall contain any and all confidential or proprietary notices or legends which appear on the original. With respect to the Confidential Information of the other, each party: (a) shall take all Reasonable Steps (defined below) to keep all Confidential Information strictly confidential; and (b) shall not disclose any Confidential Information of the other to any person other than its bona fide individuals whose access is necessary to enable it to exercise its rights hereunder. As used herein "Reasonable Steps" means those steps the receiving party takes to protect its own similar proprietary and confidential information, which shall not be less than a reasonable standard of care. Confidential Information of either party disclosed prior to execution of this Agreement shall be subject to the protections afforded hereunder.

10.2   Exceptions. The above restrictions on the use or disclosure of the Confidential Information shall not apply to any Confidential Information that: (a) is independently developed by the receiving party without reference to the disclosing party's Confidential Information, or is lawfully received free of restriction from a third party having the right to furnish such Confidential Information; (b) has become generally available to the public without breach of this Agreement by the receiving party; (c) at the time of disclosure, was known to the receiving party free of restriction; or (d) the disclosing party agrees in writing is free of such restrictions.

10.3   Confidential Terms and Conditions; Publicity. Licensee shall not disclose the terms and conditions of This Agreement related to pricing contained to any third party unless restricted from conforming to non-disclosure by governmental statute and/or ordinance. Licensor may identify Licensee on its customer lists and list Licensee as a customer in its marketing and advertising materials, and reproduce Licensee's company name, logo, trademark, trade name, service mark, or other commercial designations, solely in connection therewith. If requested by Licensor during the first two years of this Agreement, Licensee agrees to timely execute the following activities: Press Release, Case Study Testimonial, ROI Benchmarking Study, Client Referrals.

11.   ASSIGNMENT. Licensee may not, without Avolve's prior written consent, assign, delegate, pledge, or otherwise transfer this Agreement, or any of its rights or obligations under this Agreement, or the Avolve Materials or Avolve Confidential Information, to any party, whether voluntarily or by operation of law, including by way of sale of assets, merger or consolidation.

12.   GENERAL PROVISIONS.

12.1   Severability. It is the intent of the parties that in case any one or more of the provisions contained in this Agreement shall be held to be invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect the other provisions of this Agreement, and this Agreement shall be construed as if such invalid or unenforceable provision had never been contained herein.

12.2   No Waiver. If either party should waive any breach of any provision of this Agreement, it shall not thereby be deemed to have waived any preceding or succeeding breach of the same or any other provision hereof.

12.3   Counterparts. This Agreement may be signed in two counterparts, each of which shall be deemed an original and which shall together constitute one Agreement.

12.4   Regulatory Matters. The Software, Documentation and Avolve Materials are subject to the export control laws of various countries, including without limit the laws of the United States. Licensee agrees that it will not submit the Software, Documentation or other Avolve Materials to any government agency for licensing consideration or other regulatory approval without the prior written consent of Avolve, and will not export the Software, Documentation and Avolve Materials to countries, persons or entities prohibited by such laws. Licensee shall also be responsible for complying with all applicable governmental regulations of the country where Licensee is registered, and any foreign countries with respect to the use of the Software, Documentation or other Avolve Materials by Licensee and/or its Affiliates.

12.5   Governing Law; Limitations Period. This Agreement and any claims arising out of or relating to this Agreement and its subject matter shall be governed by and construed under the laws of State of Arizona without reference to its conflicts of law principles. In the event of any conflicts between foreign law, rules, and regulations, and United States law , rules, and regulations, United States law, rules, and regulations shall prevail and govern. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. The Uniform Computer Information Transactions Act as enacted shall not apply. Licensee must initiate a cause of action for any claim(s) arising out of or relating to this Agreement and its subject matter within one (1) year from the date when Licensee knew, or should have known after reasonable investigation, of the facts giving rise to the claim(s).

12.6   Notices. All notices or reports which are required or may be given pursuant to this Agreement shall be in writing and shall be deemed duly given when delivered to the respective executive offices of Avolve and Licensee at the addresses first set forth in any Software Order Form or Sales agreement. Where in this section 12.6 or elsewhere in this Agreement written form is required, that requirement can be met by facsimile transmission, exchange of letters or other written form.

12.7   Force Majeure. Any delay or nonperformance of any provision of this Agreement (other than for the payment of amounts due hereunder) caused by conditions beyond the reasonable control of the performing party shall not constitute a breach of this Agreement, and the time for performance of such provision, if any, shall be deemed to be extended for a period equal to the duration of the conditions preventing performance.

12.8   Entire Agreement. This Agreement constitutes the complete and exclusive statement of the agreement between Avolve and Licensee, and all previous representations, discussions, and writings are merged in, and superseded by this Agreement and the parties disclaim any reliance on any such representations, discussions and writings. This Agreement may be modified only by a writing signed by both parties. This Agreement shall prevail over any additional, conflicting, or inconsistent terms and conditions which may appear on any purchase order or other document furnished by Licensee to Avolve. This Agreement shall prevail over any additional, conflicting or inconsistent terms and conditions which may appear in any clickwrap end user agreement included in the Software. Signatures sent by electronic means (facsimile or scanned/sent via e-mail) shall be deemed original signatures. This Agreement does not create any partnership, joint venture or principal and agent relationship.

12.9   Governmental End Users. The API, Software and Documentation, are "Commercial Items" as that term is defined at 48 CFR 2.101 consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation: as such terms are used in 48 CFR 12.212 or 48 CFR 227.7202, as applicable.   The rights to the API, Software and Documentation are granted to US Government end users (a) only as Commercial Items and (b) only with those rights as are granted to all other end users pursuant to the terms and conditions of this Agreement.

12.10   Hierarchy. The following order of precedence shall be applied in the event of conflict or inconsistency between provisions of the components of this Agreement: (i) the Software Order Form and (ii) the GTC.

EXHIBIT "B"

This Avolve Support and Service Level Agreement ("SLA") defines the maintenance and support services ("Avolve Support") which Avolve Software, Inc. ("Avolve") shall provide in accordance with a customer's Software Order Form and the GTCs. Capitalized terms not defined otherwise herein shall have the definitions given to them in the GTCs. In the case of a conflict between the terms of this SLA and the GTCs, this SLA shall control with regard Avolve Support. For the avoidance of any doubt, customers who have not purchased Avolve Support and customers who are not current on their support fees are not entitled to Avolve Support.

1. **Portal.** Avolve will provide reasonable portal support for problem determination and resolution for problems arising during normal operation of the Software. Avolve may require the Customer to provide a written assistance request describing the problem. All issues MUST be reported via the portal.

    Support Portal: http://www.avolvesoftware.com/index.php/company/technical-support/

2. **Support Hours.**

    2.1. Customers with a standard support contract will receive assistance during Avolve's normal working hours of ~~7~~8:00 a.m. through 5:00 p.m., Monday through Friday (excluding standard holidays), ~~Arizona~~ Eastern Standard Time.

    2.2. Customers with a premium support contract with issues of a Prioroty1/High severity level will receive reasonable extended telephone support for operational problem determination and resolution per the terms as specified on their Sales Order. For all other issues of lesser severity, general support is available during Avolve's normal working hours of 7:00 a.m. through 5:00 p.m., Monday through Friday (excluding standard holidays), Arizona Standard Time.

3. **On-Site Emergency Support.** Customer may request Avolve to provide on-site emergency operational support services as a separate and distinct billable service.

4. **Releases Included**. Avolve Support includes major releases, minor releases, and maintenance releases.

    4.1. For the purposes of this SLA, (i) "maintenance releases" shall mean such bug fixes and/or platform updates that are designated as "maintenance releases" by Avolve; (ii) "minor releases" shall mean such bug fixes, platform updates, and/or minor product enhancements that are designated as "minor releases" by Avolve; and (iii) "major releases" shall mean such bug fixes, platform updates, and major product enhancements and/or new features that are designated as "major releases" by Avolve.

    4.2. To the extent applicable, all Avolve Support provided to Customer (including all maintenance releases, minor releases, and major releases) shall be subject to the applicable license agreement between Avolve and Customer.

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5. **Problem Determination and Resolution.** Avolve resources will be allocated to resolve reported problems based on the severity level set forth in the table below and Avolve will use commercially reasonable efforts to provide an acceptable resolution, workaround, or a plan for the provision of a resolution or acceptable workaround in the timeframe set forth in the table below:

Severity Level	Definition	Acknowledgement	Commitment
Priority 1 High	An error that causes a catastrophic failure substantially impacting Customer's business.	4 Hours	Avolve and Customer will commit full-time resources for problem resolution, to obtain workaround, or reduce the severity of the error.
Priority 2 Medium	An error that causes Avolve product to fail without significant business impact. Causes a substantial reduction in performance.	3 Days	Avolve and Customer will commit full-time resources during normal business hours for problem resolution, to obtain a workaround, or reduce the severity of the error.

Severity Level	Definition	Acknowledgement	Commitment
Priority 3 Low	An error that causes only minor impact on use of the product.	5 Days	Avolve and Customer will commit resources during normal business hours for problem resolution.
Request	A service request for a new feature, additional documentation, or an explanation of product functionality.	5 Days	Avolve and Customer will provide resources during normal business hours to address request.

(a) Acknowledgement. Once a problem has been reported, Customer will receive an acknowledgement via email, phone or the support portal, as to the receipt of the problem as reported and a confirmation of the problem severity. Avolve will begin the process of problem determination and resolution at this point.

(b) Status Updates. During the problem determination and resolution process, Customer may receive regular communications, via email, phone or the support portal, as to the status of the problem determination and resolution.

(c) Resolution. In response to the problem reported, Customer will receive, as appropriate, one of the following resolutions: an existing correction, a new correction, a viable workaround, or a plan on how the problem will be addressed.

(d) Severity Re-classification. If Customer determines that a previously reported and in-progress issue's severity needs to be re-classified or escalated, Customer should issue a new call or email to the Technical Support Team.

6. **Exclusions**. Avolve will have no obligation to support the following, pursuant to the terms of this Agreement:

6.1. Software not covered by an active support contract and/or not in compliance with a valid license agreement. A support contract must cover all licenses purchased.

6.2. Software that is altered or modified other than as approved in writing by Avolve.

6.3. Any Software that is not the current major release or immediately previous major release with most current minor update.

6.4. Problems caused by misuse or misapplication of the Software.

6.5. Software installed on any computer hardware/software configurations not supported by Avolve.

6.6. Problems caused by Licensee Add-Ons.

Avolve, in its sole discretion, shall determine whether any of the foregoing exclusions are applicable to Customer.

7. **Customer's Obligations for Operational Support.**

7.1. Contact Person(s). Customer will designate up to two (2) contact person(s) (or such other replacement individuals as Customer may designate in writing) (each a "Contact Person"), who shall be the sole contacts for the coordination and receipt of the Support Services set forth in this SLA. Each Contact Person shall be knowledgeable about the Software. If Avolve is unable to contact any designated Contact Person through the specified means for a period of time and such contact would be helpful for performing the Support Services, Avolve may refuse to perform the Support Services until Avolve is able to contact a designated Contact Person, in which case the times for resolution set forth in Section 6 will be suspended for such period of time.

7.2. Remote Access. For the purpose of problem determination and analysis, Customer will provide, as necessary and at Customer's discretion, the Technical Support Team with remote access capabilities into Customer's system's running the Software.

7.3. Supporting Data. Customer will provide reasonable supporting data to aid in the identification and resolution of the issue.

7.4. Installation. Unless otherwise instructed by Avolve, Customer will be responsible for installing any error correction, update or upgrade.

8. **Term.** The term of this agreement shall be as set forth on the Software Order Form associated with this agreement and shall continue unless terminated pursuant to the terms of the GTCs.

9. **Fees / Termination / Renewal.** Customer shall pay Avolve the applicable fee as listed in the Software Order Form for all Software for which Customer purchased (the "Fees"). Fees will be either billed annually or a new, multi-year agreement will be created at the then current rate. Fees are paid in advance of the term and are irrevocable and non-refundable (except for the limited credit right set forth in Section 10 below). Fees are due thirty (30) calendar days from the date of the invoice. If Licensee fails to pay all Fees by the due date, this Agreement, and all Avolve Support provided for under it, may be immediately terminated, without notice, by Avolve. Alternatively, Avolve, in its sole discretion, may elect to continue to provide Avolve Support and assess interest at a rate of up to 18% per annum, not to exceed the minimum amount allowed by law. To reinstate or renew Avolve Support (if reinstatement is allowed by Avolve at its sole discretion), Customer must pay in advance and in full all Fees that were considered in arrears at that time.

10. **Credits.** Should Avolve fail to meet any of the commitments set forth in this SLA, AS CUSTOMERS SOLE AND EXCLUSIVE REMEDY, the customer shall be entitled to receive a service credit of 2% of the client's monthly prorated support fees, per incident in a given month, up to a maximum 50% of monthly prorated support fee payable by the customer. The amount of compensation may not exceed 50% of the client's monthly support fee. This means that if a customer has two (2) incidents in which Avolve failed to respond within the time frame stated, they are entitled to receive a service credit of 4% of the prorated monthly support fee.

10.1. **Requesting a Credit.** As outlined in this SLA, Avolve shall issue a service credit to the customer's account if Avolve. does not meet the guaranteed response time limits mentioned in the SLA. The Service Credit will be applied to the clients next invoice that is due, after the credit has been requested and approved by a member of the Avolve. Management staff. In order for a customer to receive a credit on their account, the customer must request the service credit within seven (7) business days of the incident in which the response time was not met. This credit request must come from the authorized e-mail account for the customer's account, and must be submitted directly in the form of a ticket via the customer's portal account. The ticket must include the customer's account information, and the Ticket Number in which the response time was not met by Avolve's Support Department. Since all response times are checked through the Ticket Helpdesk System, there will need to be a Ticket Number mentioned and/or the dates and times that the incident(s) occurred. The Service Credit Request will be reviewed by a member of Avolve's Management staff to make sure the request is valid, and the customer will receive notification of a Service Credit approval or denial. If a Service Credit Request has been approved, the Service Credit will be applied to the customers next due invoice.