



**Office of Management and Budget
Division of Purchasing
Non-Competitive Contract Request Form**

Department	Metro Corrections	Department Contact	Ronna Martin
Contact Email	ronna.martin@louisvilleky.gov	Contact Phone	502-574-2189

Contract Type: check one	New	Amendment		
		Additional Funds	Time Extension	Scope
Professional Service				
Sole Source (goods/services)		✓	✓	
	Start	End		
Requested Contract Dates (MM/DD/YYYY)	04/24/2020	04/23/2021		

VENDOR INFORMATION

Vendor Legal Name	Canon USA Inc			
DBA				
Point of Contact	Edward Thieman	Email	ethieman@cusa.canon.com	
Street	One Canon Park			
Suite/Floor/Apt		Phone	561-893-8450	
City	Melville	State	NY	Zip Code 11747
Federal Tax ID#		SSN# (if sole proprietor)		
Louisville Revenue Commission Account #				
<u>Human Relations Commission Certified Vendors</u>	Certified Minority Owned Business	Certified Woman Owned business	Disabled Owned business	
Select if applicable				

FINANCIAL INFORMATION

Not to Exceed Contract Amount	\$30,000	(including reimbursement expenses, if applicable)			
Fund Source: General Fund	✓				
Federal Grant		Federal Granting Agency			
Other		Describe:			
Account Code String #	1101	370	3030	300130	522431
Payment Rate	per hour		per day		per service
	per month	\$30,000	Other	Annually	
Payment Frequency	Monthly		Upon Completion / Delivery		
	Quarterly	✓	Other	Annual	



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CONTRACT SCOPE and PURPOSE (Attach additional documentation if necessary)

Amendments: Describe the circumstances under which a time extension or scope change is needed.

New: Be specific about the work to be performed / product to be purchased including but not limited to: scope of work; description of service; work product created; why the service / product is necessary; and benefit to Louisville Metro Government.

Annual software maintenance/updates/upgrades of body scanning equipment and service/repair of body scanning machines as needed.

Annual cost has increased from \$29,000 per year to \$30,000.00 per year from 4/23/2020 - 4/24/2021.

JUSTIFICATION FOR NON-COMPETITIVE GOOD/SERVICE (Attach additional documentation if necessary)

Provide justification including but not limited to: a description of the unique features that prohibit competition; research conducted to verify the vendor as the only known source (sole source); why the service (PSC) is not feasible to be provided by LMG staff or expertise does not exist; known compatibility, proprietary and/or timing issues.

Software is proprietary to the vendor providing the maintenance, service and repairs for the software and machine. The vendor designed, manufactured and installed the machine, and is to the knowledge of Louisville Metro Department of Corrections, the only vendor able to provide software support, updates, upgrades and machine service and/or repairs as needed.

AUTHORIZATIONS: Per KRS 45A.380, I have determined that competition is not feasible for the above described good / service and there is a single source within a reasonable geographical area of the good / service to be procured; or the resulting contract is for the services of a licensed professional, technician, artist, or other non-licensed professional service.

Department Director Dwayne A. Clark Date 3/25/2020

Signature Dwayne A. Clark

Printed Name by:

Purchasing Director Joel Neaveill Date 4/1/2020

Signature B4B46603FB3A42D... Joel Neaveill

THIRD AMENDMENT TO CONTRACT

This Third Amendment to Contract, made and entered into by and between the **LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT**, acting by and through its **DEPARTMENT OF CORRECTIONS**, hereinafter referred to as "**METRO GOVERNMENT**" and **CANON USA, INC.**, (FORMERLY KNOWN AS VIRTUAL IMAGING, INC.) with offices located at 5600 Broken Sound Boulevard, Boca Raton, Florida 33487 herein referred to as "**CONTRACTOR**",

WITNESSETH:

WHEREAS, the Metro Government and Contractor entered into a contract for service, maintenance and repair of RadPro and SecurPASS full body security screening system ("Contract"); and

WHEREAS, the parties wish to amend the Contract to extend its duration and update its pricing for that extended duration;

NOW, THEREFORE, it is agreed by and between the parties hereto as follows:

Section I. That the above recitals are true and correct and are incorporated herein, in their entirety, by this reference.

Section II. That Agreement Section A, Fees and Compensation, Subsection A, is hereby amended in its entirety to read as follows:

The Metro Government shall pay Contractor for services rendered pursuant to and as described in Attachment A. Total compensation payable to Contractor for services rendered pursuant to this Agreement shall not exceed **ONE HUNDRED SIXTY-THREE THOUSAND DOLLARS (\$163,000.00)** unless otherwise agreed to by the parties in writing.

Section III. That Agreement Section, III, Duration, Subsection A, is hereby amended in its entirety to read as follows:

This Agreement shall begin April 24, 2015 and shall continue through and including April 23, 2021.

Section IV. That there is hereby added to Agreement Attachment A attached to this Amendment and fully incorporated herein.

Section V. All other terms and conditions as set forth in the Contract shall remain in full force and effect as if fully set out herein.

WITNESS the agreement of the parties hereto by their signatures affixed hereon.

APPROVED AS TO FORM AND LEGALITY CONTINGENT UPON APPROVAL OF OF THE APPROPRIATION FOR THIS CONTRACT BY THE METRO COUNCIL

LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT

s/s Paul Rutherford
MICHAEL J. O'CONNELL
JEFFERSON COUNTY ATTORNEY

Date: _____

DocuSigned by:
Joel Neaveill
B4B46603EB3A42D...
JOEL NEAVEILL, DIRECTOR, PURCHASING DEPARTMENT

Date: 4/14/2020 | 8:53 AM EDT

DEPARTMENT OF CORRECTIONS

DocuSigned by:
Dwayne Clark
99A3163F6F2648C...
DWAYNE CLARK
DIRECTOR

Date: 4/9/2020 | 1:57 PM PDT

CANNON USA, INC.

DocuSigned by:
Edward Hieman
8A335E9EAE864CF...
By: _____

Title: Senior Director

Date: 4/7/2020 | 3:47 PM EDT

Revenue Commission Account
No.: _____

ATTACHMENT A

SERVICE AGREEMENT

This Service Agreement # 032720ET-1 is entered into by and between Security Solutions Division, Business Imaging Communications Group, Canon U.S.A., Inc. ("CUSA") and Louisville Municipal Jail ("Customer").

Equipment Address:

Louisville Municipal Jail
400 South Sixth Street
Louisville, KY 40202

Billing Address:

Louisville Municipal Jail
400 South Sixth Street
Louisville, KY 40202

Customer hereby purchases the service and/or replacement part coverage as specified on Exhibit A – Equipment Management Form for the equipment listed on Exhibit A ("Equipment") for the effective period of coverage set forth therein, subject to the terms and conditions contained in this Agreement (as defined below). This Service Agreement together with Exhibit A and Exhibit B – Terms and Conditions, attached hereto and incorporated herein, are collectively referred to as the "Agreement." The term of this Agreement will begin on **04 / 24 / 20_** and end on **04 / 23 / 21** (the "Term").

Total Annual Price: \$30,000.00 / year (Plus Applicable Tax)

4 Quarterly Installments: \$7,500.00 / quarterly (Plus Applicable Tax)

Price Includes: See Exhibit A

Billing: Customer will be billed quarterly in advance of each upcoming quarter. Invoices are due and payable by Customer within thirty (30) days of the invoice date. The first quarterly invoice will cover the period beginning on **04 / 24 / 20** and ending on **07 / 23 / 20**. Notwithstanding the foregoing, CUSA will not be obligated to commence performance pursuant to this Agreement until the initial quarterly payment is received by CUSA.

This Agreement is subject to and contingent upon CUSA's inspection of the Equipment. As determined from CUSA's inspection and in its sole determination, if any Equipment is not up to CUSA's standard or has pre-existing conditions, all such Equipment must be repaired by CUSA, at Customer's sole cost and expense, and fully functional prior to being covered under this Agreement. Prior to the full execution of this Agreement, the price and non-price terms and conditions of this Agreement and of any additional terms and conditions attached hereto (if applicable) are valid through sixty (60) days from the date of CUSA's delivery of the unexecuted Agreement to Customer unless extended by CUSA, subject to clerical errors.

By execution of this Agreement by an authorized signatory, Customer acknowledges and agrees that it has read, understands and agrees to be bound by the terms and conditions of this Agreement.

Customer:

DocuSigned by:

Dwayne Clark

4/9/2020 | 1:57 PM EDT

Signature

Date

Director

Printed Name and Title

Canon U.S.A., Inc.:

DocuSigned by:

Edward Thiemann

Shinichi Yoshida, Executive Vice President and General Manager,
Business Imaging Communications Group

4/7/2020 | 3:47 PM EDT

Date

EXHIBIT A EQUIPMENT MANAGEMENT FORM Louisville Municipal Jail – SVC # 032720ET-1

VI Inventory # ----- S/N #	Equipment	Options	Effective Period of Coverage	Annual \$
Serial #:	SecurPASS	Platinum Service Plan	04 / 24 / 20 -- 04 / 23 / 20	\$15,000.00
Serial #:	SecurPASS	Platinum Service Plan	04 / 24 / 20 -- 04 / 23 / 20	\$15,000.00
PLEASE SEE TERMS AND CONDITIONS ATTACHED HERETO AND MADE A PART HEREOF.				
Total Service Agreement Price: \$30,000_.00				

Exhibit B

Terms and Conditions to the Service Agreement Platinum Service Plan

The Service Agreement is subject to the following terms and conditions (the "Terms and Conditions"). For purposes of this Exhibit B, all references herein to the term "Agreement" will mean the Service Agreement, together with Exhibit A attached thereto and this Exhibit B. All defined terms used herein but not defined herein will have the meanings ascribed thereto in the Service Agreement. All prior and/or contemporaneous negotiations and agreements, oral or written, between CUSA and Customer as it relates to the Platinum Service Plan purchased by Customer pursuant to this Agreement are superseded by this Agreement, including these Terms and Conditions. Any terms different from or in addition to these Terms and Conditions, whether communicated orally by Customer, or contained in any Customer proposal, acknowledgment, invoice or any other document used by Customer will not form part of this Agreement, even if Customer purports to condition Customer's acceptance of this Agreement on CUSA's agreement to such different or additional terms or conditions, and CUSA hereby expressly rejects all such different or additional terms and conditions.

Platinum Service Plan – Subject to the Terms and Conditions set forth herein, the Platinum Service Plan includes:

- Routine Preventive Maintenance (which encompasses cleaning, lubrication and adjustments – See Section entitled "Routine Preventive Maintenance" below for further details and restrictions) and repair service (which includes time and labor for repair of the Equipment) (hereinafter Routine Preventive Maintenance and repair service is collectively referred to as the "Service") for the Equipment.
- Equipment Part Coverage (which includes providing replacement parts for the Equipment, subject to the exclusions outlined below under the Section below entitled "Exclusions").

Hours of Service – Unless CUSA agrees in its sole discretion in writing to the contrary, Service will be provided during normal business hours Monday through Friday, 8:00 AM - 5:00 PM local time at the location of the Equipment specified in this Agreement (the "Customer Facility"), excluding CUSA observed holidays, a list of which will be provided by CUSA to Customer upon Customer's written request, referred to herein as "Observed Holidays." Service after normal business hours, on weekends or on Observed Holidays may, in CUSA's sole discretion, be provided, but such Service will be billed as overtime at a rate of one and one-half (1.5) times CUSA's current billing rate, which amount will be payable in full in accordance with the terms of the invoice. CUSA reserves the right to withhold or discontinue performance of its obligations under this Agreement if timely payment of Service billed as overtime is not made as required by this Agreement. While no assurances can be given, CUSA will endeavor to (i) return all calls for Service received after 8:00 AM but prior to 3:00 PM local time/ Customer Facility within two (2) hours after the call has been received by CUSA's Call Center (800) 288-1722 (calls received after 3:00 PM Customer Facility local time will result in a return call the next morning), and (ii) dispatch a service representative on site within four (4) hours of the call being received by CUSA's Call Center after 8:00 AM but prior to 3:00 PM local time/Customer Facility (calls received after 3:00 PM local time/ Customer Facility may result in a service representative being dispatched the following business morning).

Routine Preventive Maintenance - Routine Preventive Maintenance includes checking to confirm that the Equipment is functioning as per manufacturer's published specification and notifying Customer of any issues and suggested repairs. CUSA will provide Routine Preventive Maintenance at six (6) month intervals, during the regular hours of service as described in the "Hours of Service" Section above at a date and time that is mutually agreed upon by CUSA and Customer. CUSA will contact Customer to establish the date and time for the Routine Preventive Maintenance and Customer will make the Equipment and the area where the Equipment is located available to CUSA so that the Routine Preventive Maintenance can be completed on the scheduled date and time. Because Routine Preventive Maintenance can take up to four (4) hours to complete, Routine Preventive Maintenance will not begin later than 1:00 PM local time/Customer Facility unless otherwise agreed upon by CUSA and Customer in writing. If the Equipment or Equipment area is not made available on the scheduled date and time, or if Customer cancels the scheduled appointment, it will be Customer's responsibility to re-schedule the Routine Preventive Maintenance within sixty (60) days of the originally scheduled date by calling CUSA's Call Center at (800) 288-1722. If the Routine Preventive Maintenance is not re-scheduled and completed within sixty (60) days of the originally scheduled date, Customer waives the right to receive Routine Preventive Maintenance for that six (6) month interval and will be required to wait until the next six (6) month interval, if applicable, to receive Routine Preventive Maintenance. Routine Preventive Maintenance should be considered as a line of defense against unplanned downtime and Equipment failure. CUSA will not repair the Equipment during the Routine Preventive Maintenance. Customer will be responsible for scheduling a request for repair service to address any issues identified during the Routine Preventive Maintenance.

Customer Phone Support - Customer phone support for the Equipment covered by this Agreement is available from 8:00 AM to 8:00 PM (EST) Monday through Friday (except for Observed Holidays) by calling CUSA's Call Center at (800) 288-1722.

Term and Termination – The Term of this Agreement is set forth on the first page of the Service Agreement. Either party may terminate this Agreement in the event that the other party materially breaches any of the terms or conditions of this Agreement and fails to cure said breach within

thirty (30) days after its receipt from the non-breaching party of written notice outlining such breach. Notification of the breach must be sent by the non-breaching party to the breaching party via a nationally recognized overnight carrier service. Material breach, for purposes of this Agreement, means a breach of any term or condition of this Agreement, including, without limitation, Customer's timely payment of all amounts due under this Agreement. Notwithstanding the foregoing, CUSA will have the right to immediately terminate this Agreement or Customer's Platinum Service Plan coverage for any Equipment under this Agreement as further provided in the Section below entitled "Exclusions." In the event that Customer terminates this Agreement for any reason other than due solely to CUSA's uncured material breach, Customer will be required to immediately pay to CUSA all amounts due and owing under this Agreement as of the date of the early termination, plus twenty percent (20%) of the remaining quarterly charges due under this Agreement for the remainder of the Term of this Agreement. In addition, as applicable, CUSA will be entitled to recover any other damages available to it at law or equity.

Charges - Customer will be billed in advance for the upcoming quarter and payment in full in U.S. dollars is due to CUSA within thirty (30) days of the invoice date ("Due Date"). Applicable taxes will be added to the charges and reflected in the invoice sent to Customer. Prepaid charges will not be refundable except as expressly provided in subsection (b) of the Section below entitled "Exclusions." Customer will be placed on collect on delivery (COD) status if payment is not received on the Due Date. A late charge of 1.5% per month (or the maximum legal interest rate allowed by applicable law, if less) will be assessed for payments not received by the Due Date. Additionally, CUSA may withhold performance of its obligations under this Agreement in whole or in part until any delinquent payment is received by CUSA. If payment is delinquent and cannot be collected on demand or during the cure period set forth in the Section entitled "Termination," Customer agrees to pay all costs and expenses incurred by CUSA, including, without limitation, reasonable attorney's fees and court costs, in connection with CUSA's efforts to collect any payment due by Customer pursuant to this Agreement. Customer is responsible for all state, local or excise taxes levied on Service or sales during the Term of this Agreement. If Customer is tax-exempt, a current tax-exemption certificate must be mailed to CUSA immediately upon execution by Customer of this Agreement.

Exclusions

(a) Software (which includes, but is not limited to operating software and firmware) is not covered under this Agreement. Notwithstanding the foregoing, while the Equipment is covered under this Agreement, CUSA will provide updates for RadPRO® brand software products which CUSA or Virtual Imaging, Inc. ("Virtual Imaging") sold to Customer.

(b) If for any reason CUSA is unable to obtain Equipment parts for the Equipment covered under this Agreement, CUSA may, without liability, immediately cancel Customer's Platinum Service Plan coverage under this Agreement as to such Equipment and refund the unearned portion of any prepaid charges for such coverage made pursuant to this Agreement. If the cost of a part needed to Service the Equipment or a replacement part exceeds fifty percent (50%) of the Equipment's fair market value, such part will not be covered. Equipment parts replaced or removed by CUSA in connection with this Agreement will become the sole property of CUSA, and Customer hereby disclaims any and all interest therein.

(c) Customer acknowledges and agrees that CUSA's ability to perform its obligations hereunder is dependent on Customer's full and timely cooperation with CUSA. Customer will provide CUSA clear and safe access to the Equipment for purposes of providing Service, and will maintain a fully functional and safe working environment for CUSA's service representative to perform such Service. Customer will not relocate any Equipment covered under this Agreement from the site it was originally installed in at the commencement of the Term of this Agreement without CUSA's prior written consent, which consent may be withheld in CUSA's sole discretion, and CUSA may, without liability, immediately terminate this Agreement or Customer's Platinum Service Plan coverage for the Equipment that was relocated without CUSA's written consent. Relocation of Equipment is not provided under this Agreement. CUSA will not be obligated to perform its obligations under this Agreement with respect to any Equipment it determines was damaged as a result of (i) any willful act, tampering, negligence, abuse or misuse of the Equipment; (ii) any maintenance, repair and/or relocation service performed on the Equipment by anyone other than CUSA or Virtual Imaging personnel or a third-party who has been expressly authorized by CUSA or Virtual Imaging to perform such service on its behalf; (iii) power failures or modifications, operator error, accident, fire, flood, water damage, terrorism, war, insurrection or an act of God; (iv) use of supplies or consumable parts (other than those distributed by CUSA or Virtual Imaging); or (v) use of the Equipment with non-compatible computers, peripheral equipment or software, including, without limitation, the use of the Equipment in any system configuration not recommended in any instructions, user documentation or other documentation for the Equipment, and CUSA may also, without liability and upon written notice to Customer, immediately terminate this Agreement or Customer's Platinum Service Plan coverage for such damaged Equipment.

(d) EXCLUSION OF WARRANTIES AND LIMITATION OF LIABILITY – CUSA EXPRESSLY DISCLAIMS ALL WARRANTIES EXPRESS OR IMPLIED INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE RELATING TO THE USE OR PERFORMANCE OF THE EQUIPMENT AND THE PARTS AND THE PERFORMANCE OF SERVICE. CUSTOMER EXPRESSLY ACKNOWLEDGES AND AGREES THAT THE FURNISHING OF SERVICE BY CUSA PURSUANT TO THIS AGREEMENT DOES NOT ASSURE UNINTERRUPTED OPERATION AND USE OF THE EQUIPMENT. CUSA WILL NOT BE LIABLE FOR PERSONAL INJURY OR PROPERTY DAMAGE UNLESS CAUSED DIRECTLY BY CUSA'S NEGLIGENCE OR WILLFUL MISCONDUCT. THE TOTAL LIABILITY OF CUSA ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE SERVICES OR PARTS PROVIDED WILL IN NO EVENT EXCEED THE FEE OR AMOUNT RECEIVED BY CUSA FROM CUSTOMER UNDER THIS AGREEMENT. IN NO EVENT WILL CUSA BE LIABLE FOR DAMAGES SUCH AS LOST INCOME OR LOST PROFITS, LOST DATA, OR ANY OTHER DIRECT, SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL

OR EXEMPLARY DAMAGES, HOWEVER CAUSED AND REGARDLESS OF THEORY OF LIABILITY (WHETHER CONTRACT, STRICT LIABILITY OR TORT), IN ANY WAY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE SERVICES OR PARTS PROVIDED AND NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY REMEDY. Unless prohibited by law, no action arising out of or relating to this Agreement, regardless of the form of action, may be brought by Customer more than one (1) year after the action accrued.

No Assignment – Customer will inform CUSA promptly in writing of any change of name, change of any office location, or change of legal form of its business. Customer cannot assign this Agreement without CUSA's prior written consent (which consent will be in CUSA's sole discretion), and any attempted assignment without such consent will be void.

Restrictions on Hiring Employees - Customer acknowledges that CUSA has invested considerable amounts of time and money in training its employees in the systems, procedures, methods, forms, reports, formulas, computer programs, plans, techniques and other valuable information that are proprietary and unique to CUSA's manner of conducting its business and that CUSA makes such information available to its employees, its parent and its affiliates, on a confidential basis. Therefore, Customer agrees that no employees of CUSA, its parent or its affiliates, will be hired by Customer or its subsidiaries, affiliates or facilities for the Term of this Agreement and twelve (12) months thereafter, and that Customer will not permit any employees of CUSA, its parent or its other affiliates to provide services for Customer or any of its subsidiaries, affiliates or facilities indirectly (through consulting contracts, contracts with third parties that employ or otherwise retain any CUSA employees, or otherwise) for the Term of this Agreement and twelve (12) months thereafter. Customer agrees that if Customer or any of its subsidiaries, affiliates or facilities violates the obligations set forth in this Section, Customer will pay to CUSA, and CUSA will accept as liquidated damages and not as a penalty, an amount equal to two (2) times the annual salary of the employee(s) retained or allowed to work for Customer in violation of this Section. Customer agrees that the foregoing restrictions are reasonably necessary to protect CUSA's legitimate business interest and that they are reasonable as to their scope and duration.

Personal Data - Customer will comply with applicable federal, state and local laws, regulations, rules, and ordinances related to data security and privacy with respect to the Equipment and will obtain all necessary rights, permissions and/or consents to permit CUSA or its designated representative, in the performance of CUSA's obligations under the Agreement, to access, view, use, transfer, store, or otherwise process data that could be used to identify, contact or locate an individual ("Personal Data") that may be collected by, used on, stored on, or otherwise processed by the Equipment. Neither CUSA nor its designated representative has an obligation, at any time, to delete, erase or overwrite any Personal Data. Customer agrees to defend, indemnify and hold CUSA, its parent and their affiliates harmless from any claim, loss, damage, liability or expense (including attorneys' fees and court costs) incurred by CUSA, its parent or any of their affiliates as a result of claims asserted against CUSA, its parent or any of their affiliates in connection with Customer's breach of this Section.

Miscellaneous - The headings in this Agreement are inserted for convenience of reference only and will not constitute a part hereof. This Agreement constitutes the entire understanding of the parties hereto with respect to the subject matter hereof and supersedes all previous proposals and agreements whether oral or written. Only those representations or statements contained in this Agreement will be binding upon CUSA as a warranty or otherwise. Customer's acceptance of this Agreement is expressly limited to these Terms and Conditions and the terms and conditions set forth elsewhere in this Agreement, and Customer may not modify, add, delete or otherwise alter any of the terms and conditions set forth in this Agreement. No amendment, modification or alternation of the terms and conditions set forth in this Agreement will be binding unless the same is set forth in a writing which expressly states such intent, and such writing is dated subsequent to the date hereof and approved and executed by a duly authorized officer of each party, unless otherwise provided herein. No work orders, service requests, purchase orders, invoices or similar instructions delivered to CUSA by Customer or otherwise made by Customer will amend, alter or modify this Agreement (except as provided in the preceding sentence), but rather will be deemed requests subject to, and in all cases superseded by and subject to, the terms and conditions of this Agreement. Neither party will be liable to the other for failure to perform because of causes or events beyond the control of the parties which cannot be foreseen (or if foreseeable, are unavoidable) and which prevent or hinder the performance of the party's obligations under this Agreement. No provision of this Agreement will be deemed waived by course of conduct, unless such waiver is made in a writing signed by the parties stating that it is intended specifically to modify this Agreement, nor will any course of conduct operate or be construed as a waiver of any subsequent breach of this Agreement, whether of a similar or dissimilar nature. If any term or provision of this Agreement is held invalid, illegal or unenforceable in any respect under any applicable law, the validity, legality and enforceability of the remaining terms and provisions will not be affected or impaired. A copy of a signature on this Agreement will have the same force and effect as an original ink signature.

In the performance of CUSA's obligations under this Agreement, CUSA will at all times act as and be deemed an independent contractor. Nothing in this Agreement will be construed to render CUSA or any of its employees, agents or officers, an employee, joint venture, agent or partner of Customer. Neither party is authorized to assume or create any obligations or responsibilities, express or implied, on behalf of the other party, except as may be specifically provided for herein. The employees, methods, facilities and equipment of CUSA will at all times be under CUSA's exclusive direction and control. CUSA reserves the right to perform any of its obligations hereunder through its authorized subcontractors or agents. The Sections titled Term and Termination Charges, Exclusions of Warranty and Limitation of Liability, Restriction on Hiring Employees, Personal Data (with respect to indemnity obligations therein), and Law Governing Agreement will survive the termination or expiration of this Agreement.

Law Governing Agreement; Disputes - This Agreement is made within the State of New York and this Agreement and any dispute, claim or controversy between the parties arising out of or relating to this Agreement will be governed by and construed in accordance with the laws of the State of New York without regard to its conflict of law provisions. Customer hereby consents to the exclusive jurisdiction and venue of the federal

and state courts located in Suffolk County, New York. Customer further agrees that all suits commenced by Customer against CUSA upon any and all causes of action, whether or not such causes of action have arisen under or relate to this Agreement and regardless of the legal theory upon which such causes of action are based, will be brought exclusively in either the federal or state courts located in Suffolk County, New York. **The parties irrevocably waive any right to a jury trial in any and all causes of action between them, whether or not such causes of action have arisen under or relate to this Agreement and regardless of the legal theory upon which such causes of action are based.**