

**CLEVELAND PUBLIC LIBRARY**

**Board Meeting**

September 26, 2019

**RESOLUTION TO RATIFY AGREEMENTS WITH APPLIED LASER  
TECHNOLOGIES**

WHEREAS, On May 16, 2019, the Board of Trustees of the Cleveland Public Library authorized the Library to enter into an agreement with Applied Laser Technologies (BSL-Applied Laser Technologies LLC) for the purchase or lease of multifunction devices, desktop printers, and production equipment for a total cost not-to-exceed \$550,000 for outright purchase, or a three year lease with the option for two one-year renewal terms; and

WHEREAS, On May 16, 2019, the Board of Trustees of the Cleveland Public Library also authorized the Library to enter into an agreement with Applied Laser Technologies (BSL-Applied Laser Technologies LLC) for the service and maintenance of the Library's multifunction devices, desktop printers, and production equipment for an annual cost not-to-exceed \$90,000; and

WHEREAS, On June 20, 2019, the Library entered into an agreement with Applied Laser Technologies for the purchase of multifunction devices, desktop printers, and production equipment for a total cost of \$503,961.57; and

WHEREAS, On June 20, 2019, the Library also entered into a three-year agreement effective July 1, 2019, with the option of two one-year renewals, with Applied Laser Technologies for the service and maintenance of the Library's multifunction devices, pay station equipment, desktop printers, and production equipment with the fee for such service and maintenance based on the per-page rates as described in Exhibit "A" to this Resolution, and which the Library estimates not to exceed \$90,000 annually from July 1 through June 30 based on current usage; now therefore be it

**EXHIBIT 12**

RESOLVED, That the Board of Library Trustees hereby ratifies the purchase agreement and service and maintenance agreement entered into by the Library on June 20, 2019 with Applied Laser Technologies (BSL-Applied Laser Technologies LLC) at the rates set forth in this Resolution.

**Exhibit "A"**

<b>Device Type</b>	<b>Rate</b>
Multifunction Devices	B/W: \$0.00550 /page Color: \$0.04300 /page
Production Printer (B/W only)	B/W: \$0.00370 /page
Production Printer (B/W and color)	B/W: \$0.00370 /page Color: \$0.03400 /page
Desktop Printers	B/W: \$0.00750 /page
Existing Non-ALT Printers	B/W: \$0.00750 /page Color: \$0.09500/page
Pay Stations	\$25 /pay station per month

## PURCHASE AGREEMENT

This Purchase Agreement (“Agreement”) is made and entered by and between BSL-Applied Laser Technologies LLC (“ALT”) an Ohio limited liability company with a principal place of business at 4560 Johnson Parkway, Cleveland, OH 44128, and the Cleveland Public Library, a body politic and corporate with a principal place of business at 325 Superior Avenue, Cleveland, Ohio 44114 (“CPL”), on the date last signed below.

### RECITALS

WHEREAS, The Cleveland Public Library engaged in a formal request for proposal (“RFP”) process to provide Print Management Services Firms an opportunity to present proposals for providing multifunction devices, printers, pay stations, and other printing equipment to CPL;

WHEREAS, CPL received six (6) proposals in response to the RFP;

WHEREAS, CPL reviewed all of the proposals for their responsiveness to the requirements contained in the RFP, and selected three (3) of the top six (6) vendors to participate in in-person interviews;

WHEREAS, Following the interviews, the Library selected Applied Laser Technologies as the most qualified, responsive, and best vendor based on its proposal and the interview with its president;

NOW THEREFORE, for and in consideration of the mutual promises contained in this Agreement, CPL and ALT hereby agree as follows:

- Section 1. **Product.** ALT shall sell to CPL the multifunction devices, pay stations, printers, and equipment (hereinafter referred to as the “Equipment”) described in ALT’s proposal and equipment list which are attached hereto and collectively incorporated herein as Exhibits “A” and “B,” respectively. ALT shall ensure that the Equipment are in brand new condition, shipped in factory packaging, and complete with all documentation and literature issued by the manufacturer.
- Section 2. **Delivery and Installation.** ALT and CPL shall mutually agree upon a schedule for the delivery of the Equipment, and ALT shall deliver and install the Equipment at the respective locations as described in Exhibit “B.”

Section 3. **Payment Terms.**

- 3.1. **Purchase Price.** ALT shall provide the Equipment to CPL at the prices indicated in its price proposal which is attached hereto and incorporated herein as Exhibit "C" for a total sum of Five Hundred Three Thousand Nine Hundred Sixty-One Dollars and Fifty-Seven Cents (\$503,961.57) (the "Purchase Price").
- 3.2. **Payment.** CPL shall remit payment to ALT via automated clearing house on the Friday of any given week in which CPL accepts, pursuant to Section 4 below, some or all of the Equipment on the preceding Monday, Tuesday, or Wednesday. If CPL accepts some or all of the Equipment on a Thursday or Friday, then CPL shall remit payment to ALT via automated clearing house no later than the Friday of the week immediately following acceptance.
- 3.3. **No Sales Tax.** ALT shall be solely responsible for any sales or other taxes imposed upon the transaction which is the subject of this Agreement. CPL shall provide ALT with an appropriate certification of CPL's sales tax exemption upon request.

Section 4. **Acceptance.** After delivery and installation of the Equipment, acceptance by CPL will occur upon completion of satisfactory acceptance testing based upon testing criteria set forth in Exhibit "D" and execution of the Customer Acceptance Document attached as Exhibit "E".

CPL will issue a notice of noncompliance if the Equipment does not meet the testing criteria or warranties in this Agreement. If CPL issues a letter of noncompliance, ALT will have thirty (30) calendar days to correct the problems listed in the noncompliance letter. If CPL has issued a noncompliance letter, the Equipment will not be accepted until CPL issues a letter of acceptance indicating that each problem noted in the noncompliance letter has been cured. If the problems have been fixed during the thirty (30) day period, CPL will execute the Customer Acceptance Document within fifteen (15) days after all defects have been fixed. If ALT fails to fix the problems, ALT will be in default of this Agreement without a cure period, and CPL may terminate this Agreement in accordance with Section 14.

Section 5. **Warranty and Maintenance.** ALT shall furnish the Equipment with standard manufacturer's warranties and shall maintain, service, and, if necessary, replace the Equipment according to the Agreement for Print Management Services entered into by the parties. ALT warrants that the Equipment is merchantable and fit for its intended use.

Section 6. **Representations.** ALT represents and warrants to CPL as follows:

- a. ALT's performance under this Agreement will be in accordance with sound professional standards and the requirements of this Agreement and without any material defect;
- b. ALT has been duly-authorized to enter into this Agreement; and
- c. ALT is not subject to an unresolved finding for recovery under Ohio Revised Code Section 9.24. If this warranty was false on the date the parties signed this Agreement, then this Agreement is void ab initio.

- Section 7. **Compliance with Applicable Laws.** ALT shall observe and comply with all applicable rules, regulations, requirements, and directions of any governmental authority which may pertain to its activities under this Agreement, including without limitation, Ohio Revised Code Chapter 1302, Commercial Transactions, Sales. The parties expressly agree that this Agreement constitutes a contract for the sale of goods as defined in R.C. § 1302.01 and is, therefore, subject to provisions of R.C. Chapter 1302.
- Section 8. **Indemnification.** ALT shall defend, hold harmless and indemnify CPL, its officers and employees, from and against any and all claims, demands, losses, costs, damages, expenses and liabilities, including reasonable attorney fees and costs, arising out of or attributable to ALT's breach of this Agreement. Notwithstanding the foregoing, this provision shall survive the termination of this Agreement.
- Section 9. **Risk of Loss.** Title to the Equipment will pass to CPL upon delivery of the Equipment to CPL. All risk of loss with regard to the Equipment shall remain with ALT until title to the Equipment passes to CPL.
- Section 10. **Modification or Termination of Agreement.** CPL reserves the right to terminate this Agreement for any reason upon thirty (30) days advanced written notice to ALT at the notice address contained in the first paragraph of this Agreement. Unless this Agreement is terminated as a result of ALT's default, ALT shall be compensated for Equipment accepted prior to the effective date of the termination, as documented in a final invoice. Such compensation shall be ALT's exclusive remedy in the case of termination for convenience. CPL further reserves the right to cancel some of the Equipment to be provided under this Agreement in the event CPL deems it necessary or desirable, in which event the purchase price will be reduced in proportion to the Equipment eliminated. All Equipment once accepted by CPL shall remain the property of CPL.
- Section 11. **Default Remedies.** In addition to any rights and remedies which either party may have at law or in equity (which are declared to be cumulative and not exclusive) this Agreement may be terminated by either party if the other party fails to observe or perform any obligation under this Agreement and such failure continues for a period of thirty (30) days after

written notice thereof is given to the defaulting party at the notice address in the first paragraph of this Agreement.

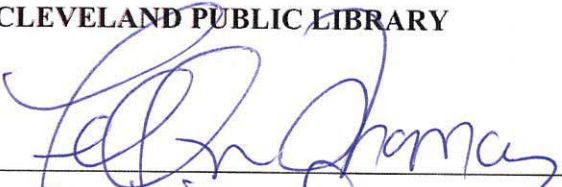
- Section 12. **Assignment and Subcontracts.** ALT shall not subcontract, in whole or in part, any of the services to be provided under this Agreement, or assign or transfer any of its rights or obligations under this Agreement without first obtaining the prior written consent of CPL.
- Section 13. **Independent Contractor.** The parties intend that ALT shall be an independent contractor and that nothing in this Agreement shall be deemed or construed as creating a principal, agent, partnership, joint venture, or exclusive dealing relationship between the parties. ALT will be fully and solely responsible for the supervision, control, performance, compensation, benefits, withholdings, and workers compensation coverage of all its employees and agents. Employees of ALT are not "public employees" for the purpose of membership in the Ohio Public Employees Retirement System.
- Section 14. **Equal Opportunity.** ALT will not discriminate in its employment practices on the basis of race, religion, age, sex, color, disability, national or ethnic origin.
- Section 15. **Choice of Law.** This Agreement shall be construed, governed, and enforced in accordance with the laws of the State of Ohio.
- Section 16. **Waiver.** No failure on the part of either party to exercise, and no delay in exercising, any right, power or privilege hereunder operates as a waiver thereof; nor does any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof, or the exercise of any other right, power or privilege.
- Section 17. **Entire Agreement.** This Agreement and any exhibits hereto constitute the entire agreement between the parties pertaining to the subject matter hereof; supersedes any and all prior agreements, proposals, letters of intent, understandings, negotiations and discussions of the parties, whether oral or written, relating to the subject matter hereof; and shall be binding upon the parties' respective successors and permitted assigns. In the event of a conflict between the terms of this Agreement and any exhibits hereto, the terms of this Agreement shall prevail.
- Section 18. **Severability of Provisions.** If any part of this Agreement is found by a court of competent jurisdiction or other competent authority to be invalid, unlawful, or unenforceable, then such part shall be severed from the remainder of this Agreement, which shall continue to be valid and enforceable to the fullest extent permitted by law.

Section 19. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original, but all of which together will constitute one and the same agreement. Faxed signatures or signatures in PDF copies transmitted via e-mail will be deemed original signatures for all purposes.

By the signatures of their duly authorized representatives below, ALT and CPL, intending to be legally bound, agree to all of the provisions of this Agreement, including any and all exhibits attached hereto.

**THE CLEVELAND PUBLIC LIBRARY**

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

  
Felton Thomas, CEO

Printed Name and Title

6/20/19  
Date

**BSL-APPLIED LASER TECHNOLOGIES LLC**

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



Tyler L. Spey\_President

6/12/19  
Date

## **AGREEMENT FOR PRINT MANAGEMENT SERVICES**

**THIS AGREEMENT** (“Agreement”) for Print Management Services is entered into by and between BSL-Applied Laser Technologies LLC, a limited liability company organized under the laws of the State of Ohio, with a principal place of business located at 4560 Johnson Parkway, Cleveland, OH 44128, hereinafter referred to as “Contractor”, and the Cleveland Public Library, a body corporate and politic with a principal place of business located at 325 Superior Avenue, Cleveland, Ohio 44114 (the “Library” or “CPL”) (collectively, the “Parties”) as of the date last signed below.

### **RECITALS**

WHEREAS, The Library engaged in a formal request for proposal (“RFP”) process to provide Print Management Services Firms an opportunity to present their qualifications, experience, and conceptual approach to providing the scope of services in relation to the needs of the Library;

WHEREAS, The Library received six (6) proposals in response to the RFP;

WHEREAS, The Library reviewed all of the proposals for their responsiveness to the requirements contained in the RFP, and selected three (3) of the top six (6) vendors to participate in in-person interviews;

WHEREAS, Following the interviews, the Library selected Applied Laser Technologies as the most qualified, responsive, and best vendor based on its proposal and the interview with its president;

NOW THEREFORE, for and in consideration of the mutual promises contained herein, Contractor and the Library hereby agree as follows:

#### **Section 1. SCOPE, CONTRACT DOCUMENTS, AND TERM.**

- 1.1 Contractor shall provide the Library professional services (the “Services”), as from time to time ordered by the Library, in accordance with the terms and conditions of this Contract.
- 1.2 This Contract consists of multiple documents as follows in order of precedence, each of which are incorporated herein and made a part hereof for all purposes as if fully set forth herein:
  - This Contract Form;
  - The Cleveland Public Library’s request for submittal of a Proposal, which is attached hereto as Exhibit “A”;
  - Contractor’s Technical Proposal, which is attached hereto as Exhibit “B”;
  - Contractor’s Price Proposal, which is attached hereto as Exhibit “C”;
  - Contractor’s Equipment & Maintenance Agreement and Sales Order Form,



- which are collectively attached hereto as Exhibit "D"; and
- Statements of work, if any, issued from time-to-time, pursuant to this Contract (each of which is incorporated in this Contract whether or not physically attached hereto).

In the event of a conflict of the terms of this Contract Form and any documents incorporated hereto, the terms of this Contract Form shall prevail.

- 1.3. This Contract shall be in effect from July 1, 2019, through June 30, 2022 unless otherwise extended, expired or terminated pursuant to this Contract. The Library may renew this Agreement up to two (2) times for renewal terms of twelve (12) months each (initial three (3) year term with up to two (2) 12-month renewals) under the same terms and at the same price as the initial three (3) year term.

## **Section 2. PROFESSIONAL SERVICES.**

- 2.1 The Contractor shall perform the Project as described in Exhibits "B" and "D." The Services shall be performed in accordance with the schedule included in Exhibit "D", or, if no such schedule is included, in accordance with a schedule agreed upon in writing by the parties at a future date and adopted as an amendment to Exhibit "D". The Contractor shall perform the Project as expeditiously as is consistent with good professional skill and care and the orderly progress of the Project.
- 2.2 The Contractor shall perform the Project in accordance with the standard of care and skill ordinarily exercised by members of the same profession with equivalent expertise and experience with similar projects currently practicing in their respective fields.
- 2.3 The maximum fee for the Contractor's professional services shall be as set forth in Exhibit "C." The Contractor's fees for services required to complete the Project shall not exceed the maximum fee.
- 2.3 The Cleveland Public Library will designate a staff member to act as coordinator ("Project Coordinator") between the Library and the Contractor. Throughout this period of the Project, copies of all correspondence, work products, specifications, estimates and other materials prepared by the Contractor should be directed to the Project Coordinator and also to any other Library personnel designated by the Project Coordinator. Direct contact or communication by the Contractor with other Library offices or any other entity concerning the Project shall be made only with the prior knowledge and consent of the Project Coordinator.
- 2.4 The professional services team for the Project shall be the same team identified in the Contractor's submittal responding to the Library's solicitation unless (a) a change is requested by the Contractor and approved in writing by the Project Coordinator; or (b) a change is requested in writing by the Project Coordinator

for good cause, in which case the Contractor will make an appropriate substitution, subject to the Library's approval, and notify the Library in writing. Major changes in the Contractor's organization or personnel (other than the Contractor's Team) shall be reported to the Library in writing as they occur.

- 2.5 All terms and conditions of the Library's solicitation, and any amendments thereto, are made a part of this Agreement unless expressly contradicted by a term and condition of this Agreement. Proposals or suggestions of the Contractor for changes in the solicitation or the terms and conditions of the contract are not binding upon the Library and are not a part of this Agreement unless set forth in an amendment of the solicitation or in this Agreement and agreed to in writing by the Library.

### **Section 3. FEES AND PAYMENT.**

- 3.1 Contractor's fees shall not exceed the rates set forth in Exhibit "C."
- 3.2 As compensation for satisfactory performance of Services, the Library will pay Contractor no later than thirty (30) days after the Library's receipt of a proper invoice from the Contractor. A purchase order number must be included on all invoices submitted to the Library for payment.
- 3.2.1. Payment requests (invoices) shall be submitted electronically to Accounts Payable at [accounting@cpl.org](mailto:accounting@cpl.org). Contractor may also send the invoices to Cleveland Public Library, Accounting Department, 325 Superior Avenue, Cleveland, Ohio 44114. The Library's current purchase order number, issued for accounting purposes only, must be noted on all invoices.
- 3.2.2. The Contractor shall cooperate with the Library's internal requisition process, and the Contractor acknowledges that the Library shall have no obligation to make payments under this Agreement until such time as a purchase order is issued and completed.
- 3.3 The Contractor shall be solely responsible for any sales or other taxes imposed upon the compensation. The Library shall provide the Contractor with an appropriate certification of the Library's sales tax exemption upon request.

### **Section 4. INSURANCE.**

- 4.1 At all times during the Term of this Agreement, the Contractor shall maintain, with a company authorized to do business in the State of Ohio, and shall require that subcontractor's secure, pay the premiums for and keep in force until the expiration of this contract, and any renewal thereof, adequate insurance as provided below:
- Commercial General Liability Insurance including all extensions  
– Not less than \$1,000,000 each occurrence;

Not less than \$1,000,000 personal injury;  
Not less than \$2,000,000 products/completed operations aggregate; and  
Not less than \$2,000,000 general aggregate.

- Worker's compensation per statutory requirements.
- Professional liability insurance in an amount not less than \$1,000,000.

4.1.1 The Contractor's comprehensive liability insurance policy shall contain endorsements or provisions waiving the insurer's rights of subrogation against the Library, and the Contractor shall name the Board of Trustees of the Cleveland Public Library, its officers and employees, as additional insureds on its liability insurance.

4.1.2 The above-described general liability coverage may be obtained through the combination of a general liability policy and an excess/umbrella policy.

4.1.3 Prior to the commencement of the Term of this Agreement, the Contractor shall deliver to the Library a certificate of insurance and additional insured endorsements to such policy (all in form and substance acceptable to the Library), evidencing the insurance coverage required hereunder.

## **Section 5. WORK PRODUCT.**

- 5.1 Contractor shall complete all reports and presentations required by the Library and other reports set forth in the Scope of Work.
- 5.2 Contractor agrees that all research, notes, data, computations, estimates, reports or other documents or work product obtained by or produced by Contractor under this Agreement (the "Work") shall be the sole and exclusive property of the Library. Upon the Library's request or upon the expiration or termination of this Agreement, Contractor shall deliver or return all copies of the Work to the Library. The Contractor is permitted, subject to its obligations of confidentiality, to retain one copy of the Work for archival purposes and to defend its work product.
- 5.3 Notwithstanding the terms of Paragraph 5.2, Contractor is permitted to retain all rights to the intellectual capital (including without limitation, ideas, methodologies, processes, inventions and tools) developed or possessed by the Contractor prior to, or acquired during, the performance of the Services under this Agreement.
- 5.4 Contractor and Library intend this Agreement to be a contract for services and each considers the Work to be a work made for hire. If for any reasons the Work would not be considered a work made for hire under applicable law, Contractor does hereby sell, assign and transfer to Library, its successors, assigns, the entire right, title and interest in and to the copyright and any registrations and copyright

applications relating thereto and renewals and extensions thereof, and in and to all works based upon, derived from or incorporating the Work, and in and to all income, royalties, damages, claims and payments now or hereafter due or payable with respect thereto, and in and to all causes of action, either in law or equity for past, present, or future infringement based on the copyrights, and in and to all rights corresponding to the foregoing throughout the world.

- 5.5 Contractor agrees to execute all documents and to perform such other proper acts as Library may deem necessary to secure for Library the rights in the Work.
- 5.6 In the event of loss of any data or records necessary for the performance of this Contract where such loss is due to the error or negligence of the Contractor, the Contractor shall be responsible, irrespective of cost to the Contractor, for recreating such lost data or records.

**Section 6. EVALUATION AND ACCEPTANCE PROCEDURE.**

- 6.1 Upon completion and delivery of each deliverable, excluding consumables, by Contractor, Library will begin the evaluation and acceptance process, which shall include, but not be limited to, the steps described below. Payments in accordance with Section 3 of this Contract will be based on the completion/delivery of a deliverable by Contractor and acceptance by Library of each deliverable, and any warranty term shall commence upon acceptance. Contractor will demonstrate to Library that the deliverable has been completed or has occurred and will provide Library with written notice of the same.
- 6.2 Within the time period specified in the Agreement including any Contract Amendments, or if not specified, then within thirty (30) business days of receipt by Library of a scheduled deliverable from Contractor, Library shall determine whether such deliverable Materially Conforms to any specifications or representations made or provided by the Contractor. As used herein, the term "Materially Conforms" means that the deliverable is ready to be used in production and meets or exceeds its intended functionality and performance. If the deliverable Materially Conforms to the specifications, then Library will provide written confirmation to Contractor that the deliverable is accepted.
- 6.3 If the deliverable does not Materially Conform, Library shall immediately return it to Contractor with a written list of deficiencies. Contractor, at no additional cost to Library, shall thereafter make all appropriate and necessary fixes to the deliverable and return it to Library within the time period specified, or if not specified, then within five (5) business days for further testing by Library. If the deliverable again fails to Materially Conform then this same process will be repeated one more time. If the deliverable fails to Materially Conform to the specifications after delivery for the second time then Library may, at its sole discretion, (a) further extend the timeframe for cure and (b) extend the warranty period, if applicable, or (c) begin the termination process as defined in Section 12 of this Agreement. If Library does not elect to terminate this Agreement after the

second failure, it has not automatically waived its right to do so following any additional failed attempt at correction by Contractor to which the parties may agree.

- 6.4 If the Contractor fails to meet the testing period described above, or any other periods of time as mutually agreed to, the Library may declare the Agreement in material breach and begin the termination process as defined in Section 12 of this Agreement.

**Section 7. INTELLECTUAL PROPERTY.**

- 7.1 Neither party may use the other party's name, trademarks or other proprietary identifying symbols without the prior written approval of the other party.
- 7.2 Contractor agrees to defend upon request and indemnify and hold harmless Library, its officers, agents and employees with respect to any claim, action, cost or judgment for patent infringement, or trademark or copyright violation arising out of purchase or use of materials, software, supplies, equipment or services under this Agreement.
- 7.3 The Contractor is the owner or authorized user of the Contractor's software and all of its components, to the best of Contractor's knowledge and does not violate any patent, trademark, trade secret, copyright or any other right of ownership of any third party.

**Section 8. CONFIDENTIAL INFORMATION AND RECORDKEEPING.**

**8.1 Confidential Information.**

8.1.1 Contractor acknowledges and understands that in connection with this Agreement, the performance of the Services and otherwise, Contractor has had or shall have access to, has obtained or shall obtain, or has been or shall be given the Library's Confidential Information (as defined herein). For purposes of this Agreement, "Confidential Information" means all information provided by the Library to Contractor, including without limitation information concerning the Library's business strategies, political and legislative affairs, patrons, employees, vendors, contractors, patron records, customer lists, finances, properties, methods of operation, computer and telecommunications systems, and software and documentation. Confidential information includes information in any and all formats and media, including without limitation oral, and includes the originals and any and all copies and derivatives of such information.

8.1.2 Contractor shall use the Confidential Information only if and when required for the performance of the Services, and for no other purpose whatsoever, and only by Contractor employees engaged in that performance.

8.1.3 Contactor shall not, in any manner whatsoever, disclose, permit access to, or allow use of Confidential Information to any person or entity except as specifically permitted or required under this Contract.

8.1.4 Contractor may disclose Confidential Information as required by legal process. If Contractor is required by legal process to disclose Confidential Information, Contractor shall immediately notify the Library, and before disclosing such information shall allow Library reasonable time to take appropriate legal action to prevent disclosure of the Confidential Information.

8.1.5 Contractor's obligations with respect to Confidential Information shall survive the expiration or the termination of this Contract.

8.1.6 Contractor acknowledges that Contractor's failure to comply fully with the restrictions placed upon use, disclosure and access to Confidential Information may cause the Library grievous irreparable harm and injury. Therefore, any failure to comply with the requirements of this Article 8 shall be a material breach of this Agreement.

8.1.7 Contractor shall forward any request for disclosure of Confidential Information to:

Legal Services Department  
Cleveland Public Library  
325 Superior Avenue  
Cleveland, Ohio 44114

8.1.8 Except to the extent otherwise required by applicable law or professional standards, the obligations under this section do not apply to information that (a) is or becomes generally known to the public, other than as a result of disclosure by Contractor, (b) had been previously possessed by Contractor without restriction against disclosure at the time of receipt by Contractor, (c) was independently developed by Contractor without violation of this Agreement, or (d) Contractor and the Library agree in writing to disclose. Contractor shall be deemed to have met its nondisclosure obligations under this section as long as it exercises the same level of care to protect the Confidential Information as it exercises to protect its own confidential information, except to the extent that applicable law or professional standards impose a higher requirement.

8.1.9 All Confidential Information received by Contractor shall be returned to the Library or destroyed upon completion or termination of this Agreement.

8.2. **Recordkeeping.** The Contractor shall maintain all records with respect to the matters covered by this Agreement for a period of three (3) years after receipt of the final payment under this Agreement. If requested, the Contractor shall provide the Library access during normal business hours to all books, accounts, records, reports, files and other papers or property of the Contractor that pertain to the compensation received

under this Agreement at any time during the term and for a period of three years thereafter.

**Section 9. SECURITY.**

- 9.1 The Contractor shall: (i) establish and maintain industry standard technical and organizational measures to help to protect against accidental damage to, or destruction, loss, or alteration of the materials; (ii) establish and maintain industry standard technical and organizational measures to help to protect against unauthorized access to the Services and materials; and (iii) establish and maintain network and internet security procedures, protocols, security gateways and firewalls with respect to the Services. Contractor software and its components are equipped and/or designed with systems intended to prevent industry known system attacks (e.g., hacker and virus attacks) and unauthorized access to confidential information.
- 9.2 The Contractor shall report any confirmed or suspected breach of Library data to CPL's IT Helpdesk Support Team within one hour of discovery or detection. Any confirmed or suspected computer security incidents not resulting in breach of Library data shall be reported to CPL's IT Helpdesk Support Team within twelve (12) hours of discovery or detection.
- 9.3 The Contractor shall also follow strong identity management characteristics and practices, requiring users to adhere to organizational usage, construction, and change requirements.
- 9.4 The Contractor shall also configure and maintain network to be suitably hardened against security threats and ensure adequate performance.
- 9.5 The Contractor shall, upon the termination of this Agreement, make available to CPL a complete and secure (i.e., encrypted and appropriately authenticated) download file of customer data, sales, and product information in .xml format including all schema and transformation definitions and/or delimited text files with documented, detailed schema definitions along with attachments in their native format. The Contractor further warrants that all data and content pertaining to CPL's buying programs is solely owned by CPL and shall not be transferred or disclosed to any Parties without the written consent from CPL.

**Section 10. RELATIONSHIP OF THE PARTIES.**

- 10.1 The Parties intend that the Contractor shall be an independent contractor, and that nothing in this Agreement shall be deemed or construed as creating a principal, agent, partnership, joint venture, or exclusive dealing relationship between the Parties. The Contractor shall be fully and solely responsible for the

supervision, control, performance, compensation, benefits, withholdings, and workers compensation coverage of any of its employees and agents, including those employees and agents providing services under this Agreement. The Contractor agrees that its employees and agents are not “public employees” for purposes of membership in the Ohio Public Employees Retirement System (OPERS), and that by mandating compliance with all applicable labor laws, the Library is not creating an employment relationship with Contractor’s employees.

- 10.2 Each party reserves the right to review all press releases or other public communications of the other party that may affect the party’s public image, programs or operations.

**Section 11. INDEMNIFICATION.** The Contractor shall defend, hold harmless and indemnify the Library, the Board of Trustees, its officers, employees, and agents, from and against any and all claims, demands, losses, costs, damages, expenses and liabilities, including reasonable attorney fees and costs, arising out of or attributable to: (a) the acts or omissions of the Contractor, its employees and agents in connection with services provided under this Agreement; (b) the Contractor’s breach of this Agreement; or (c) any employment claim or lawsuit brought against the Library by an employee of the Contractor. This provision shall survive the termination of this Agreement. The Contractor shall be responsible and liable to the Library under this Section 11 for any damage to the Library’s property and for any injuries to persons (including death) resulting or arising from the acts or omissions of the Contractor, its employees, and agents.

**Section 12. TERMINATION, EXTENSION, AND SUSPENSION.**

- 12.1 Termination for Default. “Default” shall mean: the failure of either party to observe or perform any obligation under this Agreement when such failure continues for a period of thirty (30) days after written notice thereof is given to the party failing to perform at the notice address in the first paragraph of this agreement. If a party is in Default of this Agreement, the non-defaulting party may terminate this Agreement in its entirety. If the Library terminates this Agreement or any part thereof due to Contractor’s default or due to material changes in its operations and or programming caused by adverse changes in funding, labor relations, or other external cause, then the Library shall pay Contractor for all work properly done under this Agreement up to the termination of this Agreement. The right of termination is in addition to any rights and remedies which either party may have at law or in equity (which are declared to be cumulative and not exclusive).
- 12.2 Termination for Convenience. The performance of work under this Agreement may be terminated by the Library in accordance with this clause in whole, or from time to time in part, whenever the Library shall determine that such termination is in the best interest of the Library. The Library will pay all reasonable costs associated with this Agreement that the Contractor has incurred up to the date of



termination and all reasonable costs associated with termination of the Agreement. However, the Contractor shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of CPL's Procurement Policies and Procedures.

- 12.3 Delays and Extension of Time. The Contractor agrees to prosecute the work continuously and diligently and no charges or claims for damages shall be made by it for any delays or hindrances from any cause whatsoever during the progress of any portion of the work specified in this Contract. Time extensions will be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, acts of public enemy, acts of another Contractor in the performance of a contract with the Library, changes in law or regulation, action by government or other competent authority, fires, earthquakes, floods, epidemics, quarantine restrictions, strikes, freight embargoes, malicious or criminal acts of third parties, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either the Contractor or the subcontractors or suppliers.
- 12.4 Suspension of Work. The Procurement Officer unilaterally may order the Contractor in writing to suspend, delay, or interrupt all or any part of its performance for such period of time as the Procurement Officer may determine to be appropriate for the convenience of the Library.
- 12.5 Force Majeure. "Force Majeure" shall mean any contingency beyond the affected party's reasonable control that prevents a party from complying with its obligations hereunder, including, without limitation, acts of God, terrorism, riots, acts of war, declared states of emergency, and threatened or actual labor strikes. If either party believes that a Force Majeure event has occurred, then it shall notify the other party in writing as soon as possible but no later than ten (10) days following the occurrence of the Force Majeure event, and the non-declaring party may dispute the declaration that Force Majeure event has occurred within five (5) days of receipt of notification thereof. If the Parties agree that a Force Majeure event has occurred, each party's obligation to perform under this Agreement shall be subject to temporary permitted excuse to the extent that such performance is prevented by Force Majeure. If the Force Majeure event has not been resolved within thirty (30) days after its occurrence, either party may elect to terminate this Agreement, and Contractor shall be compensated for all work properly done under this Agreement in accordance with Section 3 above.

### **Section 13. MISCELLANEOUS.**

- 13.1 Subcontracting and Assignment.

13.1.1 The Contractor may not subcontract any portion of the Services provided under this Agreement without obtaining the prior written approval of the Library nor may the Contractor assign this Agreement or any of its rights or obligations hereunder, without the prior written approval of CPL. The Library shall not be responsible for the fulfillment of the Contractor's obligations to subcontractors. Any such subcontract shall be subject to any terms and conditions that the Library deems necessary to protect its interests. Contractor shall remain responsible for performance of all Services under this Contract, and shall be subject to liability to the Library for acts and omissions of subcontractors.

13.2.2 Neither party may assign this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld, except that Contractor may assign this Agreement to any parent, subsidiary, affiliate or purchaser of all or substantially all its assets with notice to the Library. Contractor may designate a third party to receive payment without the Library's prior written consent unless in conflict with Ohio or federal law, but shall provide the Library with notification thereof.

- 13.2 Ohio Law Prevails. The laws of the State of Ohio shall govern the interpretation and enforcement of this Agreement.
- 13.3 Contract Integration and Modification. This Agreement and the documents incorporated herein form the entire agreement of the parties with respect to the subject matter of this procurement, and supersede all prior negotiations, agreements and understandings with respect thereto. This Agreement may be amended with the written consent of both parties. Amendments may not significantly change the scope of the Agreement.
- 13.4 No Third Party Beneficiaries. This Agreement is only for the benefit of the undersigned parties and their permitted successors and assigns. No one shall be deemed to be a third party beneficiary of this Agreement.
- 13.5 Notices. Notices under this Agreement will be written and will be considered effective upon personal delivery to the person addressed for five (5) calendar days after deposit in any U.S. mailbox, first class (registered or certified) and addressed to the other party as follows:

**For the Library:**

Cleveland Public Library  
Financial and Legal Services  
Attn: Procurement Officer  
325 Superior Avenue  
Cleveland, Ohio 44114

**For the Contractor:**

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13.6 Dispute Resolution.

13.6.1 **Performance to Continue.** The Parties shall, in the event of any claim or dispute in question arising out of or relating to this Agreement but which does not rise to the level of a declared default (“Dispute”) continue to perform all obligations as required under this Agreement, notwithstanding the existence of such Dispute.

13.6.2 **Mediation and Arbitration.** Upon mutual agreement of the Parties, the Parties may submit any Dispute to mediation in accordance with the Rules of the American Arbitration Association (“AAA”) currently in effect. The Parties may agree to mediate with an independent third party who is not associated with the AAA who is mutually acceptable to both parties. If the Parties agree to engage in mediation or arbitration, then the Parties shall each pay one half (1/2) of the fees and expenses of the mediation or arbitration.

13.6.3 **Choice of Law, Forum, and Litigation.** This Agreement and all matters connected with the performance thereof shall be construed, interpreted, applied, and governed in accordance with the laws of the State of Ohio. The Parties consent to the jurisdiction of the state courts located in Cuyahoga County, Ohio which the Parties find to be a proper forum for any legal action brought under this Agreement.

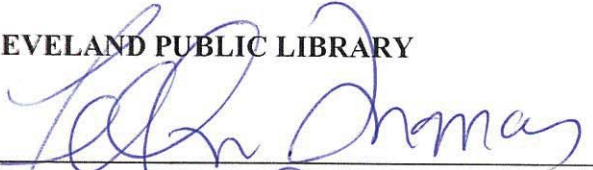

- 13.7 Equal Opportunity. Contractor shall not discriminate in its employment practices on the basis of race, religion, age, sex, color, disability, sexual orientation, political affiliation, national or ethnic origin, or veteran status.
- 13.8 Waiver. No failure on the part of the Party to exercise, and no delay in exercising any right, power or privilege hereunder, including but not limited to the partial termination of services provision contained in Section 12.2 above, operates as a waiver thereof; nor does any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof, or the exercise of any other right, power or privilege.
- 13.9 Counterparts. This Agreement may be executed in counterparts, each of which taken together shall constitute one single agreement between the Parties. Faxed signatures or signatures in PDF copies transmitted via e-mail will be deemed original signatures for all purposes.

- 13.10 Entire Agreement. This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof; supersedes any and all prior agreements, proposals, letters of intent, understandings, negotiations, and discussions of the Parties, whether oral or written, relating to the subject matter hereof; and shall be binding upon the Parties' respective successors and permitted assigns.
- 13.11 Amendments. Any modifications to this Agreement shall be made only in writing, signed by the duly authorized representatives of both Parties, and a copy shall be attached to the original Agreement.
- 13.12 Severability of Provisions. If any part of this Agreement is found by a court of competent jurisdiction or other competent authority, to be invalid, unlawful, or unenforceable, then such part shall be severed from the remainder of this Agreement which shall continue to be valid and enforceable to the fullest extent permitted by law.

By the signatures of their duly-authorized agents below, the Contractor and the Library, intending to be legally bound, agree to all of the provisions of this Agreement, including any and all Exhibits attached hereto.

**THE CLEVELAND PUBLIC LIBRARY**

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

\_\_\_\_\_  
**PRINTED NAME & TITLE**

6/20/19

\_\_\_\_\_  
**Date**

**BSL-APPLIED LASER TECHNOLOGIES LLC**

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



\_\_\_\_\_  
Tyler L. Spey President

\_\_\_\_\_  
**PRINTED NAME & TITLE**

6/12/19

\_\_\_\_\_  
**Date**