

SUPPORT AND MAINTENANCE AGREEMENT

BETWEEN

MILWAUKEE COUNTY ZOO

AND

KMIT SOLUTIONS, LLC

This Support and Maintenance Agreement ("Agreement") is made and entered into on _____, 2018, by and between MILWAUKEE COUNTY ZOO (the "County") and KMIT SOLUTIONS, LLC ("KMIT"). Referenced together, the County and KMIT are the "Parties" and individually, each, a "Party" to this Agreement.

WITNESSETH:

WHEREAS, in October 2015 the County issued a Request for Proposals to provide a point of sale system and related support and maintenance services to Milwaukee County Zoo (the "RFP"), and KMIT submitted a written proposal response to the RFP on November 24, 2015, as further modified by a Best and Final Offer dated May 23, 2016 (the "RFP Response"); and

WHEREAS, pursuant to the RFP and the RFP Response, the Parties have entered into a software purchase contract governing the implementation and licensing of KMIT's point of sale system ("FocusPoint 360"), the software terms and conditions, as well as the support and maintenance contract for the initial year of support and maintenance services, dated October 10, 2016 (collectively, the "Software Agreement"); and

WHEREAS, pursuant to the RFP and the RFP Response, the Parties wish to enter into an agreement governing the remaining five (5) years of support and maintenance services; and

WHEREAS, the Zoological Society of Milwaukee (the "Society") manages the membership and education operations of the Zoo using a software product known as Tessitura; and

WHEREAS, KMIT and the Society have entered into a separate Software Development and Services Agreement whereby KMIT will develop and supply an interface between FocusPoint 360 and Tessitura for use at the Zoo (the "Product"); and

WHEREAS, the County has agreed to pay the fees for the support and maintenance services provided by KMIT for the Product;

NOW THEREFORE, the Parties do herewith, in consideration of mutual promises and other good and valuable consideration, agree as follows:

PROVISIONS:

1. **Order of Precedence**. The Parties' execution of this Agreement shall be deemed the Parties' acceptance of this Agreement, the RFP, the RFP Response, and the Statement of Work ("SOW") attached hereto. In the event of any conflict between the terms of this Agreement, the SOW, the RFP, and the RFP Response, the following order of precedence shall govern:

- (i) This Agreement;
- (ii) The SOW;
- (iii) The RFP;
- (iv) The RFP Response.

2. Terms. Capitalized terms not defined herein shall have the meanings afforded them in the Software Agreement.

3. Terms of Support. Onsite support options are available upon request at an hourly rate of \$120.00/hr. per team member plus the cost of travel, food and accommodations. Site visit fees may be waived at KMIT's discretion. Renewal of this Agreement after a lapse period in excess of thirty (30) days will require upgrade, reinstallation and data configuration fees based on the number of Licenses and Modules purchased. The County may not redistribute, sell, decompile, reverse engineer, or disassemble the Software. The Software, including any modified or customized versions, cannot be resold, redistributed, or offered as a service without explicit written permission from the President or an authorized representative of KMIT. This clause shall survive termination of this Agreement. The County agrees that KMIT may, at its option, establish and maintain access to the Systems for the purpose of providing technical support, maintenance, collecting data to improve product offerings and other services to the extent such services are authorized or required under agreements between the Parties. Such access may be by means including, but not limited to, telecommunications and/or Internet connections. KMIT support includes:

- Upgrades (e.g., software versions, as defined in the Software Agreement) to the County's purchased FocusPoint360 software modules
- Updates to FocusPoint360. An "update" is a relatively minor release to an existing product or module that adds minor features or corrects bugs
- Established Service Level Agreements ("SLAs")
- Support at all times, including afterhours support (i.e., after 8 pm CST)
- Live Support by experienced developers
- Remote support via a remote desktop application such as Team Viewer or similar
- Phone & Web Support
- Online Helpdesk Support with Support Tickets and Client ID code assignment
- Access to KMIT's library of best practices documentations
- Access to KMIT's user forums and electronic help manuals
- 1 Server Restoration per 12-month period in the event of a hardware crash (daily server and FocusPoint360 database backups are the County's responsibility)
- All other support services set forth in the RFP.

4. Assignment. This Agreement and any licenses provided for under this Agreement and the Software Agreement may not be assigned by either Party without the express written consent of the other Party; provided, however, that KMIT may assign this Agreement without the consent of the County as part of a transfer of substantially all of its assets or other type of business reorganization or combination upon written notice to County, and KMIT may assign its rights to receive payment under this Agreement without the consent of the County. As applicable to County, County shall provide KMIT thirty (30) days' written notice of any proposed transfer by County and if KMIT consents to such transfer or assignment, the County shall pay in full all amounts due and payable to KMIT as of the effective date of assignment and obtain for the benefit of KMIT the written agreement of the proposed assignee to be bound and abide by this Agreement. Any work requested by the assignee to be performed by KMIT relating to desired changes in the Modules and the License and Data entered therein will be performed by KMIT only under an agreement then in effect between KMIT and assignee, including applicable payment terms for such work.

5. Term and Termination; Renewal

- a. This Agreement shall commence on the first (1st) anniversary of Go-Live and shall terminate five (5) years thereafter. This period shall be referred to herein as the "Term." The County shall have the option to renew the Term of this Agreement for a mutually agreed upon term with written notice to KMIT at least

sixty (60) days prior to the expiration of the Term. County hereby acknowledges and agrees that, except as expressly provided below, in the event it seeks to terminate this Agreement without cause, or fails to make on-time payments, which failure has not been cured within forty-five (45) days' written notice by KMIT, and causes the termination of this Agreement, prior to the expiration of the Term or any renewal term, the County shall pay to KMIT all Fees to be paid under this Agreement and the Software Agreement through the entire Term or any renewal term or for a period of twelve (12) months following the cessation of all use of KMIT's Software, Support, and all other services, whichever time period is less. Except as otherwise provided herein, termination of this Agreement will end customer support and forfeit any new software upgrades and updates as of the effective date of such termination.

- b. Notwithstanding the foregoing, either Party may terminate this Agreement upon the occurrence of a material breach hereof by the other Party, which material breach has not been cured within sixty (60) days after the date of written notice to the breaching Party by the non-breaching Party. Any nonconformity of the Modules or the Licenses shall not be considered a material breach as long as repairs or workarounds are reasonably agreed to by the Parties.
- c. Either Party may terminate this Agreement immediately if the other Party makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, files a voluntary petition seeking relief, or consents to the commencement of an involuntary case, under bankruptcy or any other similar state or federal law, or has an involuntary case under bankruptcy or other similar state or federal law filed against it and such involuntary case is not dismissed within sixty (60) days thereafter.
- d. KMIT will, at County's request, keep the Modules and Licenses accessible for a period of ninety (90) days following the date of termination of this Agreement. KMIT shall, at County's request, provide the support services, at its then current fee schedule rates, to assist in transitioning any County specific data and County specific information to County and/or its new vendor(s). In its sole discretion and without liability, KMIT may elect to immediately terminate this Agreement if County fails to pay amounts as they become due hereunder (which failure has not been cured within forty-five (45) days' written notice by KMIT) or as any amounts become due under any separate agreement for support or other related services between the County and KMIT (which failure has not been cured within the period identified in such agreement). The County will receive a written notice of intent to terminate two (2) weeks prior to the effective date of such termination.

6. **KMIT Help Desk Access.** The KMIT Solutions help desk is staffed by an experienced team of technical professionals. There are no third party support staff, meaning that when County calls, a knowledgeable KMIT Solutions team member will assist with any questions or problems County may have. The KMIT Solutions Support Customer Service Department can be reached via phone, email and web. Web support is handled via our web portal: <https://kmitsupport.zendesk.com/home> or support@kmitsolutions.freshdesk.com. KMIT Solutions Support is available every day of the week, 8 am – 8 pm, Eastern Time. KMIT Regular Support Contact: 216-916-0501 Ext 214.

7. **Service Level Agreements.** The three Service Level Agreements are as follows:

a. **Severity One.**

KMIT will respond within 10 minutes of receipt of request by County to system issues that relate to ability to transact in the following areas:

- Point of Sale Workstations
- Credit card operations
- Any peripheral device required to support processing a customer transaction, for example ticket printers or bar code scanners.

Response within 10 minutes is defined as calling back to the Zoo staff and making a positive connection. It is expected that KMIT will have system connectivity within 30 minutes. Severity One issues require closure within 2 hours.

b. **Severity Two.**

KMIT will respond within 30 minutes of receipt of request by County to system issues that relate to ability to transact in the following areas:

- Customer account reconciliation
- System integrations, for example with the Zoological Society system
- End of day, end of month reconciliation activities.
- Event Management and Sales

Response within 30 minutes is defined as calling back to the Zoo staff and making a positive connection. It is expected that KMIT will have system connectivity within 120 minutes. Severity Two issues require closure within 2 business days.

c. **Severity Three.**

Severity Three issues can be, but are not expected to be opened through a ticketing system. KMIT will respond within 48 hours of receipt of request by County. Examples of Severity Three issues would be report enhancements or system configuration changes. Expected closure times would be 5 days unless mutually agreed otherwise.

8. **Payment Schedule.** County shall pay KMIT the fees for the support and maintenance services as set forth in Schedule A attached hereto (herein collectively called the “Fees”). Such Fees shall be due and payable as provided in Schedule A.

9. **County Responsibilities.** Except as otherwise indicated in this Agreement, County shall be solely responsible for the following:

- a. Selection of any additional software to achieve County’s intended results;
- b. Procuring all computer hardware, peripherals, device drivers, third party operating systems, and other third party software which may be required to operate the System, which shall include any such items identified by KMIT;
- c. The compatibility of County’s computer hardware, peripherals, device drivers, third party operating systems, and other third party software with the System;
- d. The use and operation of the System, including the Modules and Licenses;
- e. The maintenance and support of County’s hardware, peripherals, third party operating systems, third party software, and the Modules and Licenses (unless otherwise expressly provided in a written agreement signed by both Parties);
- f. The results obtained from use and operation of the System, including the Modules and the Licenses; subject, however, to the warranties provided herein and in the Software Agreement;
- g. Providing a safe and suitable location for installation, use and operation of the System, including the Modules and the Licenses, in accordance with any instructions that may be reasonably specified by KMIT;
- h. Providing cabling and all cabling services in preparation for the installation of the Modules and the Licenses throughout the Term and any renewal term of this Agreement;

- i. Providing Internet hosting and access (including all hardware, peripherals and third party software and services) with requirements provided by KMIT, if applicable, except to the extent KMIT expressly agrees to provide such services in a separate written agreement;
- j. Providing and maintaining the appropriate environment for operating the System and maintaining back up and disaster recovery facilities for the System, including the Modules, the Licenses and the Data, except to the extent KMIT expressly agrees to provide such services in a separate written agreement signed by both Parties;
- k. Contacting and negotiating with the credit card processor (recommended by KMIT Solutions in the Software Agreement, if applicable), except to the extent KMIT expressly agrees to provide such services in a separate written agreement signed by both Parties.

10. Payment Terms. For County's convenience, KMIT has agreed to accept payment of the Fees in installment payments as set forth in Schedule A. KMIT's agreement to accept installment payments does not relieve County of its obligation to pay any or all of the applicable Fees during the Term of this Agreement (including any renewal or extension of this Agreement). Unless otherwise provided in this Agreement, all Fees shall be due within sixty (60) days after the receipt of invoice. Continuance of this Agreement beyond the limits of funds available to the County shall be contingent upon appropriations of the necessary funds and the termination of this Agreement by lack of appropriations shall be without penalty. In the event of termination of this Agreement due to lack of funds available to the County, the County shall pay any outstanding fees due to KMIT within thirty (30) days of such termination. The Milwaukee County Zoo reserves the right to make payments through a Purchasing Card. KMIT's billings shall include, but not be limited to, the following information:

- A. Name and address of contractor
Invoice date and number
Contract number
Remittance name and address
- B. General task(s) performed
- C. Name, title, and phone number of person to notify in event of defective invoice

Invoices should be sent to:

Milwaukee County Zoo
Attn: Sue Rand, Zoo Accounting Manager
10001 W. Bluemound Rd.
Milwaukee, WI 53226

11. Taxes. The Fees and Expenses set forth in this Agreement do not include taxes. The Parties acknowledge that Milwaukee County is exempt from Federal Excise Taxes and Wisconsin State Sales Taxes. Any billing submitted by KMIT should not include such taxes.

12. Compliance with Laws. County agrees not to export the Modules or Licenses or allow the System to be accessed outside the United States. In the event County does export, or attempt to export, the Modules or Licenses or allow the System to be accessed outside the United States, it shall be deemed a material breach of this Agreement and KMIT shall then have the right to terminate this Agreement immediately with no right to cure.

13. Warranties.

- a. System Warranty. KMIT hereby warrants that the System, including any updates or replacements furnished pursuant to support and maintenance, shall be new and free from defects in material and workmanship throughout the Term of this Agreement. County shall promptly notify KMIT in writing of any alleged

nonconformity and provide any and all such information as KMIT may request to allow it to replicate the nonconformity. KMIT shall either correct such nonconformities, develop a suitable workaround, or, at either Party's option in the event KMIT is unable to provide a suitable correction or workaround within sixty (60) days, or in a timeframe as otherwise reasonably agreed to by the Parties after receipt of notice of nonconformity, refund to County the applicable Fees paid under this Agreement which materially relate to the nonconformity, including any and all annual support and maintenance fees paid for the 12-month period prior to the receipt of such nonconformity notice by KMIT. Notwithstanding the foregoing, KMIT shall not be obligated to correct, cure, or otherwise remedy any nonconformity in the Modules or the Licenses if (a) County has modified the Modules or the Licenses or the Data, or allowed modifications thereto, without KMIT's guidance, and such modifications materially cause or contribute to the reported nonconformity; or (b) the Modules or the Licenses were misused or damaged in any respect, and KMIT or its contractors are not responsible for such misuse or damage; or (c) KMIT has not been notified of the existence and nature of such nonconformity within sixty (60) days upon its discovery by County; or (d) the nonconformity is outside the scope of the Modules or the Licenses as defined in the Software Agreement.

- b. Product Warranty. KMIT hereby warrants that the Product, including any updates or replacements furnished pursuant to support and maintenance, shall be new and free from defects in material and workmanship throughout the Term of this Agreement. County shall promptly notify KMIT in writing of any alleged nonconformity and provide any and all such information as KMIT may request to allow it to replicate the nonconformity. KMIT shall either correct such nonconformities, develop a suitable workaround, or, at either Party's option in the event KMIT is unable to provide a suitable correction or workaround within sixty (60) days, or in a timeframe as otherwise reasonably agreed to by the Parties after receipt of notice of nonconformity, refund to County the applicable Fees paid under this Agreement which materially relate to the nonconformity, including any and all annual support and maintenance fees paid for the 12-month period prior to the receipt of such nonconformity notice by KMIT. Notwithstanding the foregoing, KMIT shall not be obligated to correct, cure, or otherwise remedy any nonconformity in the Product if (a) County has modified the Product or the data, or allowed modifications thereto, without KMIT's guidance, and such modifications materially cause or contribute to the reported nonconformity; or (b) the Product was misused or damaged in any respect, and KMIT or its contractors are not responsible for such misuse or damage; or (c) KMIT has not been notified of the existence and nature of such nonconformity within sixty (60) days upon its discovery by County; or (d) the nonconformity is outside the scope of the Product as defined in the Software Agreement.

14. Infringement.

- a. Regarding System. KMIT represents and warrants that it has good title or the right to use the System, any new release or fixes furnished thereto, and any equipment provided to the County. To the best of KMIT's knowledge, the Modules and the Licenses do not violate or infringe upon any United States copyright or patent now issued and in effect. KMIT shall indemnify, defend and hold harmless County and its agents, officers and employees, from and against all loss or expenses including cost and attorney's fees for any claims for or by reason of any actual or alleged infringement of any intellectual property rights of a third party or any actual or alleged trade secret disclosure that may arise out of or are connected with the activities covered by this Agreement. County shall provide written notice of any knowledge it may have of such claim and all reasonably necessary information and assistance to defend or settle the claim. KMIT shall reimburse County's reasonable out of pocket costs, including reasonable legal fees, incurred to provide such information or assistance. KMIT shall have exclusive control of the defense, negotiation and settlement of any such claims. KMIT will pay all damages and costs awarded against County by a court of competent jurisdiction arising out of any such claims. If the Modules or the Licenses are, in KMIT's opinion, likely to or do become the subject of a claim for patent or copyright infringement, KMIT may, at its option and expense: (i) procure for County the right to continue using the Modules or the Licenses; (ii) modify the Modules or the Licenses so that it becomes non-infringing with no loss of material functionality; or (iii) grant County a refund of all fees paid by County for the affected Modules or Licenses, including any fees paid by County for the support and maintenance of such Modules or Licenses within the prior 12-month period preceding the date of KMIT's determination of such

claim or likely claim for patent or copyright infringement. KMIT shall not be responsible for any infringement liability, or claim thereof, if the alleged infringement is based on any modifications or changes made to the Modules or the Licenses by or for County other than by KMIT or if the claim is based on information provided to KMIT from County.

- b. Regarding Product. KMIT represents and warrants that it has good title or the right to use the Product, any new release or fixes furnished thereto, and any equipment provided to the County for use of the Product. To the best of KMIT's knowledge, the Product does not violate or infringe upon any United States copyright or patent now issued and in effect. KMIT shall indemnify, defend and hold harmless County and its agents, officers and employees, from and against all loss or expenses including cost and attorney's fees for any claims for or by reason of any actual or alleged infringement of any intellectual property rights of a third party or any actual or alleged trade secret disclosure that may arise out of or are connected with the Product. County shall provide written notice of any knowledge it may have of such claim and all reasonably necessary information and assistance to defend or settle the claim. KMIT shall reimburse County's reasonable out of pocket costs, including reasonable legal fees, incurred to provide such information or assistance. KMIT shall have exclusive control of the defense, negotiation and settlement of any such claims. KMIT will pay all damages and costs awarded against County by a court of competent jurisdiction arising out of any such claims. If the Product is, in KMIT's opinion, likely to or does become the subject of a claim for patent or copyright infringement, KMIT may, at its option and expense: (i) procure for County and the Society the right to continue using the Product; (ii) modify the Product so that it becomes non-infringing with no loss of material functionality; or (iii) grant County a refund of all fees paid by County for the affected for the support and maintenance of the Product within the prior 12-month period preceding the date of KMIT's determination of such claim or likely claim for patent or copyright infringement. KMIT shall not be responsible for any infringement liability, or claim thereof, if the alleged infringement is based on any modifications or changes made to the Product by or for County other than by KMIT or if the claim is based on information provided to KMIT from County.
- c. Entire Obligation. This Section states KMIT's entire obligation to County regarding infringement of any form of intellectual property.

15. Party Warranties. Each Party warrants to the other Party that (a) it has full authority to execute and perform this Agreement; (b) this Agreement has been duly executed and delivered by such Party and constitutes the legal, enforceable and binding obligation of such Party; (c) such Party's execution and performance of this Agreement will not violate any law or breach any other agreement or obligation of such Party; (d) no approval, action or authorization by any governmental authority or agency is required for such Party's execution and performance or, if it is, such approval, action or authorization has been obtained and written evidence thereof has been provided to the other Party; and (e) to its knowledge, County has obtained for the benefit of KMIT all rights and licenses of third parties necessary or appropriate for KMIT to use all information, including, but not limited to, the Data, delivered from County for the purposes described in this Agreement.

16. Non-Solicitation. County agrees that it shall not solicit the employment of, offer employment to, or accept employment from any employee or independent contractor of KMIT (either directly, as a County employee, or indirectly, as an independent contractor, vendor employee or representative of another organization) during the Term of this Agreement and for a period of twelve (12) months after the termination of this Agreement. For purposes of this provision, the term "employee of KMIT" shall mean an individual who has been or is currently an employee or contractor of KMIT at any time during the Term of this Agreement and/or for a period of twelve (12) months after the termination of this Agreement. Should County violate this provision, County agrees to pay KMIT, not as a penalty but as liquidated damages, an amount equal to fifty percent (50%) of any affected employee's annual salary while at KMIT or a fee of \$30,000.00 for any independent contractor unless mutually agreed upon by the Parties in writing.

17. Independent Principals. KMIT and County are independent principals in all relationships and actions under and contemplated by this Agreement. This Agreement shall not be construed to create any employment relationship,

partnership, joint venture or agency relationship between the Parties or to authorize either Party to enter into any commitment or agreement binding on the other Party. Neither Party shall make any warranties, guarantees or any other commitment on behalf of the other Party. KMIT accepts full responsibility for appropriate income tax withholding, Social Security and similar taxes as required under applicable federal, state and local tax laws for KMIT personnel who provide services to County under this Agreement.

18. Force Majeure. Neither Party shall be in default by reason of any failure in performance of this Agreement if such failure arises, directly or indirectly, out of causes reasonably beyond the direct control or foreseeability of such Party, including but not limited to, acts of God or of the public enemy, acts of civil or military authority, current laws and regulations and changes thereto, embargoes, epidemics, war, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, strikes, power blackouts, volcanic action, other major environmental disturbances, unusually severe weather conditions, or acts of hackers and other illegal activities of third parties. In the event of such Force Majeure, the time for performance or cure shall be extended for a period equal to the duration of the Force Majeure but not in excess of three (3) months.

19. Non-Waiver. No failure on the part of either Party to exercise or delay in exercising any right hereunder will be deemed a waiver thereof, nor will any single or partial exercise preclude any further or other exercise of such or any other right.

20. Equitable Remedies and Specific Performance. The Parties acknowledge and agree that each provision in this Agreement providing for the protection of KMIT's or the County's Confidential and Proprietary Information is material to this Agreement. Confidential and Proprietary Information shall mean any data or information having commercial value which may include but is not limited to data, data bases, Software source code, product plans, strategies, forecasts, research procedures and development, marketing techniques procedures and materials, pricing policies, copyrights patents, trade secrets, other proprietary rights and financial information which the Parties consider sensitive and which is not generally known to the public. The Parties acknowledge and agree that any threatened or actual breach of KMIT's or the County's Confidential and Proprietary Information, shall constitute immediate, irreparable harm to KMIT or the County, as the case may be, for which such Party shall be entitled to equitable remedies awarded by a court of competent jurisdiction.

21. Governing Law. The Agreement shall be governed by, construed, and interpreted in accordance with the laws of the State of Wisconsin without giving effect to its conflicts of laws principles. In any civil action or arbitration by either Party relating to the Agreement, the prevailing Party shall recover from, and be reimbursed by, the other Party for all costs, including reasonable attorney's fees awarded by a court of competent jurisdiction, and related expenses.

22. Severability. If any provision of the Agreement is declared invalid by a court of competent jurisdiction, such provision shall be ineffective only to the extent of such invalidity, so that the remainder of that provision and all remaining provisions of the Agreement will continue in full force and effect.

23. Notice. All communications between the Parties which are required or permitted to be given shall be made in writing and shall be sent by commercial delivery or by prepaid, first class U.S. postal service mails, certified return receipt requested, or by facsimile with confirmation by first class U.S. postal service and sent to the address specified in the Software Agreement. By written communication, either Party may designate a different address for purposes hereof.

24. County Rights of Access and Audit. KMIT, its officers, directors, agents, and employees shall allow the County Audit Services Division and department contract administrators (collectively referred to as "Designated Personnel") and any other party the Designated Personnel may name, with or without notice, to audit, examine and make copies of any and all records of KMIT related to the performance of this Agreement for a period of up to three (3) years following the date of last payment. Any subcontractors or other parties performing work on this Agreement will be bound by the same terms and responsibilities as KMIT. All subcontracts or other agreements for work performed on this Agreement will include written notice that the subcontractors or other parties understand and will comply with

the terms and responsibilities. Any and all County contracts and solicitations for contracts shall include a statement that KMIT and any subcontractors understand and will abide by the requirements of this Section.

25. Entire Agreement. This Agreement, and any other related agreements and documents referred to expressly herein supersede and cancel all prior and contemporaneous understandings, proposals, communications, representations and agreements between the Parties, whether written or oral, relating to the subject matter hereof, and expresses the complete and final understanding with respect to the subject matter hereof.

26. Disclaimer of Warranties. COUNTY ACKNOWLEDGES AND AGREES THAT THE WARRANTIES SET FORTH IN THIS AGREEMENT, INCLUDING THE DOCUMENTS REFERRED TO EXPRESSLY HEREIN, ARE THE ONLY WARRANTIES MADE BY KMIT REGARDING THE MODULES AND THE LICENSES, ANY SERVICES PROVIDED HEREIN, OR OTHERWISE WITH RESPECT TO THIS AGREEMENT, AND ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON INFRINGEMENT, ALL OF WHICH ARE HEREBY EXPRESSLY DISCLAIMED. KMIT DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE SOFTWARE OR SERVICES WILL BE UNINTERRUPTED OR ERROR FREE, THAT ALL DEFICIENCIES, ERRORS, DEFECTS OR NONCONFORMITIES WILL BE CORRECTED OR THAT THE SOFTWARE OR SERVICES WILL MEET SPECIFIC REQUIREMENTS.

27. Indemnification. Each Party agrees, to the fullest extent permitted by law, to indemnify, defend and hold harmless, the other Party and its agents, officers and employees, from and against all loss or expenses including cost and attorney’s fees by reason of liability for damages including suits at law or in equity, caused by any act or omission the indemnifying Party, or its agents or guests, which may arise out of or are connected with the activities covered by this Agreement.

28. Insurance. KMIT understands and agrees that financial responsibility for claims or damages to any person, or to KMIT’s employees and agents, caused by KMIT, its agents or employees, in providing the Services hereunder shall rest with KMIT. KMIT may effect and maintain any insurance coverage, including, but not limited to, Worker’s Compensation, Employers Liability and General Contractual, Cyber and Automobile Liability, to support such financial obligations. The indemnification obligation, however, shall not be reduced in any way by existence or non-existence, limitation, amount or type of damages, compensation or benefits payable under Worker’s Compensation laws or other insurance provisions.

KMIT shall provide evidence of the following coverages and minimum amounts:

<u>Type of Coverage</u>	<u>Minimum Limits</u>
Wisconsin Workers Compensation	Statutory
Employers Liability & Disease	\$100,000/\$500,000/\$100,000
General Liability	
Bodily Injury & Property Damage	\$1,000,000 Per Occurrence
To include Personal Injury, Fire,	\$2,000,000 Aggregate
Products and Completed Operations	
Contractual Liability	
Automobile Liability	
Bodily Injury & Property Damage	\$1,000,000 Per Accident
All autos	
Cyber Liability	\$1,000,000 Per Occurrence

Milwaukee County shall be named as and Additional Insured on the general liability, auto and cyber liability policies as its interests may with appear with respect to the services provided in this Agreement. A waiver of subrogation shall be afforded to Milwaukee County on the Workers' Compensation policy. A thirty (30) day written notice of cancellation or non-renewal shall be afforded to Milwaukee County.

The insurance specified above shall be placed with an A rated carrier per Best's Rating Guide approved to do business in the State of Wisconsin. Any deviations or waiver of required coverages or minimums shall be submitted in writing and approved by Milwaukee County's Director of Risk Management as a condition of this Agreement.

A certificate of insurance shall be submitted for review to Milwaukee County for each successive period of coverage for the duration of this Agreement.

29. Prohibited Practices. Neither Party during the Term of this Agreement shall hire, retain or utilize for compensation any member, officer, or employee of the other Party. KMIT, during the Term of this Agreement, shall not hire, retain or utilize for compensation any member, officer, or employee of the County or any person who, to the knowledge of KMIT, has a conflict of interest as set forth in the following paragraph.

KMIT hereby attests that it is familiar with Milwaukee County's Code of Ethics which states, in part, "No person may offer to give to any County officer or employee or his immediate family, and no County officer or employee or his immediate family, may solicit or receive anything of value pursuant to an understanding that such officer's or employee's vote, official actions or judgment would be influenced thereby."

30. Public Records. Both Parties understand that the County is bound by the public records law, and as such, all of the terms of this Agreement are subject to and conditioned on the provisions of Wis. Stat. § 19.21, et seq. KMIT hereby agrees that it shall be obligated to assist the County in retaining and timely producing records that are subject to the Wisconsin Public Records Law upon any statutory request having been made, and that any failure to do so within a timely period after receiving written notice from the County of such request shall constitute a material breach of this Agreement, whereupon KMIT shall then and in such event be obligated to indemnify, defend and hold the County harmless from liability under the Wisconsin Public Records Law occasioned by such breach. Except as otherwise authorized by the County in writing, records that are subject to the Wisconsin Public Records Law shall be maintained for a period of three years after receipt of final payment under this Agreement.

31. Non-Conviction for Bribery. KMIT hereby declares and affirms that, to the best of its knowledge, none of its officers, directors, or employees as of the date of this Agreement directly involved in obtaining contracts has been convicted of bribery, attempted bribery, or conspiracy to bribe under the laws of any state or the federal government.

32. County Engagements. KMIT acknowledges and agrees that it may be necessary for the County to engage third parties to include the Zoological Society of Milwaukee and concessionaires who would require use of the Modules and Licenses under the management and supervisions of the County. In the event that such third parties require access to and use of the Modules and Licenses, any training, data configuration, setup and all other related fees and expenses shall be the responsibility of County or the relevant third party. The County shall ensure that such third parties agree to be bound by the confidentiality and indemnification provisions of this Agreement.

33. LIMITATION OF LIABILITY. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE MAXIMUM TOTAL LIABILITY OF KMIT TO THE COUNTY SHALL BE LIMITED TO DIRECT MONEY DAMAGES IN AN AMOUNT NOT TO EXCEED THE GREATER OF (A) THE TOTAL AMOUNT PAID BY COUNTY FOR THE DEFECTIVE SOFTWARE/SERVICE CAUSING THE DAMAGE DURING THE 12 MONTHS IMMEDIATELY PRECEDING THE LOSS OR (B) \$10,000. THIS REMEDY IS COUNTY'S SOLE AND EXCLUSIVE REMEDY. KMIT SHALL NOT BE RESPONSIBLE FOR ANY SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES EVEN IF KMIT HAS KNOWLEDGE OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE. KMIT WILL NOT BE RESPONSIBLE FOR FAILURE TO PROVIDE SERVICES IF DUE TO ANY CAUSE OR CONDITION BEYOND THE REASONABLE CONTROL OF KMIT. DAMAGES PAID PURSUANT TO AN INDEMNIFICATION CLAIM OR A WARRANTY CLAIM SHALL BE EXCLUDED FROM THIS SECTION 33.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties hereto have set their hands as follows:

KMIT SOLUTIONS, LLC

By: _____ Date: _____

Name: _____

Title: _____

MILWAUKEE COUNTY ZOO

By: _____ Date: _____

Charles Wikenhauser, Director

Approved with regards to County Ordinance Chapter 42:

By: _____ Date: _____

Community Business Development Partners

Approved for execution:

Reviewed by:

By: _____ Date: _____

Corporation Counsel

By: _____ Date: _____

Risk Management

Approved by:

Approved by:

By: _____ Date: _____

County Executive Chris Abele

By: _____ Date: _____

Comptroller Scott B. Manske

Approved as compliant under Wis. Stats. § 59.42(2)(b)5, Stats.:

By: _____ Date: _____

Corporation Counsel

SCHEDULE A

FEES

This fee schedule includes maintenance and support for ZSM Membership and Education interfaces.

January 31, 2018	Due date for Annual Maintenance and Support Fee equal to \$44,124.00
	Due date for eCommerce Web Hosting & SSL equal to \$3,200.00
	Due date for Annual Maintenance and Support fee – API Interface between KMIT Solutions FocusPoint360 and ZSM’s Tessitura Application not to exceed \$10,000
January 31, 2019	Due date for Annual Maintenance and Support Fee equal to \$44,124.00
	Due date for eCommerce Web Hosting & SSL equal to \$3,200.00
	Due date for Annual Maintenance and Support fee – API Interface between KMIT Solutions FocusPoint360 and ZSM’s Tessitura Application not to exceed \$10,000
January 31, 2020	Due date for Annual Maintenance and Support Fee equal to \$48,536.00
	Due date for eCommerce Web Hosting & SSL equal to \$3,200.00
	Due date for Annual Maintenance and Support fee – API Interface between KMIT Solutions FocusPoint360 and ZSM’s Tessitura Application not to exceed \$10,000
January 31, 2021	Due date for Annual Maintenance and Support Fee equal to \$48,536.00
	Due date for eCommerce Web Hosting & SSL equal to \$3,200.00
	Due date for Annual Maintenance and Support fee – API Interface between KMIT Solutions FocusPoint360 and ZSM’s Tessitura Application not to exceed \$10,000
January 31, 2022	Due date for Annual Maintenance and Support Fee equal to \$48,536.00
	Due date for eCommerce Web Hosting & SSL equal to \$3,200.00
	Due date for Annual Maintenance and Support fee – API Interface between KMIT Solutions FocusPoint360 and ZSM’s Tessitura Application not to exceed \$10,000

FEE Structure Breakdown

Time Period	Support & Maintenance Fee	Hosting	Amount	ZSM Membership
2018-2019	POS, eCommerce, Food Mobile & Kiosk, SciQuest Integration		\$44,124.00/year	
2018-2019	eCommerce Web Hosting & SSL	\$3,200.00/year		
2018-2019	FocusPoint360 & Tessitura Interface			Not to exceed \$10,000/year
2020-2022	POS, eCommerce, Food Mobile & Kiosk, SciQuest Integration		\$48,536.00/year	
2020-2022	eCommerce Web Hosting & SSL	\$3,200.00/year		
2020-2022	FocusPoint360 & Tessitura Interface			Not to exceed \$10,000/year

*Future purchases having annual & maintenance support fees will be added to these totals.