



**AGREEMENT BETWEEN THE CITY OF PEMBROKE PINES
AND SAFEWARE, INC.**

THIS AGREEMENT ("Agreement"), is entered into on _____ day of _____, 2022, by and between the **City of Pembroke Pines**, a Florida municipal corporation with a business address of 601 City Center Way, Pembroke Pines, Florida 33025 (hereinafter referred to as "**CITY**"), and **Safeware, Inc.**, a For Profit Corporation, with a business address of **4403 Forbes Blvd, Lanham, MD 20706** ("**CONTRACTOR**"). CITY and CONTRACTOR shall be collectively referred to herein as "**Parties**" and individually as "**Party**".

WHEREAS, the CITY is in need of Public Safety and Emergency Preparedness Equipment and Related Services such as Badge ID Access Control Software and Hardware for the CITY Police Department; and,

WHEREAS, on March 8, 2018, the County of Fairfax, Virginia, as the lead agency for OMNI Partners awarded Contract #4400008468 to CONTRACTOR pursuant to Request for Proposals (RFP) #2000002547, entitled "Public Safety and Emergency Preparedness Equipment and Related Services" for a term commencing on October 1, 2018 and terminating on September 30, 2023, with the option to renew at the end of the initial period by mutual agreement of the parties; and,

WHEREAS, pursuant to CITY Code of Ordinances §35.18(C)(5), entitled "Utilization of Other Governmental Agencies' Contracts", CITY has evaluated the County of Fairfax's RFP #2000002547 and Contract #4400008468 and determined that commodities and services thereunder are the subject of a competitive bid by another governmental agency and not on any preference and that such terms and pricing may be utilized by CITY to procure the Public Safety and Emergency Preparedness Equipment and Related Services herein required; and,

WHEREAS, pursuant to CITY Code of Ordinances §35.18(C)(5), the CITY desires to engage CONTRACTOR to provide Public Safety and Emergency Preparedness Equipment and Related Services utilizing the terms and pricing offered in Contract #4400008468, attached hereto and made a specific part hereof as Exhibit "A"; and,

WHEREAS, CONTRACTOR agrees to provide the Public Safety and Emergency Preparedness Equipment and Related Services to CITY utilizing the terms and pricing offered in Contract #4400008468; and,

WHEREAS, the Parties wish to incorporate and supplement the terms and conditions set forth in Contract #4400008468 with the terms and requirements set forth herein; and,

WHEREAS, at its meeting of _____, 2022, the CITY Commission approved this Agreement and authorized the proper CITY officials to execute this Agreement.



NOW, THEREFORE, in consideration of the mutual terms and conditions, promises, covenants and payments hereinafter set forth, the Parties agree as follows:

1. The foregoing recitals are true and correct and incorporated herein as if set forth in full.
2. **Services and Responsibilities**. The CONTRACTOR hereby agrees to provide Public Safety and Emergency Preparedness Equipment and Related Services including Badge ID Access Control Software and Hardware to CITY for use at CITY's Police Department, at the following locations: **9500 Pines Boulevard, Pembroke Pines, FL 33024, 18400 Johnson Street, Pembroke Pines, FL 33029, and 1097 SW 208th Avenue, Pembroke Pines, FL 33029** ("Property"), in accordance with **Exhibit "A"** and CONTRACTOR's proposal for CITY, attached hereto as **Exhibit "B"**, and made a specific part hereof by reference. The CONTRACTOR agrees to perform all services required pursuant to this Agreement, each exhibit, amendment, or addenda hereto, and set forth in the Commission award.
 - 2.1 CONTRACTOR shall furnish all services, labor, equipment, and materials necessary and as may be required in the performance of this Agreement, except as otherwise specifically provided for herein, and all work performed pursuant to this Agreement shall be done in a professional manner.
 - 2.2 CONTRACTOR shall supervise the work force to ensure that all workers conduct themselves and perform their work in a safe and professional manner. CONTRACTOR shall comply with all OSHA safety rules and regulations in the operation of equipment and in the performance of the work. CONTRACTOR shall at all times have a competent field supervisor on the job site to enforce these policies and procedures at the CONTRACTOR's expense.
 - 2.3 CONTRACTOR shall provide CITY with seventy-two (72) hours written notice prior to the beginning of work under this Agreement and prior to any schedule change with the exception of changes caused by inclement weather.
 - 2.4 CONTRACTOR shall comply with any and all Federal, State, and local laws and regulations now in effect, or hereinafter enacted during the term of this Agreement, which are applicable to CONTRACTOR, its employees, agents or subcontractors, if any, with respect to the work and services described herein. A violation of any federal, state, or local law or regulation may be cause for breach, allowing the CITY to terminate this Agreement.
 - 2.5 CONTRACTOR hereby represents to CITY that CONTRACTOR is properly licensed by the applicable federal, state, and local agencies to provide the services pursuant to this Agreement. Furthermore, CONTRACTOR agrees to maintain such licenses during the term of this Agreement. If CONTRACTOR's license is revoked, suspended, or terminated for any reason by any governmental agency, CONTRACTOR shall notify the CITY immediately.
 - 2.6 The Parties hereby agree that CONTRACTOR is the prime contractor providing the products and services described herein, and may only use subcontractors that are authorized



and approved by CITY. CONTRACTOR shall subcontract any of its obligations under this Agreement without first obtaining the CITY's prior written consent. In the event the CITY does consent in writing to any additional subcontracting arrangement, CONTRACTOR shall be the prime contractor and shall remain fully responsible for performance of all obligations which it is required to perform under this Agreement. Any subcontract entered into by CONTRACTOR shall name the CITY as a third party beneficiary.

2.7 **Return of Keys.** Upon completion of services rendered or termination of this agreement, CONTRACTOR must promptly return to CITY all CITY keys and/or access cards. By agreeing herein, CONTRACTOR understands that any loss or failure to return a CITY key shall subject CONTRACTOR to the costs associated with key replacement and/or re-keying. For keys unlocking several doors, replacement and re-keying costs can be substantial. In case of failure to return a key and failure to pay for key replacement and/or lock re-keying, CONTRACTOR understands that CITY shall enforce by all legal means its right to repayment for all costs incident to key replacement and/or lock re-keying. For the purposes of this Agreement, the term "completion" shall mean the satisfactory completion and final inspection of the Property by the CITY.

2.8 **Warranty.** CONTRACTOR shall provide an all-inclusive, non-prorated warranty on all parts, equipment, and labor provided by the CONTRACTOR and pursuant to this Agreement, for a period of one (1) year from the date of completion of work. In the event that defect occurs during this time, CONTRACTOR shall be responsible for any damages caused by defect to affected area or to interior structure, and CONTRACTOR shall perform such steps as required to remedy the defects. The one (1) year warranty period does not begin until completion of the entire project.

3. **Compensation and Method of Payment.** The CITY agrees to compensate CONTRACTOR monthly, for all services performed, completed, inspected, and properly invoiced pursuant to this Agreement and as more particularly described in **Exhibit "B"**. The total amount not to exceed for the commodities and services herein required shall not exceed **ONE HUNDRED TWENTY-TWO THOUSAND SIX HUNDRED TEN DOLLARS AND 17/100 CENTS (\$122,610.17)**.

3.1 All payments shall be governed by the Local Government Prompt Payment Act, as set forth in Part VII, Chapter 218, Florida Statutes. The CITY shall not be subject to late charges for past due amounts in excess of one percent (1%) as provided for in §218.74, Florida Statutes. Prices applicable to CITY do not include applicable state and local sales, use and related taxes. The CITY is exempt from state and local sales and use taxes and shall not be invoiced for the same. Upon request CITY will provide Company with proof of tax-exempt status.

3.2 The CITY shall within thirty (30) days, from the date the City's Public Service Director approves the Application for Payment, pay the CONTRACTOR the amount approved by the CITY's Police Department Chief or his/her assignees. Payment shall be made to CONTRACTOR at:



**Safeware, Inc.
4403 Forbes Blvd.
Lanham, MD 20706-4328**

4. **Changes to Scope.** CITY or CONTRACTOR may request changes that would increase, decrease, or otherwise modify the scope of services, to be provided pursuant to this Agreement as described as more particularly described in **Exhibit "B"**. These changes may affect the monthly compensation accordingly. Such changes or additional services must be in accordance with the provisions of CITY's Code of Ordinances and must be contained in a written amendment, executed by the Parties hereto prior to any deviation from the terms of this Agreement, including the initiation of any additional or extra work. In no event will the CONTRACTOR be compensated for any work which has not been described either herein, in a purchase order, or in a separate written agreement executed by the Parties hereto. CONTRACTOR shall continue work when seeking change order unless work has not been authorized herein, or by written amendment or change order, executed by the Parties hereto.
5. **Term.** The work herein required shall be completed within **sixty (60) days of CITY's notice to proceed**, subject to any permitted extensions of time pursuant to this Agreement and any amendments and/or addenda thereto. The annual subscription for the OnGuard IDES Client software licenses shall continue for a period of one (1) year following the Go-Live Date. Thereafter, the Parties may agree to renew the OnGuard IDES Client software licenses for additional periods as set forth in a separate written agreement. The annual OnGuard IDES Client software licenses shall not automatically renew.
 - 5.1 During the pre-construction portion of the work hereunder, the Parties agree to work diligently and in good faith in performing their obligations hereunder, so that all required permits for the construction portion of the work may be obtained. In the event that any delays in the pre-construction or construction portion of the work occur, despite the diligent efforts of the Parties hereto, and such delays are the result of force majeure or are otherwise outside of the control of either party hereto, then the Parties shall agree on an equitable extension of the time for substantial completion hereunder and any resulting increase in general condition costs.
 - 5.2 In the event that CONTRACTOR abandons this Agreement or causes it to be terminated, CONTRACTOR shall indemnify CITY against any loss pertaining to this termination up to a maximum of the full contracted fee amount. All finished or unfinished documents, data, studies, surveys, and reports prepared by CONTRACTOR shall become the property of CITY and shall be delivered by CONTRACTOR to CITY.
6. **Termination of Agreement.**
 - 6.1 **Termination for Convenience.** This Agreement may be terminated by CITY for convenience, upon providing thirty (30) calendar days written notice of such termination to CONTRACTOR, in which event CONTRACTOR shall be paid its compensation for services performed and equipment provided prior to termination date, including compensation reasonably related to such termination.



6.2 **Termination for Cause; Default.** In addition to all other remedies available to CITY, this Agreement shall be subject to termination by CITY for cause, should CONTRACTOR breach the agreement or fail to perform or observe any of the terms, provisions, conditions, or requirements herein contained, if such neglect or failure shall continue for a period of seven (7) days after receipt by CONTRACTOR of written notice of such neglect or failure. In the event that CONTRACTOR abandons this Agreement, CONTRACTOR shall indemnify CITY against loss pertaining to such abandonment. CITY reserves the right to recover any ascertainable actual damages incurred as a result of the failure of CONTRACTOR to perform in accordance with the requirements of this Agreement.

6.3 **Default Events.** The occurrence of any one or more of the following events shall constitute a default and breach of this agreement by CONTRACTOR:

6.3.1 The abandonment of the Property by CONTRACTOR for a period of more than seven (7) business days.

6.3.2 Unnecessary delay, refusal of, or failure to correct deficiencies for a period of seven (7) days after receipt by CONTRACTOR of written notice of such neglect or failure.

6.3.3 Assignment and/or transfer of this Agreement which is not expressly permitted here under or in writing by CITY.

6.3.4 The filing by or against CONTRACTOR of a petition to have CONTRACTOR adjudicated bankrupt (unless, the same is dismissed within sixty (60) days of such filing).

6.3.5 The default by CONTRACTOR with respect to any obligations to any third party pertaining to CONTRACTOR or to Collection Services, which may permit any third party, either immediately or following notice and/or the passage of time to accelerate the maturity of any obligation of CONTRACTOR, to assume control of CONTRACTOR or take possession of or to transfer or caused to be transferred to any third party any portion of the assets of CONTRACTOR, but only if such default materially interferes with or prevents CONTRACTOR's performance under the terms of this Agreement.

6.3.6 If CONTRACTOR shall fail to diligently perform its work in accordance with the requirements of this Agreement.

6.4 **Dispute Resolution.** In the event that a dispute, if any, arises between CITY and CONTRACTOR relating to this Agreement, performance or compensation hereunder, CONTRACTOR shall continue to render service in full compliance with all terms and conditions of this Agreement as interpreted by CITY regardless of such dispute. CONTRACTOR expressly agrees, in consideration for the execution of this Agreement, that in the event of such a dispute, if any, it will not seek injunctive relief in any court, but will negotiate with CITY for an adjustment on the matter or matters in dispute and, upon failure of said negotiations to resolve the dispute, may present the matter to a court of competent jurisdiction in an appropriate suit therefore instituted by it or by CITY.

7. **Insurance.**



- 7.1 CONTRACTOR shall not commence work under this Agreement until it has obtained all insurance required under this paragraph and such insurance has been approved by the Risk Manager of the CITY nor shall the CONTRACTOR allow any subcontractor to commence work on any subcontract until all similar such insurance required of the subcontractor has been obtained and similarly approved.
- 7.2 Certificates of Insurance, reflecting evidence of the required insurance, shall be filed with the CITY's Risk Manager prior to the commencement of this Agreement. Policies shall be issued by companies authorized to do business under the laws of the State of Florida. The insurance company shall be rated no less than "A" as to management, and no less than "Class VI" as to financial strength according to the latest edition of Best's Insurance Guide published by A.M. Best Company.
- 7.3 Certificates of Insurance shall provide for thirty (30) days' prior written notice to the CITY in case of cancellation in the policy limits or coverage states. If the carrier cannot provide thirty (30) days' notice of cancellation, either the CONTRACTOR or their insurance broker must agree to provide notice.
- 7.4 Insurance shall be in force until all obligations required to be fulfilled under the terms of the Agreement are satisfactorily completed as evidenced by the formal acceptance by the CITY. In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the period of this Agreement, the CONTRACTOR shall furnish, at least thirty (30) days prior to the expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like coverage for the balance of the period of the Agreement and extension thereunder is in effect. The CONTRACTOR shall neither commence nor continue to provide any services pursuant to this Agreement unless all required insurance remains in full force and effect. CONTRACTOR shall be liable to CITY for any lapses in service resulting from a gap in insurance coverage.
- 7.5 **Required Insurance.** CONTRACTOR shall be required to obtain all applicable insurance coverage, as indicated below, prior to commencing any work pursuant to this Agreement:

Yes No

- ✓ ☐ 7.5.1 Comprehensive General Liability Insurance written on an occurrence basis including, but not limited to: coverage for bodily injury and property damage, personal & advertising injury, products & completed operations, and contractual liability. Coverage must be written on an occurrence basis, with limits of liability no less than:
1. Each Occurrence Limit - \$1,000,000
 2. Fire Damage Limit (Damage to rented premises) - \$100,000
 3. Personal & Advertising Injury Limit - \$1,000,000
 4. General Aggregate Limit - \$2,000,000
 5. Designated Construction Project(s) General Aggregate Limit - \$2,000,000

Products & Completed Operations Coverage shall be maintained for the later of three (3) years after the delivery of goods/services or final payment under the Agreement. **The City of Pembroke Pines must be shown as an additional insured with respect to this**



coverage. The CITY's additional insured status shall extend to any coverage beyond the minimum limits of liability found herein.

Yes No

- ✓ ☐ 7.5.2 Workers' Compensation and Employers' Liability Insurance covering all employees, and/or volunteers of the CONTRACTOR engaged in the performance of the scope of work associated with this Agreement. In the case any work is sublet, the CONTRACTOR shall require the subcontractors similarly to provide Workers' Compensation Insurance for all the latter's employees unless such employees are covered by the protection afforded by the CONTRACTOR. Coverage for the CONTRACTOR and all subcontractors shall be in accordance with applicable state and/or federal laws that may apply to Workers' Compensation Insurance with limits of liability no less than:

1. Workers' Compensation: Coverage A – Statutory
2. Employers Liability: Coverage B \$500,000 Each Accident
\$500,000 Disease – Policy Limit
\$500,000 Disease – Each Employee

If CONTRACTOR claims to be exempt from this requirement, CONTRACTOR shall provide CITY proof of such exemption along with a written request for CITY to exempt CONTRACTOR, written on CONTRACTOR letterhead.

Yes No

- ✓ ☐ 7.5.3 Comprehensive Auto Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the performance of work under this Agreement, with a combined single limit of liability for bodily injury and property damage no less than:

1. Any Auto (Symbol 1)
Combined Single Limit (Each Accident) - \$1,000,000
2. Hired Autos (Symbol 8)
Combined Single Limit (Each Accident) - \$1,000,000
3. Non-Owned Autos (Symbol 9)
Combined Single Limit (Each Accident) - \$1,000,000

If work under this Agreement includes transportation of hazardous materials, policy shall include pollution liability coverage equivalent to that provided by the latest version of the ISO pollution liability broadened endorsement for auto and the latest version of the ISO Motor Carrier Act endorsement, equivalents or broader language.

Yes No

- ✓ ☐ 7.5.4 Umbrella/Excess Liability Insurance in the amount of \$1,000,000.00 as determined appropriate by the CITY depending on the type of job and exposures contemplated. Coverage must be follow form of the General Liability, Auto Liability and Employer's Liability. This coverage shall be maintained for a period of no less than the later of three (3) years after the delivery of goods/services or final payment pursuant to this Agreement. **The City of Pembroke Pines must be shown as an additional insured with respect to this coverage. The CITY's additional insured status shall extend to any coverage beyond the minimum limits of liability found herein.**

Yes No



- ✓ ☐ 7.5.5 Cyber Liability including Network Security and Privacy Liability with a limit of liability no less than \$1,000,000.00 per loss. Coverage shall include liability arising from: theft, dissemination and/or use of confidential information stored or transmitted in electronic form, unauthorized access to, use of, or tampering with computer systems, including hacker attacks or inability of an authorized third party to gain access to your services, including denial of service, and the introduction of a computer virus into, or otherwise causing damage to, a customer's or third person's computer, computer system, network, or similar computer-related property and the data, software and programs thereon. If vendor is collecting credit card information, it shall cover all PCI breach expenses. Coverage is to include the various state monitoring and state required remediation as well as meet the various state notification requirements. This coverage shall be maintained for a period of no less than the later of three (3) years after delivery of goods/services or final payment of the Agreement. Retroactive date, if any, to be no later than the first day of service to the CITY. **The City of Pembroke Pines must be shown as an additional insured with respect to this coverage. The CITY's additional insured status shall extend to any coverage beyond the minimum limits of liability found herein.**

7.6 REQUIRED ENDORSEMENTS.

- 7.6.1 The City of Pembroke Pines shall be named as an Additional Insured on each of the Liability Policies required herein.
- 7.6.2 Waiver of all Rights of Subrogation against the CITY.
- 7.6.3 Thirty (30) Day Notice of Cancellation or Non-Renewal to the CITY.
- 7.6.4 CONTRACTOR's policies shall be Primary & Non-Contributory.
- 7.6.5 All policies shall contain a "severability of interest" or "cross liability" clause without obligation for premium payment of the CITY.

7.7 Any and all insurance required of the CONTRACTOR pursuant to this Agreement must also be required by any subcontractor in the same limits and with all requirements as provided herein, including naming the CITY as an additional insured, in any work that is subcontracted unless such subcontractor is covered by the protection afforded by the CONTRACTOR and provided proof of such coverage is provided to CITY. The CONTRACTOR and any subcontractors shall maintain such policies during the term of this Agreement.

8. **Indemnification.** The CONTRACTOR shall indemnify and hold harmless the CITY, its elected and appointed officials, and employees, from and against any and all claims, suits, actions, damages, or causes of action arising during the term of this Agreement for any personal or bodily injury, loss of life, or damage to property caused directly or indirectly by the negligence, recklessness, or intentional wrongful conduct of CONTRACTOR and other person employed or utilized by CONTRACTOR during performance of this Agreement and from and against all costs, counsel fees, expenses and liabilities incurred with respect thereto, the investigation thereof, or the defense of any action or proceedings brought thereon, and from and against any orders or judgements which may be entered therein. The CITY shall notify CONTRACTOR within ten (10) days of receipt by CITY of any claim, suit or action against CITY arising directly or indirectly from the operations of CONTRACTOR hereunder, for



which CITY may be entitled to a claim or indemnity against CONTRACTOR, under the provisions of this Agreement.

8.1 Upon completion of all services, obligations and duties provided for in this Agreement, or in the event of termination of this Agreement for any reason, the terms and conditions of this Article shall survive indefinitely.

8.2 CITY reserves the right to select its own legal counsel to conduct any defense in any such proceeding and all costs and fees associated therewith shall be the responsibility of CONTRACTOR.

8.3 CONTRACTOR's aggregate liability shall not exceed the proceeds of insurance required to be placed pursuant to this Agreement, plus the compensation received by CONTRACTOR.

9. **Agreement Subject to Funding.** This Agreement shall remain in full force and effect only as long as the expenditures provided for in the Agreement have been appropriated by the City Commission of the City of Pembroke Pines in the annual budget for each fiscal year of this Agreement, and is subject to termination based on lack of funding.

10. **Governing Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida as now and hereafter in force. The venue for any and all actions or claims arising out of or related to this Agreement shall be in Broward County, Florida.

11. **Sovereign Immunity.** Nothing contained herein is intended nor shall be construed to waive CITY's rights and immunities under the common law or §768.28, Florida Statutes, as may be amended from time to time.

12. **Independent Contractor.** This Agreement does not create an employee/employer relationship between the Parties. It is the intent of the Parties that the CONTRACTOR is an independent contractor under this Agreement and not the CITY's employee for all purposes, including but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the State Workers' Compensation Act, and the State unemployment insurance law. The CONTRACTOR shall retain sole and absolute discretion in the judgment of the manner and means of carrying out CONTRACTOR's activities and responsibilities hereunder provided, further that administrative procedures applicable to services rendered under this Agreement shall be those of CONTRACTOR, which policies of CONTRACTOR shall not conflict with CITY, State, or Federal policies, rules or regulations relating to the use of CONTRACTOR's funds provided for herein. The CONTRACTOR agrees that it is a separate and independent enterprise from the CITY, that it has full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This Agreement shall not be construed as creating any joint employment relationship between the CONTRACTOR and the CITY and the CITY will not be liable for any obligation incurred by



CONTRACTOR, including but not limited to unpaid minimum wages and/or overtime premiums.

13. **Non-Discrimination & Equal Opportunity Employment.** During the performance of the Agreement, neither CONTRACTOR nor any subcontractors shall discriminate against any employee or applicant for employment because of race, religion, color, gender, national origin, sex, age, marital status, political affiliation, familial status, sexual orientation, or disability if qualified. CONTRACTOR will take affirmative action to ensure that employees are treated during employment, without regard to their race, religion, color, gender, national origin, sex, age, marital status, political affiliation, familial status, sexual orientation, or disability if qualified. Such actions must include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. CONTRACTOR shall agree to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause. CONTRACTOR further agrees that CONTRACTOR will ensure that subcontractors, if any, will be made aware of and will comply with this nondiscrimination clause.
14. **Uncontrollable Forces.** Neither CITY nor CONTRACTOR shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to Uncontrollable Forces, the effect of which, by the exercise of reasonable diligence, the non-performing party could not avoid. The term "Uncontrollable Forces" shall mean any event which results in the prevention or delay of performance by a party of its obligations under this Agreement and which is beyond the reasonable control of the nonperforming party. It includes, but is not limited to fire, flood, earthquakes, storms, lightning, epidemic, pandemic, acts of God, war, riot, civil disturbance, sabotage, and governmental actions. Neither party shall, however, be excused from performance if nonperformance is due to forces, which are preventable, removable, or remediable, and which the nonperforming party could have, with the exercise of reasonable diligence, prevented, removed, or remedied with reasonable dispatch. The nonperforming party shall, within a reasonable time of being prevented or delayed from performance by an uncontrollable force, give written notice to the other party describing the circumstances and uncontrollable forces preventing continued performance of the obligations of this Agreement.
15. **Binding Authority.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.
16. **Assignments; Amendments.** This Agreement, and any interests herein, shall not be assigned, transferred or otherwise encumbered, under any circumstances, by CONTRACTOR without the prior written consent of CITY. For purposes of this Agreement, any change of ownership of CONTRACTOR shall constitute an assignment which requires CITY approval. It is further agreed that no modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed by the Parties hereto.



17. **Public Records.** The City of Pembroke Pines is a public agency subject to Chapter 119, Florida Statutes. CONTRACTOR shall comply with Florida's Public Records Law. Specifically, CONTRACTOR shall:

17.1 Keep and maintain public records required by the CITY to perform the service;

17.2 Upon request from the CITY's custodian of public records, provide the CITY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law;

17.3 Ensure that public records that are exempt or that are confidential and exempt from public record disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and, following completion of the Agreement, CONTRACTOR shall destroy all copies of such confidential and exempt records remaining in its possession after CONTRACTOR transfers the records in its possession to the CITY; and

17.4 Upon completion of the Agreement, CONTRACTOR shall transfer to the CITY, at no cost to the CITY, all public records in CONTRACTOR's possession. All records stored electronically by CONTRACTOR must be provided to the CITY, upon request from the CITY's custodian of public records, in a format that is compatible with the information technology systems of the CITY.

17.5 The failure of CONTRACTOR to comply with the provisions set forth in this Article shall constitute a default and breach of this Agreement, for which, the CITY may terminate the Agreement in accordance with the terms herein.

IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

**CITY CLERK
601 CITY CENTER WAY, 4th FLOOR
PEMBROKE PINES, FL 33025
(954) 450-1050
mgraham@ppines.com**

18. **Notice.** Whenever any party desires to give notice unto any other party, it must be given by written notice, sent by certified United States mail, with return receipt requested, addressed to the party for whom it is intended and the remaining party, at the places last specified, and the places for giving of notice shall remain such until they shall have been changed by written notice in compliance with the provisions of this section. For the present, CITY designates the following as the respective places for giving of notice:



CITY: Charles F. Dodge, City Manager

City of Pembroke Pines
601 City Center Way, 4th Floor
Pembroke Pines, Florida 33025
Telephone No. (954) 450-1040

Copy To: Samuel S. Goren, City Attorney
Goren, Cherof, Doody & Ezrol, P.A.
3099 East Commercial Boulevard, Suite 200
Fort Lauderdale, Florida 33308
Telephone No. (954) 771-4500
Facsimile No. (954) 771-4923

CONTRACTOR: **Peter Van Kirk, Director-Government Security Solutions
Safeware, Inc.
4403 Forbes Blvd,
Lanham, MD 20706
Telephone No. (561) 400-1029
Facsimile No. (301) 683-1200**

19. **Attorneys' Fees.** In the event that either party brings suit for enforcement of this Agreement, each party shall bear its own attorney's fees and court costs, except as otherwise provided under the indemnification provisions set forth herein above.
20. **Counterparts and Execution.** This Agreement may be executed by hand or electronically in multiple originals or counterparts, each of which shall be deemed to be an original and together shall constitute one and the same agreement. Execution and delivery of this Agreement by the Parties shall be legally binding, valid and effective upon delivery of the executed documents to the other party through facsimile transmission, email, or other electronic delivery.
21. **Scrutinized Companies.** CONTRACTOR, its principals or owners, certify that they are not listed on the Scrutinized Companies that Boycott Israel List, Scrutinized Companies with Activities in Sudan List, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or are engaged in business operations with Syria. In accordance with Section 287.135, Florida Statutes, as amended, a company is ineligible to, and may not, bid on, submit a proposal for, or enter into or renew a contract with any agency or local governmental entity for goods or services of:
- 21.1 Any amount if, at the time bidding on, submitting a proposal for, or entering into or renewing such contract, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, Florida Statutes, or is engaged in a boycott of Israel; or
- 21.2 One million dollars or more if, at the time of bidding on, submitting a proposal for, or entering into or renewing such contract, the company:



- 21.2.1 Is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473, Florida Statutes; or
- 21.2.2 Is engaged in business operations in Syria.

22. **Employment Eligibility.** CONTRACTOR certifies that it is aware of and complies with the requirements of Section 448.095, Florida Statutes, as may be amended from time to time and briefly described herein below.

22.1 **Definitions for this Section.**

- 22.1.1 “Contractor” means a person or entity that has entered or is attempting to enter into a contract with a public employer to provide labor, supplies, or services to such employer in exchange for salary, wages, or other remuneration. “Contractor” includes, but is not limited to, a vendor or consultant.
- 22.1.2 “Subcontractor” includes, but is not limited to, a vendor or consultant.
- 22.1.3 “Subcontractor” means a person or entity that provides labor, supplies, or services to or for a contractor or another subcontractor in exchange for salary, wages, or other remuneration.
- 22.1.4 “E-Verify system” means an Internet-based system operated by the United States Department of Homeland Security that allows participating employers to electronically verify the employment eligibility of newly hired employees.

22.2 **Registration Requirement; Termination.** Pursuant to Section 448.095, Florida Statutes, effective January 1, 2021, Contractors, shall register with and use the E-verify system in order to verify the work authorization status of all newly hired employees. Contractor shall register for and utilize the U.S. Department of Homeland Security’s E-Verify System to verify the employment eligibility of:

- 22.2.1 All persons employed by a Contractor to perform employment duties within Florida during the term of the contract; and
- 22.2.2 All persons (including subvendors/subconsultants/subcontractors) assigned by Contractor to perform work pursuant to the contract with the City of Pembroke Pines. The Contractor acknowledges and agrees that registration and use of the U.S. Department of Homeland Security’s E-Verify System during the term of the contract is a condition of the contract with the City of Pembroke Pines; and
- 22.2.3 The Contractor shall comply with the provisions of Section 448.095, Florida Statutes., "Employment Eligibility," as amended from time to time. This includes, but is not limited to registration and utilization of the E-Verify System to verify the work authorization status of all newly hired employees. Contractor shall also require all subcontractors to provide an affidavit attesting that the



subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. The Contractor shall maintain a copy of such affidavit for the duration of the contract. Failure to comply will lead to termination of this Agreement, or if a subcontractor knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than twenty (20) calendar days after the date of termination. Termination of this Agreement under this Section is not a breach of contract and may not be considered as such. If this contract is terminated for a violation of the statute by the Contractor, the Contractor may not be awarded a public contract for a period of one (1) year after the date of termination.

23. **Use of Marks or Likeness.** CONTRACTOR may not use CITY's official seal for marketing or publicity purposes as prohibited by §165.043, Florida Statutes. CONTRACTOR acknowledges and agrees to obtain prior written consent from CITY prior to using any of CITY's protected service marks or CITY's likeness for any reason, including marketing purposes; such written request must specifically identify the desired use and the period of use. Any authorization granted by CITY pursuant to this section shall terminate at the expiration or termination of the Agreement.
24. **Customer Data.** Any Customer Data, reproduced, published, displayed, received, stored, or distributed by CONTRACTOR shall first be de-identified where all personally identifiable information, including direct and indirect personal identifiers and other non-public information has been removed, before maintaining or any transfer of such Customer Data is made to any third-party.
25. **Confidentiality.** Any confidentiality obligations related to this Agreement shall be binding on CITY to the extent permitted by applicable laws, including Ch. 119, Florida Statutes.
26. **Records and Audit.** CITY may, upon prior written notice and at a mutually agreed upon date for a period of up to five (5) years following the date of final performance of services by CONTRACTOR under this Agreement, review those books and records of CONTRACTOR which are related to CONTRACTOR's performance under this Agreement. CONTRACTOR agrees to maintain all such books and records at its relevant branch location for a period of five (5) years after final payment is made under this Agreement, or as otherwise required by applicable law.
27. **Severability.** If any provision of this Agreement or application thereof to any person or situation shall to any extent, be held invalid or unenforceable, the remainder of this Agreement, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable, shall not be affected thereby, and shall continue in full force and effect, and be enforced to the fullest extent permitted by law.
28. **Waiver.** Failure of CITY to insist upon strict performance of any provision or condition of this Agreement, or to execute any right therein contained, shall not be construed as a waiver or



relinquishment for the future of any such provision, condition, or right, but the same shall remain in full force and effect.

29. **Compliance with Laws.** CONTRACTOR shall comply with any and all Federal, State, and local laws and regulations now in effect, or hereinafter enacted during the term of this Agreement, which are applicable to CONTRACTOR, its employees, agents or subcontractors, if any, with respect to the work and services described herein. A violation of any federal, state, or local law or regulation may be cause for breach, allowing the CITY to terminate this Agreement.
30. **Entire Agreement.** These terms, together with **Exhibit "A"** and **Exhibit "B"**, incorporated herein by this reference, set forth the entire understanding of the parties and supersedes all prior agreements, whether written or oral, with respect to such subject matter. All references to "County" or "Lead Public Agency" in the before mentioned attachments shall be construed as a reference to CITY, and all terms and conditions shall be deemed as having been available for use by the City of Pembroke Pines. Where the before mentioned attachments reference laws and regulation of another local and/or state jurisdiction, such citation or reference will be replaced by the comparable Florida law or local regulation.
31. **Conflict of Terms.** In the event of any conflict or ambiguity by and between the terms set forth in **Exhibit "A"** and **Exhibit "B"** with the terms set forth herein, the terms of this Agreement shall prevail followed by **Exhibit "B"** and then **Exhibit "A"**.
33. **Designated Personnel.** Contract Manager: Frank Ford, (954) 499-9598. In the event the CITY desires to change the personnel designated herein, CITY will provide CONTRACTOR written notice of such change.
34. The CONTRACTOR acknowledges and agrees that the CITY reserves the right to review and negotiate the license and maintenance terms and conditions prior to any purchase of software under this Agreement and that the CONTRACTOR will provide full support for executing the negotiated license/maintenance agreements by the CITY and the software publisher. The CONTRACTOR also agrees to obtain agreement from its software publishers that their shrink wrap, browse wrap, click through, or similar processes are for access purposes only, and any terms and conditions offered in or referenced by those procedures will have no force or effect.

SIGNATURE PAGE FOLLOWS



IN WITNESS OF THE FOREGOING, the Parties have set their hands and seals the day and year first written above.

CITY:

CITY OF PEMBROKE PINES, FLORIDA

ATTEST:

MARLENE D. GRAHAM, CITY CLERK

BY: _____
MAYOR FRANK C. ORTIS

APPROVED AS TO FORM:

Print Name: _____
OFFICE OF THE CITY ATTORNEY

BY: _____
CHARLES F. DODGE, CITY MANAGER

CONTRACTOR:

SAFEWARE, INC.

Signed By: Peter Van Kirk

Name: Peter Van Kirk

Title: Safeware, National Director