

STATE OF ALABAMA     )

COUNTY OF BALDWIN    )

**AGREEMENT FOR PROFESSIONAL SERVICES**

This Agreement for Professional Services (“Agreement”) is made and entered into by and between the Baldwin County Commission, the honorable county governing body of Baldwin County, Alabama (hereinafter collectively referred to as “COMMISSION”), and OnCell Systems, Inc. (hereinafter referred to as “PROVIDER”).

**WITNESSETH:**

**WHEREAS**, the COMMISSION remains committed to public access, and providing information to the public; and

**WHEREAS**, the COMMISSION continues to cause the production of various documentaries; and

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants contained herein, the sufficiency of which being hereby acknowledged, PROVIDER and COMMISSION do hereby agree as follows:

- I.     Definitions. The following terms shall have the following meanings:
  - A. COMMISSION: The Baldwin County Commission, the honorable county governing body of Baldwin County, Alabama
  - B. PROVIDER: OnCell Systems, Inc.
  
- II.    Obligations Generally. The COMMISSION hereby retains, and the PROVIDER agrees to perform for the COMMISSION, those professional services as hereinafter set forth and attached. This document shall serve as the binding agreement for the services of PROVIDER. PROVIDER shall immediately commence performance of the professional services outlined herein upon full execution of this Agreement. All work shall be commenced and completed in a timely manner as, herein set out.
  
- III.   Recitals Included. The above recitals and statements are incorporated as part of this Agreement and shall have the effect and enforceability as all other provisions herein.
  
- IV.    Professional Qualifications. For the purpose of this Agreement, the PROVIDER represents and warrants to the COMMISSION that it possesses the professional, technical, and administrative personnel with the specific experience and training necessary to provide the professional services required herein.

- V. No Prohibited Exclusive Franchise. The COMMISSION neither perceives nor intends by this Agreement a granting of an exclusive franchise or violation of Art. I, Section 22 of the Alabama Constitution.
- VI. Representation/Warranty of Certifications, Etc. PROVIDER represents and warrants that PROVIDER is presently certified, licensed and otherwise permitted under all necessary and applicable laws and regulations to perform the services herein, and that PROVIDER shall renew, maintain, and otherwise ensure that all such certifications, licenses, and permits are current and valid, without interruption, for and through completion of the services.
- VII. Legal Compliance. PROVIDER shall at all times comply with all applicable Federal, State, local and municipal laws and regulations.
- VIII. Independent Contractor. PROVIDER acknowledges that it is an independent contractor, and PROVIDER shall at all times remain as such in performing the services under this Agreement. PROVIDER is not an employee, servant, partner, or agent of the COMMISSION and has no authority, whether express or implied, to contract for or bind the COMMISSION in any manner. The parties agree that PROVIDER shall be solely responsible for and shall have full and unqualified control over developing and implementing its own means and methods, as it deems necessary and appropriate, in providing the services hereunder, and that the COMMISSION'S interests herein are expressly limited to the results of said services. PROVIDER is not entitled to unemployment insurance benefits, and PROVIDER is responsible for and obligated to pay any and all federal and state income tax on any monies paid pursuant to this Agreement.
- IX. No Agency Created. It is neither the express nor the implied intent of PROVIDER or COMMISSION to create an agency relationship pursuant to this Agreement. Therefore, the PROVIDER does not in any manner act on behalf of COMMISSION, and the creation of such a relationship is prohibited and void.
- X. Unenforceable Provisions. If any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof. This Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
- XI. Entire Agreement. This Agreement represents the entire and

integrated agreement between the COMMISSION and PROVIDER and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by written instrument signed by all parties.

**XII.** Failure to Strictly Enforce Performance. The failure of the COMMISSION to insist upon the strict performance of any of the terms, covenants, agreements and conditions of this Agreement shall not constitute and shall never be asserted by PROVIDER as constituting, a default or be construed as a waiver or relinquishment of the right of the COMMISSION to thereafter enforce any such term, covenant, agreement, or condition, but the same shall continue in full force and effect.

**XIII.** Assignment. This Agreement or any interest herein shall not be assigned, transferred or otherwise encumbered by PROVIDER without the prior written consent of the COMMISSION, which may be withheld or granted in the sole discretion of the COMMISSION.

**XIV.** Ownership of Documents/Work. The COMMISSION shall be the owner of all copyright or other intellectual property rights in videos, compact discs, DVDs, reports, documents and deliverables produced and paid for under this Agreement, and to the extent permitted by Alabama law, any such material may be reproduced and reused at the discretion of the COMMISSION without payment of further consideration. PROVIDER shall not transfer, disclose, or otherwise use such information for any purpose other than in performance of the services hereunder, without the COMMISSION'S prior written consent, which may be withheld or granted in the sole discretion of the COMMISSION.

**XV.** Notice. Notice required herein shall be in writing, unless otherwise allowed, and said notice shall be deemed effective when received at the following addresses:

PROVIDER:                    OnCell Systems, Inc.  
   1160D Pittsford-Victor Road  
   Pittsford, New York 14532

COMMISSION:                Baldwin County Commission  
   c/o Chairman  
   312 Courthouse Square, Suite 12  
   Bay Minette, Alabama 36507

**XVI.** Services to be Rendered. PROVIDER is retained by the COMMISSION as a professionally-qualified producer of documentaries, upon request by the Commission. The general scope of work for the services will encompass:

A.        OnCell Yearly Subscription – Local & Specialty Plan,

all as more fully set out at “**Exhibit A**” hereto, which Exhibit is expressly incorporated herein.

**B. Insurance Documents “Exhibit B”**

1. The Baldwin County Commission will be billed at a price of \$1,188.00 by invoice, for the following services:
  - a. OnCell Yearly Subscription – Local & Specialty Plan

**C. PROVIDER** will provide ongoing communications with the COMMISSION regarding this service, including updates, emails etc. as requested. Additionally, PROVIDER will meet with COMMISSION as needed or requested.

**D. PROVIDER** is responsible for the professional quality, technical accuracy, timely completion and coordination of all services furnished by or in relation to this Agreement.

**E. PROVIDER** represents and warrants that its services shall be performed within the limits and standards provided by the COMMISSION, in a manner consistent with the level of care and skill ordinarily exercised by similar providers under similar circumstances at the time the services are performed, and more particularly in a manner consistent with the level of care and skill which PROVIDER has exercised in the provision of these services heretofore.

**XVII. General Responsibilities of the COMMISSION.**

A. The COMMISSION shall provide reasonable notice to PROVIDER whenever the COMMISSION observes or otherwise actually becomes aware of any development that affects the scope or time of PROVIDER’s services hereunder or any defect or nonconformance in the work of PROVIDER.

B. The COMMISSION shall pay to PROVIDER the compensation subject to the terms set out below.

**XVIII. Termination of Services.** The COMMISSION or PROVIDER may terminate this Agreement, with or without cause or reason, by giving thirty (30) days written notice of such to the other party. Upon receipt of such notices, PROVIDER shall discontinue its work to the extent specified in the notice.

In the event of termination, the COMMISSION shall pay PROVIDER for all services satisfactorily rendered, and for any expenses deemed by COMMISSION to be a reimbursable expense incurred pursuant to this Agreement and prior to the date of termination.

- XIX.** Compensation Limited. The compensation to be paid to the PROVIDER shall be the full compensation for all work performed by PROVIDER under this Agreement. Any and all additional expenditures or expenses of PROVIDER, not listed in full within this Agreement, shall not be considered as a part of this Agreement and shall not be demanded by PROVIDER or paid by COMMISSION.
- XX.** Compensation. Compensation to PROVIDER for work shall be paid pursuant to the terms, prices and amounts set out in Section XVI of this Agreement. Said compensation shall be all inclusive, including without limitation, reimbursement of all cost, incidentals and operating expense associated with those directly engaged in performance of the requested services.
- XXI.** Method of Payment. PROVIDER shall submit invoices to the COMMISSION for payment for work performed. Such invoice shall be accompanied by a detailed account of compensation to be paid PROVIDER.
- Payment shall be made by the COMMISSION within thirty (30) days of the approval of the invoice submitted by the PROVIDER. The COMMISSION agrees to review and approve invoices submitted for payment in a timely manner.
- XXII.** Effective and Termination Dates. This Agreement shall be effective and commence on February 17, 2023, and the same shall terminate upon the expiration of twelve (12) months, on February 17, 2024, with an option to renew (not exceeding thirty-six (36) months. This Agreement may also be terminated by a written notification thereof received by either party pursuant to Section XVIII herein related to termination of services. Nothing herein stated shall prohibit the parties from otherwise terminating this Contract according to the provisions herein.
- XXIII.** Force Majeure. The Parties hereto shall incur no liability to the other if performance becomes impossible or impracticable by reason of an event or effect that the parties could neither have anticipated nor controlled. This allowance shall include both an act of nature and acts of third parties. Any costs that would otherwise be incurred and/or necessitated by the provisions herein shall be alleviated for either party by such event or effect.
- XXIV.** Indemnification. To the fullest extent allowed by law, PROVIDER shall indemnify, defend and hold COMMISSION and its Commissioners, affiliates, employees, agents, representatives, contractors, subcontractors, licensees and invitees (collectively herein, "COMMISSION") harmless from and against any and all claims, demands, liabilities, damages, losses, judgments and costs,

and expenses including, without limitation, attorneys' fees, for any and all personal injury (including death), property damage or any other damage or injury of any kind or nature whatsoever, incurred by, asserted against, or imposed upon COMMISSION, arising from or related to this Agreement or the services to be provided hereunder.

**XXV. Number of Originals.** This Agreement shall be executed with two (2) originals, both of which are equally valid as an original.

**XXVI. Governing Law.** This Agreement and all aspects thereof, including without limitation any and all claims or actions arising therefrom or based thereon, shall be governed by the law of the State of Alabama, without regard to Alabama conflict of law principles, and any action between the parties hereto shall be brought solely in the Circuit Court of Baldwin County, Alabama.

**XXVII. Insurance.** Prior to performing services pursuant to this Agreement, Provider shall carry, with insurers satisfactory to the County Commission, throughout the term of hereof, Commercial General Liability Insurance, including all contractual liability hereunder, with limits not less than \$1,000,000, combined single limit, for both bodily injury liability and property damage liability each occurrence; *All liability insurance shall name the County Commission as an additional insured.* Prior to commencing operations hereunder, a Certificate of Insurance evidencing such coverage, satisfactory to County, shall be furnished to County, which shall specifically state that such insurance shall provide for at least a thirty (30) day notice to County in the event of cancellation, termination or any change in such insurance policies. The workers compensation certificate shall bear an endorsement clearly evidencing a waiver of the right of subrogation against the County and County Representatives. Should Provider fail to furnish current evidence upon demand of any insurance required hereunder, or in the event of cancellation, termination or change in any such insurance, Commission may, at its option, suspend this Agreement until insurance is obtained, terminate this Agreement immediately without further action, or hold Provider in material default and pursue any and all remedies available. Said Certificate of Insurance evidencing said coverage is attached hereto as "**Exhibit B**" as if fully set forth.

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the last day of execution by the COUNTY as written below.

**BALDWIN COUNTY COMMISSION**  
**"COMMISSION"**

ATTEST:

\_\_\_\_\_  
Charles F. Gruber /Date  
Chairman

\_\_\_\_\_  
Ronald J. Cink /Date  
Budget Director

STATE OF ALABAMA        )  
COUNTY OF BALDWIN     )

I, \_\_\_\_\_, a Notary Public in and for said County and State, hereby certify that Charles F. Gruber, as Chairman of the Baldwin County Commission, and Ronald J. Cink as Budget Director/Interim County Administrator of the Baldwin County Commission, whose names are signed to the foregoing instrument and who are known to me, acknowledged before me on this day that being informed of the contents of the instrument, they, as such officers and with full authority, executed the same voluntarily for and as the act of said Baldwin County Commission.

GIVEN under my hand and seal on this the \_\_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Notary Public  
Commission Expires:

**OnCell Systems, Inc.**  
**“PROVIDER”**

\_\_\_\_\_  
/Date  
Its \_\_\_\_\_

STATE OF ALABAMA        )  
COUNTY OF BALDWIN     )

I, \_\_\_\_\_, a Notary Public in and for said County and State, hereby certify that OnCell Systems, Inc. as \_\_\_\_\_ of OnCell Systems, Inc., whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said entity.

GIVEN under my hand and seal on this the \_\_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Notary Public  
Commission Expires: