

QSCEND TERMS OF USE - v120729

QScend Technologies Inc., a _____ corporation, (“QScend”, “we”, “us” “our” and terms of similar meaning) provides its software applications, hosted software and mobile applications and professional services to you subject to these terms and conditions of use (“Terms”).

In these Terms we refer to each of QScend’s software applications as the “Software”, its hosted software services (available under the domain and sub domains of qscend.com or through a Subscriber’s web page) (collectively, the “Site”), its mobile applications as the “Applications” and the web-hosting, installation, implementation and other professional services as “Professional Services.” The Software, the Site, the Applications and the Professional Services are collectively referred to as the “QScend Services.”

Please read these Terms carefully before using the QScend Services. By accessing or using the QScend Services you agree to be legally bound by these Terms and all terms, policies and guidelines incorporated by reference in these Terms. If you do not agree with these Terms in their entirety, you may not use the QScend Services.

In these Terms, our customers are called “Subscribers” and end-users (i.e., Subscriber employees, contractors or residents) who use the QScend Services (for example, to record, edit, view or submit service requests) are called “Users.”

QScend reserves the right to change or modify any of the terms and conditions contained in these Terms, or any policy or guideline applicable to the QScend Services, at any time and in its sole discretion by posting the amended terms on our website and providing you at least thirty days’ prior written notice. Your use of the QScend Services after such thirty-day notice period will constitute your acceptance of such changes or modifications. If you do not agree to any amended Terms, you must stop using the QScend Services before expiration of the thirty-day notice period, in which case QScend will refund to you the amount of the pro rated pre-paid unused services. If you have any questions about the Terms, please email us at legal@qscend.com.

The QScend Services are for your own use only. You may not resell, lease or provide them in any other way to anyone else, except as expressly permitted through the Site and the Applications.

1. Privacy Policy

Please refer to QScend's privacy policy, available at www.qscend.com/privacy (the “Privacy Policy”) for information on how QScend collects, uses and discloses information from its users. By using the QScend Services you agree to our use, collection and disclosure of information in accordance with the Privacy Policy.

2. Account Security

If you register for an account for the QScend Services, you agree to (a) provide accurate, current and complete information as may be prompted by any registration forms in connection with the QScend Services (“Registration Data”); (b) except as otherwise provided by Florida law, maintain the security of your password; (c) maintain and promptly update the Registration Data and any other information you provide to QScend, and to keep it accurate, current and complete; and (d) accept all risks of unauthorized access to the Registration Data and any other information you provide to QScend. You are responsible for all activity on your QScend account, and for all charges incurred by your QScend account.

3. Fees; Charges; Taxes

Each Subscriber is responsible for: (i) all fees and any other charges as described on an Order, and (ii) except to the extent exempt, all sales, use and other taxes applicable to the fees and charges in any applicable jurisdiction. Fees shall be due and payable thirty (30) days from the date of the invoice and shall be deemed overdue if unpaid thereafter. Each Subscriber shall be liable for any and all expenses incurred in collection of any unpaid fees, including reasonable attorneys’ fees and expenses. Without limiting its rights or remedies, QScend shall have the right to halt or terminate use or access to the QScend Services to Subscriber or its Users if payment is not received within sixty (60) days of the invoice date.

4. Ownership, Copyright and Trademarks

In these Terms, the content available through the QScend Services, including all information, data, logos, marks, designs, graphics, pictures, sound files, other files, and their selection and arrangement, is called “Content.” Content provided by Users is called “User Content” and is the property of the respective User. Solely in connection with any website development services performed by QScend for a Subscriber, any newly-created web-based graphical designs created by QScend shall be referred to as “New Website Designs,” shall be deemed “work for hire,” and shall be owned by Subscriber.

Other than the User Content and any New Website Designs, the QScend Services, the Content, and any Work Product created in connection with any Professional Services and all software made available to Users on the QScend Services or used to provide and operate the QScend Services is the property of QScend or its licensors, and is protected by U.S. and international copyright laws. All rights to the QScend Services, the Content, all Work Product and such software are expressly reserved by QScend. For purposes of these Terms, “Work Product” means the tangible and intangible results of the Professional Services, including, without limitation, any and all software object and source code, HTML, CGI, XML formatting, computer system designs, documentation, any writings of any kind, user interfaces, audio-visual works, “look and feel,”

artwork, illustrations, images, photographs, printed or graphic matter, trademarks (including service marks, trade dress, trade names, logos, corporate names, and Internet domain names), copyrights and copyrightable works, preparatory materials, charts, diagrams, memoranda, drafts, sketches, outlines, developments, materials, data, inventions (whether patentable or not), improvements, processes, discoveries, ideas, know-how, techniques, formulae, compositions, methodologies, program materials, notes, lists, compilations, manuscripts, pictorial materials, schematics, drawings, specifications, blueprints, flowcharts, schematics, protocols, designs, design rights, plans, business plans, proposals, technical data, financial and marketing plans and customer and supplier lists and information, and other items, created, developed or supplied in connection with the Professional Services.

All trademarks, service marks, product names or logos mentioned in the QScend Services are the property of their respective owners. Reference to any products, services, processes or other information, by trade name, trademark, manufacturer, supplier or otherwise does not constitute or imply endorsement, sponsorship or recommendation thereof by QScend.

Your User Content is your responsibility. We have no responsibility or liability for it, or for any loss or damage your User Content may cause to you or other people. You are solely responsible for maintaining copies of and replacing any User Content you post or store on the QScend Services. If you authorize third parties to access your User Content through the QScend Services, you agree that we are permitted to provide to them the User Content, and also agree that we have no responsibility or liability for their use of such User Content.

5. Limited License to QScend

We do not claim any ownership interest in your User Content, but we do need the right to use your User Content to the extent necessary to provide the QScend Services, now and in the future. Therefore, by posting or distributing User Content to or through the QScend Services, you: (a) grant QScend and its affiliates and subsidiaries a non-exclusive, royalty-free, transferable right to use, display, perform, reproduce, distribute, publish, modify, adapt, translate, and create derivative works from such User Content, in the manner in and for the purposes for which the QScend Services from time to time use such User Content; (b) represent and warrant that: (i) you own and control all of the rights to the User Content that you post or otherwise distribute, or you otherwise have the lawful right to post and distribute that User Content, to or through the QScend Services; and (ii) the use and posting or other transmission of such User Content does not violate these Terms and will not violate any rights of or cause injury to any person or entity.

If your User Content is intended for the use of other Users, you also grant us and our affiliates and subsidiaries a non-exclusive, royalty-free, transferable right to sublicense such User Content to such Users for their use in connection with their use of the QScend Services.

These licenses from you are non-exclusive because you have the right to use your User Content elsewhere. They are royalty-free because we are not required to pay you for the use of your User Content on the QScend Services and they are transferable because we need the right to transfer these licenses to any successor operator of the QScend Services. Our rights to “modify, adapt, translate, and create derivative works from” are necessary because the normal operation of the QScend Services does this to your User Content when it processes it for use in the QScend Services.

6. Limited License to You

QScend grants you a limited, revocable, non-exclusive, non-sublicensable license to use and access the QScend Services and to view, copy and print the portions of the Content available to you through the QScend Services. Such license is subject to these Terms, and specifically conditioned upon the following: except as otherwise provided by Florida law, (i) you may only view, copy and print such portions of the Content for your own use; (ii) you may not modify or otherwise make derivative works of the Content, or reproduce, distribute or display the Content except as expressly permitted in these Terms; (iii) you may not remove or modify any copyright, trademark, or other proprietary notices that have been placed in the Content; (iv) you may not use any data mining, robots or similar data gathering or extraction methods; and (v) you may not use the QScend Services or the Content other than for their intended purpose. Additional restrictions, as set forth in an order form executed by Subscriber and QScend (“Order”), may be applicable to a Subscriber.

Except as expressly permitted above or except as otherwise provided by law, any use of any portion of the Content without the prior written permission of QScend is strictly prohibited and will terminate the license granted to you, this Agreement and your account with us. Any such unauthorized use may also violate applicable laws, including without limitation copyright and trademark laws. Unless explicitly stated herein, nothing in these Terms may be construed as conferring any license to intellectual property rights, whether by estoppel, implication or otherwise. The license in this Section is revocable by QScend at any time.

You represent and warrant that your use of the QScend Services and the Content will be consistent with this license and will not infringe or violate the rights of any other party or breach any contract or legal duty to any other parties, or violate any applicable law.

7. Providing a Reliable and Secure Service

We take reliability and security seriously and we put a great deal of effort into ensuring that our service operates consistently, and that it is a secure environment for your data. We believe our QScend Services and security technologies meet or exceed industry standards and we believe we provide you with a reasonably secure and safe environment.

However, no system is perfectly secure or reliable, the Internet is an inherently insecure medium, and the reliability of hosting services, Internet intermediaries, your Internet service provider, and other service providers cannot be assured. When you use the QScend Services, you accept these risks, and the responsibility for choosing to use a technology that does not provide perfect security or reliability.

8. No Responsibility for Third-Party Material

The QScend Services may contain links to third-party Web sites ("Third-Party Sites") and third-party content ("Third-Party Content") as a service to those interested in this information. You use links to Third-Party Sites and any Third-Party Content or service provided there, at your own risk.

QScend makes no claim or representation regarding Third-Party Content or Third-Party Sites, and provides them or links to them only as a convenience. Inclusion in the QScend Services of a link to a Third-Party Site or Third-Party Content does not imply QScend's endorsement, adoption or sponsorship of, or affiliation with, such Third-Party Site or Third-Party Content. QScend accepts no responsibility for reviewing changes or updates to, or the quality, content, policies, nature or reliability of, Third-Party Content, Third-Party Sites, or Web sites linking to the QScend Services. When you leave the QScend Services, our terms and policies no longer govern. You should review applicable terms and policies, including privacy and data gathering practices, of any Third-Party Site, and should make whatever investigation you feel necessary or appropriate before proceeding with any transaction with any third party.

9. Professional Services

Subscriber may obtain Professional Services from QScend under these Terms by signing an Order which specifies the scope and schedule of Professional Services to be performed by QScend for Subscriber and the applicable fees. Unless otherwise expressly stated in the applicable Order, Professional Services shall be provided on a time and materials ("T&M") basis at QScend's T&M rates in effect at the time the Professional Services are performed. On a T&M engagement, if an estimated total amount is stated in the applicable Order, that amount is solely a good faith estimate for Subscriber's budgeting and QScend's resource scheduling purposes and not a guarantee that the work will be completed for that amount; the actual amount may be higher or lower. If the estimated amount is expended, QScend will continue to provide Professional Services on a T&M basis under the same rates and terms. Subject to Subscriber's prior approval of each expense, Subscriber agrees to reimburse QScend for all material(s) and reasonable travel in accordance with Subscriber's Travel Allowance and Subsistence Policy, administrative, and out-of-pocket expenses incurred in conjunction with the performance of the Professional Services.

10. Warranty Disclaimer; User Warranty

The Software, Applications and the Content are provided to you on an "as is" basis without warranties from QScend of any kind, either express or implied.

QScend warrants that the Professional Services will be performed in a professional and workmanlike manner, in accordance with generally accepted industry standards. Subscriber must report any deficiencies in the Professional Services to QScend in writing within ten (10) business days of performance of such Professional Services in order to receive warranty remedies. FOR ANY BREACH OF THIS PROFESSIONAL SERVICES WARRANTY, SUBSCRIBER'S EXCLUSIVE REMEDY, AND QSCEND'S ENTIRE LIABILITY, SHALL BE LIMITED TO THE RE-PERFORMANCE OF THE DEFICIENT PROFESSIONAL SERVICES. IF QSCEND IS UNABLE TO RE-PERFORM THE PROFESSIONAL SERVICES AS WARRANTED, SUBSCRIBER SHALL BE ENTITLED TO RECOVER THE FEES PAID TO QSCEND FOR THE DEFICIENT PROFESSIONAL SERVICES. QSCEND EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND TITLE. QSCEND DOES NOT REPRESENT OR WARRANT THAT THE QSCEND SERVICES OR THE CONTENT ARE ACCURATE, COMPLETE, RELIABLE, CURRENT OR ERROR-FREE. WHILE QSCEND ATTEMPTS TO MAKE YOUR ACCESS TO AND USE OF THE QSCEND SERVICES SAFE, QSCEND DOES NOT REPRESENT OR WARRANT THAT THE QSCEND SERVICES OR THE CONTENT ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS.

If you are a Subscriber, you represent, warrant and covenant that any person to whom you give access to your account (including as staff) will not, in connection with the QScend Services, collect, input, store or otherwise use: (i) nonpublic personal information (including social security numbers) as defined under federal and/or state law; or (ii) protected health information as defined under federal and/or state law.

If you are a User, you represent, warrant and covenant that you will not, in connection with the QScend Services, collect, input, store or otherwise use: (i) nonpublic personal information (including social security numbers) as defined under federal and/or state law; or (ii) protected health information as defined under federal and/or state law.

Subscriber represents, warrants, and covenants to QScend that: (i) the individual signing an Order on Subscriber's behalf has the full legal authority necessary to enter into the Order and bind Subscriber to these Terms; and (ii) the execution of the Order by Subscriber and the performance of Subscriber's obligations pursuant to these Terms will not violate any agreement, whether written or oral, to which Subscriber is a party.

11. Limitation of Liability

You waive and shall not assert any claims or allegations of any nature whatsoever against QScend, its affiliates or subsidiaries, their sponsors, contractors, advertisers, vendors or other partners, any of their successors or assigns, or any of their respective officers, directors, agents or employees (collectively, the "Released Parties") arising out of or in any way relating to your use of the Content or the QScend Services,

including, without limitation, any claims or allegations relating to infringement of proprietary rights, or allegations that any Released Party has or should indemnify, defend or hold harmless you or any third party from any claim or allegation arising from your use or other exploitation of the Content or the QScend Services. You use the Content and the QScend Services at your own risk.

WITHOUT LIMITATION OF THE FOREGOING, NEITHER QSCEND NOR ANY OTHER RELEASED PARTY SHALL BE LIABLE FOR ANY DIRECT, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES, OR ANY OTHER DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO LOSS OF USE, LOSS OF PROFITS OR LOSS OF DATA OR LOSSES AS A RESULT OF DISCLOSURE OF USER CONTENT OR OTHER DATA, WHETHER IN AN ACTION IN CONTRACT, TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE) OR OTHERWISE, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE USE OF (OR INABILITY TO USE) THE CONTENT OR THE QSCEND SERVICES, INCLUDING WITHOUT LIMITATION ANY DAMAGES CAUSED BY OR RESULTING FROM YOUR RELIANCE ON THE CONTENT OR THE QSCEND SERVICES OR OTHER INFORMATION OBTAINED FROM QSCEND OR ANY OTHER RELEASED PARTY OR ACCESSIBLE VIA THE QSCEND SERVICES, OR THAT RESULT FROM MISTAKES, ERRORS, OMISSIONS, INTERRUPTIONS, DELETION OF FILES OR EMAIL, DISCLOSURE OF USER CONTENT, DEFECTS, VIRUSES, DELAYS IN OPERATION OR TRANSMISSION OR ANY FAILURE OF PERFORMANCE, WHETHER OR NOT RESULTING FROM ACTS OF GOD, COMMUNICATIONS FAILURE, THEFT, DESTRUCTION OR UNAUTHORIZED ACCESS TO QSCEND OR ANY OTHER RELEASED PARTY'S RECORDS, PROGRAMS OR SERVICES.

IN NO EVENT SHALL THE AGGREGATE LIABILITY OF QSCEND, WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE, WHETHER ACTIVE, PASSIVE OR IMPUTED), PRODUCT LIABILITY, STRICT LIABILITY OR OTHER THEORY, ARISING OUT OF OR RELATING TO THE USE OF THE CONTENT OR THE QSCEND SERVICES EXCEED ANY COMPENSATION PAID BY YOU FOR ACCESS TO OR USE OF THE CONTENT OR THE QSCEND SERVICES, AS THE CASE MAY BE, DURING THE THREE (3) MONTHS IMMEDIATELY PRIOR TO THE DATE OF ANY CLAIM.

12. Communications

Notices that we give you may be provided in any number of ways, depending on the circumstances. For example, we may email you or telephone you at the contact information you provide or we may post a notice to Subscribers in the login or dashboard area of your account on the Site, or post the notice elsewhere on the Site. When we post notices on the Site, we post them in the area of the Site suitable to the notice. It is your responsibility to periodically review the Site for notices.

Subject to the Privacy Policy and Florida law, if you send to QScend or post on the Site in any public area any information, ideas, inventions, concepts, techniques or know-how ("User Submissions"), for any purpose, including the developing, manufacturing and/or marketing or products or services incorporating such information, you acknowledge that QScend can use the User Submissions without acknowledgement or compensation to you, and you waive any claim of ownership or compensation or other rights you may have in relation to the User Submissions. We actively review User Submissions for new ideas. If you wish to preserve any interest you might have in your User Submissions, you should not post them to the Site or send them to us.

13. Applicable Law and Venue

The QScend Services are controlled by QScend and operated by it from its offices in Connecticut. You and QScend explicitly agree that all disputes, claims or other matters arising from or relating to your use of the Content, the QScend Services or these Terms will be construed in accordance with the laws of the State of Florida without regard to its conflicts of law principles. All disputes under this Agreement shall be resolved by the State courts in and for Broward County in the State of Florida or in the United States District Court for the Southern District of Florida, and each party consents to the exclusive jurisdiction of such courts and hereby waives any jurisdictional or venue defenses otherwise available to it.

You will be responsible for compliance with all local laws of the jurisdiction within which you use the QScend Services.

14. Termination/Modification of License and QScend Services

Notwithstanding any provision of these Terms, QScend reserves the right, in its sole discretion, following 30 days' written notice, without any liability to you except a refund of the pro rata amount for unused services, to (a) terminate your license to use the QScend Services, or any portion thereof and the rights of any third party to which you have granted access to your User Content; (b) block or prevent your future access to and use of all or any portion of the QScend Services or Content and the rights of any third party to which you have granted access to your User Content; (c) change, suspend or discontinue any aspect of the QScend Services or Content; and (d) impose limits on the QScend Services or Content.

15. Termination of Agreement

You and QScend may terminate your use of the QScend Services, including your agreement to these Terms, at any time upon 30 days' written notice. If Subscriber terminates its use of the QScend Services, Subscriber must pay any fees applicable for the balance of the then current Term specified on your Order. Termination by Subscriber hereunder will not limit QScend from pursuing any other remedies available to it, including injunctive relief, nor shall termination relieve Subscriber of its obligation to pay all fees and expenses accruing prior to such termination.

In the event a Subscriber's QScend account is terminated, the applicable User Content will, shortly thereafter, no longer appear on the QScend Services. We may or may not retain an archival copy of such User Content after termination, and Subscriber hereby grants us a non-exclusive, perpetual, irrevocable license to maintain such archival copy for our internal business purposes.

If these Terms expire or terminate for any reason, Sections 3, 4, 5, 7, 8, 10, 11, 13, 15 and 16, including any covenant, representation or warranty you make in these Terms, shall survive indefinitely.

16. Miscellaneous

If any provision of these Terms shall be deemed unlawful, void or for any reason unenforceable by a court of competent jurisdiction, then that provision shall be deemed severable from these Terms and shall not affect the validity and enforceability of any remaining provisions. QScend may assign any or all of its rights hereunder to any party without your consent. You are not permitted to assign any of your rights or obligations hereunder without the prior written consent of QScend, and any such attempted assignment will be void and unenforceable. QScend shall not be liable in damages for any delay or default in providing the QScend Services hereunder if such delay or default is caused by conditions beyond its control, including but not limited to, acts of God, government restrictions, wars, insurrections and/or any other cause beyond the reasonable control of QScend (including mechanical, electronic, or communications failure). These Terms constitute the entire agreement between you and QScend regarding your use of the Content and the QScend Services, and supersede all prior or contemporaneous communications whether electronic, oral or written between you and QScend regarding your use of them.

17. Questions and Comments

If you have any questions regarding these Terms or your use of the QScend Services, please contact us here:

QScend Technologies Inc.

231 Bank Street

Waterbury CT 06702

(203) 757-6000 (phone)

(203) 759-0519 (fax)

legal@qscend.com

18. Public Records

Pursuant to Section 119.0701, Florida Statutes (2013), notwithstanding anything contained in this Agreement to the contrary, QScend shall:

- a) Keep and maintain public records that ordinarily and necessarily would be required by Subscriber in order to perform the Services.
- (b) Provide the public with access to public records on the same terms and conditions that Subscriber would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes (2013), as may be amended or revised, or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.
- (d) Meet all requirements for retaining public records and transfer, at no cost, to Subscriber, all public records in possession of QScend upon termination of this contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to Subscriber in a format that is compatible with Subscriber's information technology systems.

CITY

ATTEST:

CITY OF FORT LAUDERDALE

Jonda K. Joseph, City Clerk

John P. "Jack" Seiler, Mayor

Lee R. Feldman, City Manager

Approved as to form:

City Attorney

QSCEND TECHNOLOGIES

WITNESSES:

QSCEND TECHNOLOGIES INC.:

Print Name:

By: _____

Print Name:

Print Name:

Title:

ATTEST:

Print Name:

Secretary

(Corporate Seal)

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____ 2013, by _____ as _____ for QScend Technologies Inc., a _____ corporation.

(SEAL)

(Signature of Notary Public)

(Print, Type, or Stamp Commissioned Name of Notary Public)

State of _____

Personally Known _____ OR Produced Identification _____

Type of Identification Produced _____

ADDENDUM- 1
Account Information

Subscriber:	City of Fort Lauderdale	Title:	Applications Services Manager
Contact Name:	Kevin Keimel	Address 2:	
Address 1:		State:	FL
City:	Fort Lauderdale	Contact phone:	954-828-5722
Zip:		Email:	kkeimel@forlauderdale.gov
Facsimile:			
Effective Date:	12/31/2013		

DESCRIPTION	LICENSE TYPE	FEE	EXTENDED PRICE
QAlert Citizen Service Request Management Software	Perpetual	\$79,900	\$79,900
Setup/Configuration	Service	n/a	\$19,900
1 Year Software Maintenance and Support	Service	n/a	Included
12 months – Enterprise Application Hosting	Hosting	\$400/month	\$4,800
QScend Academy – 1 year Subscription	Training	n/a	Included

- (1.) Hosting includes Microsoft IIS and Microsoft SQL Server.
- (2.) Billing for monthly hosting will begin on the day of installation of QAlert.
- (3.) Services are billed in the month in which they are performed.
- (4.) Optional Maintenance and Support can be renewed beginning in year two for 20% of the then current list price of the software.

IN WITNESS WHEREOF, the Parties have caused this Schedule to be duly executed on their behalf, effective from the date set forth below.

CITY

ATTEST:

 Jonda K. Joseph, City Clerk

CITY OF FORT LAUDERDALE

 John P. "Jack" Seiler, Mayor

 Lee R. Feldman, City Manager

Approved as to form:

 City Attorney



WITNESSES:

QSCEND TECHNOLOGIES INC.:

Print Name: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

ATTEST:

Print Name: _____

Secretary

(Corporate Seal)

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____ 2013, by _____ as _____ for QScend Technologies Inc., a _____ corporation.

(SEAL)
(Print, Type, or Stamp Commissioned Name of Notary Public)
State of _____

(Signature of Notary Public)

Personally Known _____ OR Produced Identification _____

Type of Identification Produced _____