



**THIS SERVICE AGREEMENT** (the "Agreement"), incorporating Exhibits A hereto, is effective as of February 1, 2019 (the "Effective Date"), by and between Homeowner Toolbox, Inc. d/b/a/ CounselorDirect ("CounselorDirect"), with its principal office located at 540 Wald, Irvine CA 92618, and Florida Housing Finance Corporation ("FHFC or Client"), with its principal office located at 227 N. Bronough Street, Suite 5000, Tallahassee, FL 32301 (together the "Parties"). Commencing on the Effective Date, CounselorDirect shall provide Client and participating, HUD and Client approved non-profit housing counseling agencies ("Counseling Agencies") with access to a secure web portal to allow for the uploading, transacting and reporting on homeowner data records ("Homeowner Data") associated with the Florida Foreclosure Counseling Program (the "FCP Portal") Access to the FCP Portal and homeowner data records shall be granted in accordance with terms and conditions of this Agreement.

**LICENSE FEES**

CounselorDirect shall grant Client and its Counseling Agencies a license to access and utilize the FCP Portal for a quarterly maintenance fee of \$5,400.00 per quarter ("License Fee"). The License Fee shall be due and payable on the 15<sup>th</sup> day after the start of each quarter.

**CONTACT INFORMATION**

	<i>Primary Contact</i>	<i>Billing Contact</i>
Name:	<u>Rob Dearduff</u>	_____
Address:	<u>227 N. Bronough Street, Suite 5000</u>	_____
City/ST/Zip:	<u>Tallahassee, FL 32301</u>	_____
Phone:	<u>850-488-4197</u>	_____
Fax Number:	<u>850-488-9809</u>	_____
E-Mail Address:	<u>Robert.Dearduff@floridahousing.org</u>	_____

If the terms and conditions in this Agreement are acceptable to Client, kindly signify by executing and dating both originals of this Agreement and returning one such original to CounselorDirect.

**Florida Housing Finance Corporation**

By: [Signature]  
 Name: Hugh R. Brown  
 Title: General Counsel  
 Date: 1/28/2019

**CounselorDirect**

By: [Signature]  
 Name: Jason Connolly  
 Title: President  
 Date: 01/28/2019



#### EXHIBIT A: TERMS AND CONDITIONS

1. Term. The original term of this Agreement shall be one (1) year following the Effective date. Upon termination of this Agreement, CounselorDirect shall deliver to Client a copy of the FCP Portal software application and the database or scripts to re-create the database to maintain all Homeowner Data so Client can continue the Program at its own cost and expense. Such costs and expenses may include but not limited to hosting, third-party software licenses such as MS SQL and any and all technical staff required by Client to support the FCP Portal software application. Such copy of the FCP Portal software application shall be compiled code and subject to the Intellectual Property provisions of this Agreement outlined in Sections 6, 7 and 10.
2. Resources. Client and its Counseling Agencies shall be responsible for providing Internet access and copies of Internet Explorer and Adobe Acrobat software as required for use of the FCP Portal.
3. Training and Support. CounselorDirect has already provided training for the Portal in previous terms. If future trainings are required those will be memorialized in a separate SOW. CounselorDirect shall operate and maintain telephone technical assistance support from 9:00 a.m. PST until 5:00 p.m. PST Monday through Friday (excluding designated holidays) for authorized Client representatives.
4. Storage Space & Data Access. CounselorDirect shall retain Homeowner Data through the term of this Agreement. During the term, Client shall have access to data as needed and upon request. In the event of termination, CounselorDirect shall deliver all Homeowner Data to Client in accordance with Section 1 above.
5. Custom Services. The Client may from time to time request CounselorDirect to provide additional services not otherwise set forth herein, including custom development, assistance in creating custom batch files or system interfaces, additional training sessions, and preparing custom reports or forms. All details regarding such Custom Services, including scope, fees and payment terms, shall be set forth in a written statement of work that, upon execution by both parties, shall be deemed to be a part of this Agreement and subject to the terms and conditions herein ("Custom Services SOW").
6. Licensed Rights. Subject to the terms and conditions of this Agreement, CounselorDirect hereby grants to Client, during the Term and the subsequent Client hosted period following Termination (as defined above), a personal, non-exclusive, non-transferable license (without the right to sublicense) to access and use the FCP Portal to the extent necessary for Client and its Counseling Agencies to submit, receive and process Homeowner Data in connection with its FCP Program. Client acknowledges that the software, interfaces, databases, processes, documents, logos, graphics, sounds, images and CounselorDirect provided data included in the FCP Portal contain valuable trade secrets of CounselorDirect. Accordingly, Client shall not (i) de-compile, disassemble, reverse engineer or otherwise reduce to human perceivable form the FCP Portal, or any portion thereof, or attempt to determine the algorithms of such software; or (ii) copy, distribute, modify, or create derivative works of the FCP Portal; or (iii) utilize the FCP Portal for another program or function not contemplated in this Agreement.
7. Ownership of Software. Client acknowledges and agrees that, as between CounselorDirect and Client, CounselorDirect shall retain all right, title and interest in and to all of the FCP Portal, including all intellectual property rights therein, and CounselorDirect grants no licenses to Client other than those expressly set forth in Section 6.
8. Privacy. CounselorDirect shall maintain reasonable security measures intended to provide protection against foreseeable threats or hazards to the security, integrity and confidentiality of any non-public personal information ("NPI") contained in the Homeowner Data. CounselorDirect, and its employees and agents, shall not disclose such NPI to third parties without homeowner, Counseling Agencies or Client's prior consent except as permitted by applicable law.



9. Maintenance. Client acknowledges that, from time to time, CounselorDirect will have to disable the FCP Portal in order to provide preventative and corrective maintenance services for such resources. The primary maintenance window for such activities is between 8:00 p.m. and 12:00 a.m. Pacific Time Monday through Saturday and 12:01 a.m. to 11:59 p.m. Pacific Time Sundays. CounselorDirect reserves the right to perform any required maintenance services outside the primary maintenance window; however, CounselorDirect will use its commercially reasonable efforts to limit maintenance outside the primary window to a minimum.
10. Confidentiality. "Confidential Information" shall mean all information provided or disclosed, intentionally or unintentionally, by a party (the "Client") to the other party (the "CounselorDirect") in connection with this Agreement, including without limitation: all technical and non-technical data; formulae; patterns; compilations; programs; software; devices; methods; techniques; designs; drawings; processes; business practices; plans or proposals; trade secrets; financial information; names and non-public information of employees and consultants; sales and marketing information; training and operations materials; and pricing and other financial information relating to the business or affairs of the Client and which is so defined as information that may not be disclosed under law. Confidential Information shall not include any information that: (a) enters the public domain through no fault of the CounselorDirect; (b) was in CounselorDirect's possession or known by it prior to receipt from Discloser, (c) was rightfully disclosed to it by a third party without restriction, or which is a public record and may not be held confidential under applicable law. All Confidential Information shall be held in the strictest confidence and will not be disclosed by the CounselorDirect, except as specifically permitted by the terms hereof or as may be required to be released by law. CounselorDirect will use the other party's Confidential Information solely for the purpose of performing under and in compliance with the terms of this Agreement, will not use the other party's Confidential Information for any other purpose, and will not disclose or communicate the other party's Confidential Information, directly or indirectly, to any third party, except that Client may disclose Confidential Information to its auditors or regulators, consultants or agents who are subject to written confidentiality agreements at least as restrictive as the terms of this Agreement or as may be required to be released under law. All Confidential Information shall remain the exclusive property of the Client. At any time upon request by the Client, and promptly without request upon termination of this Agreement, the CounselorDirect shall promptly surrender to the Client all of the Client's Confidential Information in the CounselorDirect's possession, or at the Client's request completely and permanently destroy all copies thereof. If the Client requests that the CounselorDirect destroy such Confidential Information, then CounselorDirect shall provide the Client with information regarding CounselorDirect's procedures and processes for destruction, and shall give written assurances, acceptable to the Client, that the Confidential Information was properly and securely destroyed. CounselorDirect acknowledges and agrees that due to the nature of Discloser's Confidential Information, there may be no adequate remedy at law for any breach of its obligations hereunder, that any such breach or any unauthorized use or release of any Confidential Information may result in irreparable harm to Discloser and therefore, that upon any such breach or any threat thereof, Discloser shall be entitled to seek appropriate equitable relief in addition to whatever remedies it might have at law. CounselorDirect will notify Discloser immediately upon learning of the occurrence of any such unauthorized release, use or other breach, and will assist Discloser in remedying such breach. CounselorDirect may make disclosures required by applicable law or regulation provided CounselorDirect promptly notifies Discloser, gives Discloser an opportunity to limit disclosure and to obtain confidential treatment or a protective order and, to the extent permitted by law, allows Discloser to participate in the proceeding. Notwithstanding the provisions set forth above, Client must act in all cases in accordance with the laws that apply to the production of public records.
11. Disclaimer. The services are provided "as is," and CounselorDirect makes no representations or warranties, whether express, statutory, or implied regarding the services, including without limitation, any implied warranties of merchantability or fitness for a particular purpose, that the services will operate uninterrupted or error free, or that the services will meet the requirements of the client. Client acknowledges that the





services do not include, and CounselorDirect is not providing, legal services or legal advice to client under this agreement.

13. Limitation of Liability. Neither party will be liable to the other for any incidental, consequential, indirect, punitive, or exemplary damages arising from or related to this agreement, regardless of the type of claim, whether in contract, tort, negligence, strict liability or otherwise, and regardless of the cause of such damages. Client agrees to hold harmless and indemnify CounselorDirect for any and all claims related to the use of this FCP Portal. CounselorDirect's aggregate liability under this agreement shall not exceed the Pre-paid License Fee actually paid by the Client under the terms of this agreement. Restrictions. Client agrees that the FCP Portal is for the use of Client and its Counseling Agencies.
14. General. This Agreement will be governed in accordance with the laws of the State of Florida without regard to its conflicts of laws provisions, with venue for any action on this agreement to be Leon County, Florida. In the event that any provision of this Agreement conflicts with the law under which this Agreement is to be construed or if any such provision is held invalid, void or unenforceable by a court with jurisdiction over the parties, such provision shall be deemed to be restated to reflect as nearly as possible the original intention of the parties in accordance with applicable law, and the remainder of this Agreement shall remain in full force and effect. CounselorDirect understands and agrees to cooperate with any audits conducted in accordance with the provisions set forth in Section 20.055(5), Fla. Stat. FHFC understand that the cost to comply with any information request will be billed under a separate statement of work. This Agreement is the complete agreement between the parties and supersedes any prior agreements, oral or written, relating to its subject matter. This Agreement may not be assigned by either party in whole or in part without the express written consent of the other party. Notwithstanding the foregoing, CounselorDirect may assign this Agreement without the consent of Client to any of its affiliates or to any successor in interest as a result of a sale of all or substantially all of its business or assets, whether by merger, sale of assets, sale of stock, or otherwise, provided such affiliate or successor in interest agrees to assume all of the obligations applicable to CounselorDirect as set forth herein. Any waivers or amendments to this Agreement or to the services provided hereunder must be agreed upon in writing by both parties. Either party may terminate this Agreement for material breach by the other party that is not cured within thirty (30) days of notice thereof. The rights and obligations of the parties which by their nature survive termination or completion of this Agreement, including but not limited to Sections 6, 7, 10, 11 and 12 shall survive the expiration or termination of this Agreement for any reason. Neither party shall be liable for any delays or failures in performance due to causes beyond such party's reasonable control. There are no third party beneficiaries to this Agreement. The relationship between CounselorDirect and Client established by this Agreement is solely that of independent contractors, and nothing in this Agreement shall be construed to make any party (or its agents or employees) the representative of the other, and no party has the authority to make any binding commitments on behalf of the other including without limitation any oral representation or warranty except as expressly set forth herein. The parties represent and warrant that this Agreement has been executed by their duly authorized representatives, and that this Agreement is a legal, valid and binding obligation of such party. This Agreement may be executed and delivered by email or facsimile transmission and in one or more counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed one and the same Agreement.
15. Files Subject to Florida's Public Records Law. Any file, report, record, document, paper, letter, or other material received, generated, maintained or sent by the CounselorDirect in connection with this Contract is subject to the provisions of Section 119.01-.15, Fla. Stat., as may be amended from time to time (Florida's Public Records Law). CounselorDirect represents and acknowledges that it has read and understands Florida's Public Records Law and agrees to comply with Florida's Public Records Law.

Pursuant to Section 119.0701(2)(b), Fla. Stat., CounselorDirect will be required to comply with public records laws, specifically to:

- a. Keep and maintain public records required by the public agency to perform the service.
- b. Upon request from the public agency's custodian of public records, provide the public agency



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 this chapter 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 for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the public agency.
- d. Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the contractor upon termination of the contract or keep and maintain public records required by the public agency to perform the service. If the contractor transfers all public records to the public agency upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

Notwithstanding anything contained herein to the contrary, the provisions and requirements of this paragraph shall only apply if and when CounselorDirect is acting on behalf of Florida Housing.

If the CounselorDirect has questions regarding the application of Chapter 119, Florida Statutes, to the Contractor's duty to provide public records relating to this contract, contact the Corporation Clerk at:

Corporation Clerk  
227 N. Bronough Street, Suite 5000  
Tallahassee, Florida 32301-1329  
Phone: 850.488.4197  
E-mail: Corporation.Clerk@floridahousing.org

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