

Prepared for:



**The American Inns of Court Foundation**  
***Initial Engagement.***

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11.28.2008

Prepared by:



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## 1. Introduction.

This document was created as a detailed response to the American Inns of Court Foundation (hereinafter, "AICF" or "Client") regarding our initial recommendations on how the organization might successfully transition away from its current web vendor and engage 10 Notes as its new vendor. It outlines key task areas for all parties involved, and provides an overview of what will be required for 10 Notes to assume responsibility for the development and maintenance of AICF's web systems going forward.

### 1.1. Background.

For those who may not be familiar with 10 Notes, or with the nature of our staff members' past relationships with both AICF and the current vendor, we thought it best to include a bit of background information.

10 Notes is a privately held web consulting agency that was formed in October, 2007. Our core customers are associations, non-profits, and small businesses based in and around the D.C. metro area. Nate Mow is the founder of the company. Having worked as a senior developer, technical lead, and consultant at several area firms, Nate felt it was time to branch out and begin building a company that could provide its clients with a more transparent and cost-effective approach to custom web design and development.

Prior to founding 10 Notes, Nate was employed as the Director of Technology by AICF's current vendor, and was a partner in that firm. Ultimately Nate became dissatisfied with their overall direction, and made a decision to transition away from them. Throughout the course of his employment there, Nate served as a developer, project manager, and primary point-of-contact to AICF on a number of its projects, but perhaps most importantly, on several iterations of its Chapter Management Module. In addition, 10 Notes currently employs other consultants that were formerly a part of the AICF project team.

## 2. Transition Plan.

The following table lists all points-of-contact that will likely be involved with the transition process, and assigns high-level tasks to each group:

| Organization   | Points-of-Contact                | Tasks   |
|----------------|----------------------------------|---|
| AICF           | David Akridge<br>Others – TBD    | - Formally discontinue engagement of the current vendor, and be available to answer questions that 10 Notes may have.   |
| Current Vendor | President<br>Lead Developer      | - Deliver copies of all materials used in the design or development of AICF's web systems.  |
| 10 Notes       | Nate Mow<br>Lead Developer – TBD | - Establish a development environment for AICF.<br>- Identify the project team.<br>- Prepare for development on all tasks outlined in the requirements documents for CMM v2.0, v2.1, and v3.0.  |
| DelCor         | Jessica Flores<br>Chris Ecker    | - Adjust VPN and/or firewall access rules in the new VPS server environment for both the current vendor, and for 10 Notes.<br>- Potentially, assist 10 Notes with installation/setup of "back office" system dependencies (e.g. Lyrus, Crystal enterprise, iMIS). |

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It is our understanding that AICF has reached an extreme level of dissatisfaction with its current vendor, and wishes to disengage them as soon as possible. The primary goal of this document is to address AICF's request that 10 Notes be hired for future web design and development work, and to establish the plan and contractual vehicle necessary to make that transition happen smoothly. Based on the discussion surrounding this document, we will assign completion dates to each phase of the transition plan (Sections 2.1 – 2.5 below), and identify points of frustration that AICF may have with its current vendor. During discussion, we request that AICF answer any questions to the best of its ability (*italicized*), and identify any inaccuracies that may be present in the document.

Task areas are presented in chronological order, and have been assigned headers in the following format: [Initiating Organization] → [Recipient Organization]

Note: Our particular background circumstances require that we not be involved in the first 2 phases of the transition plan (2.1 "Disengagement" and 2.2 "Obtaining assets").

### **2.1. AICF → Current Vendor: Disengagement.**

These deliverables will be completed by AICF on: \_\_\_\_\_

- ➔ AICF will formally discontinue engagement of its current vendor, and request that its assets be gathered and returned.

### **2.2. Current Vendor → AICF: Obtaining assets.**

These deliverables will be received by AICF on: \_\_\_\_\_

This section lists assets that AICF will need to obtain from its current vendor. From a purely technical perspective, we estimate that this phase will require 4-8 hours of work by the current vendor, plus any additional time required for FTP transfer or the creation of DVD archives.

- ➔ Obtain the most recent version of all source code for both the Content Management System, as well as the Chapter Management Module. *Are there additional APIs, web services, or other programmatic connectors that also need to be accounted for?*
- ➔ Obtain copies of all databases used during development. If this is not possible, we can likely use copies of your current production or staging databases to establish the development environment.
- ➔ Obtain all files used during the creation of the current website template (e.g. Photoshop source files, any images purchased, etc.)
- ➔ Obtain copies of all files used during the creation of the Leadership Training modules, or other multimedia projects that may have been executed.

### **2.3. AICF → 10 Notes: Transferring assets.**

These deliverables will be received by 10 Notes on: \_\_\_\_\_

In addition to the assets outlined in [Section 2.2](#), AICF will also need to provide us with the following via FTP transfer or DVD archives:

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- ➔ A copy of the iMIS client software, as well as any required product keys.
- ➔ A copy of the iMIS web connectors. *Did this project happen? If so, can you provide us with an overview of the results, revisions to the CMM, etc.?*
- ➔ A copy of the Lyris ListManager software, as well as any required product keys.
- ➔ Optional. A copy of the Crystal Reports enterprise suite. *If memory serves, this wasn't previously possible due to licensing restrictions, though maybe that has changed?*
- ➔ Optional. Ideally, full documentation of all systems should be provided by the current vendor to AICF, though circumstances may preclude this. In the event that documentation can not be provided, we do request that, where available, copies of SOWs, requirements documents, etc. from the last 2-3 years be made available to us. These documents will only be used as background reading material by any staff resources that we may allocate to AICF.

### **2.4. DelCor → AICF: Server virtualization.**

These deliverables will be completed by DelCor on: \_\_\_\_\_

DelCor is currently in the process of migrating AICF's server infrastructure from a physical to virtual environment.

- ➔ Install, configure, and test AICF's VPS environment.
- ➔ Migrate iMIS staging database and verify connectivity to the web systems.
- ➔ Migrate iMIS production database and verify connectivity to the web systems.
- ➔ Revise firewall and/or VPN access rules for the current vendor and for 10 Notes. 10 Notes' public IP address is 68.50.8.151. We will also need to be supplied with any authentication credentials required for accessing the new environment.
- ➔ *What direct assistance or support can 10 Notes provide during the VPS transition?*

### **2.5. 10 Notes → AICF: Implementation of assets.**

These deliverables will be completed by 10 Notes on: \_\_\_\_\_

This section lists tasks that we will need to complete, and decisions we will need to make prior to any new development:

- ➔ Before any revisions to the existing systems can begin, we will need to spend time creating a development environment for AICF from the ground up. Much of the difficulty that typically accompanies this type of transition stems directly from how quickly the new vendor can become knowledgeable of how each systemic part fits the whole. And while we do have some strong historical knowledge of AICF's systems, the technical infrastructure itself is quite involved. We are currently estimating that these pre-development tasks will require approximately 24 hours to complete.

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- ➔ Without going in to a lot of specifics, AICF's decision to discontinue use of its current vendor may potentially create an "ideal world" of staffing possibilities for the CMM project. It is conceivable that the Lead Developer who has been working directly (and successfully) with AICF for the past 1-2 years will be directly engaged by 10 Notes. And though there are obvious considerations that we need to make in such a scenario, we are prepared to act if such an opportunity arises. Having worked with this individual for several years, we have a tremendous personal and professional respect for her, and would welcome the opportunity to work together again.
- ➔ We reserve the right to re-assess any estimates provided to AICF by its current vendor. The scope of this document does not include any assessment of the existing requirements for the Chapter Management Module. For the most part, the existing requirements appear to be fairly straightforward, but we would like to do a direct, first-hand review of the requirements after our development environment has been set up, and after we have made a final decision on who will act as our main point-of-contact to AICF.

### 3. Analysis.

In order to foster dialog and to achieve a mutual understanding, this section provides a brief analysis of the risks and benefits associated with the transition for both AICF and 10 Notes. This analysis is not intended to be exhaustive, and we welcome and encourage feedback from AICF on any of the items below.

#### 3.1. Impact on AICF.

##### Risks.

- ➔ AICF risks losing direct access to the Lead Developer, who has proven to be a critical resource in the ongoing support and maintenance of AICF's web systems.
- ➔ Depending on how quickly any potential bottlenecks in the transition plan can be addressed, AICF risks a negative impact to its overall schedule for revisions to the Chapter Management Module.
- ➔ ("The pessimistic view.") AICF will be transitioning to a vendor who is very much a "young company". The current vendor, regardless of any present shortcomings, has been in business for a longer period of time, and they cumulatively possess deeper industry experience.

##### Benefits.

- ➔ ("The optimistic view.") AICF will be transitioning to a vendor who is very much a "young company". For us, being retained by AICF represents a tremendous milestone in our overall growth and we are absolutely committed to making the engagement successful.
- ➔ Probably more than any other vendor that AICF may have under consideration, 10 Notes has a unique and valuable knowledge of the organization's existing systems and goals. The "ramp-up" time that would typically be necessary for another vendor during this type of transition is greatly reduced in this particular set of circumstances.
- ➔ AICF can expect fair, honest, and timely communication from us in all matters related to the billing, scheduling, and execution of new work.

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- ➔ AICF can expect that any consultative, technical, or creative staff resources that we may apply to AICF's projects will be highly skilled, courteous, and responsive.

### 3.2. Impact on 10 Notes.

#### Risks.

- ➔ While we are under no legal obligation to decline AICF as a potential client, it is possible that this transition will have some negative repercussions on our relationship with AICF's current vendor, which at present, is cordial.
- ➔ There may potentially be some liability that is introduced for us in the event that we directly engage the current Lead Developer.

#### Benefits.

- ➔ This engagement offers us an opportunity to strengthen our portfolio, expand our full-time staff, and to revise our current project execution model.
- ➔ As previously highlighted, AICF's retention of 10 Notes as its preferred web consulting agency represents a tremendous milestone in our overall growth as a company. On a number of levels, this opportunity means a great deal to us, and we sincerely thank AICF for its consideration.

## 4. Conclusion.

In order to properly prepare for development of the next iteration of the Chapter Management Module, and in order to meet AICF's schedule requirements for the project, the transition plan detailed above necessitates rapid action by all parties involved. There is much at stake for both AICF and for 10 Notes, but we believe that a great opportunity is immediately available to both parties. In many ways, this new relationship between AICF and 10 Notes offers a "fresh start" and allows everyone to (A) capitalize on the collective historical knowledge that is available, (B) to create an open and healthy dialog on our management of the account, and (C) to build on our previously-established working relationships.

## 5. Professional Fees and Schedule.

The following table lists known technical tasks that we will need to complete prior to beginning new development work:

| Task   | Estimated Hours | Cost   |
|--|-----------------|--------|
| Establish AICF development environment.                            | 24              | WAIVED |
| As-needed support of the VPS implementation and rollout.           | ?               | WAIVED |
| Re-assessment of requirements for pending development initiatives. | ?               | WAIVED |
| <b>Total</b>   | ?               | WAIVED |

In consideration of our lack of direct involvement in Sections [2.1](#) and [2.2](#) of the transition plan, and in anticipation of the pending work on the Chapter Management Module, we are waiving any hourly fees associated with execution of this work.

The schedule for this effort is entirely dependent on the dates set forth above, and each party's strict adherence to the dates.

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## 6. Authorization to Begin Work.

If the Client decides to move forward with this project in accordance with the terms set forth in this document, specifically [Section 7](#) (Terms and Conditions) below, and believes that 10 Notes is qualified to meet its needs, please complete this document and return it to:

10 Notes, LLC  
1510 Park Road, NW, Suite 1  
Washington, DC 20010

10 Notes, LLC is hereby authorized to commence work effective immediately in accordance with this document and the terms and conditions set forth herein. Upon receipt of the fully executed and initialed original of this document, 10 Notes will begin work. Thank you for your business, and we look forward to working with you.

### The American Inns of Court Foundation, Authorized Representative:

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

### 10 Notes, LLC, Authorized Representative:

NATHAN J. MOW  
\_\_\_\_\_  
Printed Name

PRINCIPAL  
\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

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## 7. Terms and Conditions.

- **Confidentiality** – We hold confidential all information obtained from our clients, not otherwise previously known by us or in the public domain, unless such information comes into the public domain through no fault of ours, or is also furnished to us by a third party who is under no obligation to keep such information confidential.
- **Inventions** – Unless otherwise expressly agreed, all right, title, and interest in the final product that is developed by 10 Notes for the Client shall be the property of the Client. All tools, reusable components, and other modules (collectively known as developer toolsets) integrated in the system will be nonexclusively licensed to the Client, meaning that source code will be provided and may be modified by 10 Notes. These developer toolsets will continue to be used on other projects and with other clients by 10 Notes.
- **No Warranties, No Guarantees** – 10 Notes shall perform services hereunder in a professional manner. However, 10 Notes' services and/or other efforts are provided without, and 10 Notes expressly disclaims, any and all other warranties and representations, whether express or implied, or whether arising by statute or otherwise in law or from a course of dealing or usage of trade, including but not limited to any warranty of accuracy, completeness, performance, merchantability, or fitness for a particular purpose. The Client acknowledges that he/she/it has been provided with no guarantee pertaining to the result(s) achieved in or from services provided by 10 Notes. The Client acknowledges that he/she/it must pay 10 Notes' fees in accordance with the terms of this Agreement regardless of the results of 10 Notes' services, and that the Client's dissatisfaction with the result of any services or other efforts or recommendations of 10 Notes does not, in and of itself, constitute any reasonable objection to payments due hereunder.
- **Limitation Of Liability** – Regardless of whether 10 Notes is advised or aware of the potential for damages to be suffered by Client, 10 Notes' liability, if any, to the Client shall not exceed the amount(s) paid by Client to 10 Notes pursuant to this agreement. In other words, Client's sole and exclusive remedy for any damage or loss in any way relating to or arising from 10 Notes' acts or omissions shall be, at 10 Notes' option, the re-performance of the relevant services or a refund of not more than the fees paid by the Client to 10 Notes. 10 Notes shall not be liable in any way to Client or any other person(s) or entit(ies) for consequential, exemplary, special, incidental, or punitive damages. This limitation applies to all claims and/or causes of action whether made individually and/or in the aggregate, including without limitation claims for breach of contract, breach of warranty, negligence, strict liability, misrepresentation, fraud and any and all other torts, claims, demands, causes of action, actions and/or lawsuits. Both parties understand and agree that the remedies and limitations herein allocate the risks of product and service nonconformity between the parties in accordance with applicable laws and equitable principles. The fees herein reflect this allocation of risk and the limitation and exclusion of damages as set forth herein.
- **Independent Consultant** – Our services will be rendered as an independent consultant and not as an employee, agent, partner, or joint venturer of the Client. The Client shall not bind or obligate 10 Notes in any way to any third party or to any work that is not expressly set forth herein.
- **Use of Our Name** – Clients may not use or refer to our name in any advertisement or public announcement or otherwise without the express written consent of an officer of our firm.
- **Client's Responsibility** – Client shall cooperate with 10 Notes' requests for information, content, feedback, and data, and shall not interfere with 10 Notes' ability to perform under this agreement. Client shall indemnify, defend and hold 10 Notes, its owners, officers, directors, agents, contractors,

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employees and representatives harmless from and against any and all claims, judgments, causes of action, lawsuits, liability, loss, damage and/or expense, including but not limited to attorney's fees caused by or relating to or arising from Client's acts or omissions, Client's failure or refusal to perform, and/or any act(s) or omission(s) of any third part(ies).

- **Legal Proceedings** – If 10 Notes and/or its owners, officers, directors, agents, contractors, employees and representatives is/are required by Client or legal process to participate, appear and/or testify in any judicial or administrative proceeding, Client shall pay any and all attorneys' fees, costs and expenses incurred by 10 Notes with regard to such proceedings and preparation thereof. Said costs and expenses shall include but not be limited to 10 Notes' fees for professional time expended for such proceedings and preparation thereof, and 10 Notes shall have sole and exclusive discretion with regard to the selection of its attorney(s).
- **Fees** – 10 Notes' invoices are payable within thirty (30) days of the invoice date. Past due amounts will be assessed interest charges of 1.5% per month. All disputes concerning any invoice must be received by 10 Notes from the Client within 20 days of the invoice date, and must identify the specific charge at issue and provide a detailed reason for dispute. Any charge not clearly disputed in writing will be considered accepted. A dispute concerning an invoice shall not affect the original due date for payment of the invoice and payment of any and all undisputed items shall be timely paid by the Client regardless of how or whether any disputed item is resolved. A dispute or difference of opinion on a question of 10 Notes' services and/or professional judgment shall not excuse Client from paying for the services rendered. The parties shall undertake efforts to promptly resolve any disputes.
- **Termination** – This agreement may be terminated by either party upon thirty (30) days advance written notice. Upon such termination, 10 Notes shall deliver to the Client all work products completed by the end of the 30-day period, provided that Client shall pay 10 Notes for all professional fees and expenses and any and all other obligations incurred or services provided by 10 Notes through and including the time of termination. Unless and until Client provides all such payment to 10 Notes, 10 Notes shall have no duty to deliver to the Client any work products completed by the end of the 30-day termination period.
- **Excusable Delays** – Neither 10 Notes nor the Client shall be liable or deemed to have breached this agreement for (a) any delays or failure in performance or nonperformance, or for (b) interruption of services, if any such delay, failure or interruption results directly or indirectly from causes beyond the reasonable control of either the party charged with performing. Such causes include, but are not limited to, adverse extreme weather conditions, strikes, riots, epidemics, war, governmental regulations subsequently imposed, fire, transportation or communication delays, acts of God or the public enemy, machine or equipment failures, earthquakes, or other natural disasters.
- **Taxes** – Client shall provide 10 Notes with an IRS 1099 form at the end of the tax year(s) if the income from 10 Notes exceeds six hundred dollars 00/100 (\$600.00) a year. 10 Notes shall provide Client with its FEIN number for purpose of providing IRS 1099 form.
- **Assignment** – Neither party may assign this agreement or any rights, duties, obligations described herein without the prior expressed written consent of the other Party. Notwithstanding the foregoing, 10 Notes shall have the discretion and ability to utilize individuals or entities in a support and/or service capacity in its performance hereunder.
- **Amendments** – No changes, modifications, or waivers to this agreement shall be binding unless made in writing and duly signed by authorized agents of the Parties.

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- **No Waiver** – A failure of a party to enforce any provision of this agreement shall not act as a waiver of that or any other provision. A waiver by a party of any breach of this agreement shall not act as a waiver of any other breach.
- **Severability** – If any provision of this Agreement is held in whole or in part to be unenforceable, invalid, void or contrary to law for any reason, that provision shall be severable and the remainder of this agreement shall remain in full force and effect. If any provision of this agreement is held in whole or in part to be unenforceable, invalid, void or contrary to law on the grounds that it unfairly or unlawfully favors 10 Notes, 10 Notes shall have the right to waive and/or not enforce any and/or all such provision(s). Additionally, if this agreement or any part of this agreement is held to be unenforceable, invalid, void or contrary to law, an arbitrator or court of competent jurisdiction shall have and exercise “blue pencil” authority and shall amend, revise and/or supplement this agreement so that it is valid, enforceable, and effective to the maximum extent allowable by law for the protection and benefit of 10 Notes.
- **No Presumption Against Drafter** – Any Court or arbitrator considering this agreement shall not apply any presumption or make any finding by reason of the rule or conclusion that a document should be construed more strictly against its drafter, and the parties agree that each participated in the preparation of this agreement upon consultation with legal counsel or the fair opportunity for same before execution of this agreement.
- **Entire Understanding** – This agreement represents the entire understanding of the parties as to the subject matter herein and may not be modified except in a writing executed by authorized agents of 10 Notes and the Client.
- **Survival** – Termination or expiration of this agreement or withdrawal from any relationship with 10 Notes shall not release the Client from his/her/its liabilities or obligations incurred or accrued through the date of termination or expiration or withdrawal, and shall not release either party from any liabilities or obligations that remain to be performed or have been agreed upon as intended to apply following any such termination or expiration or withdrawal.
- **Choice of Law and Interpretation** – The law of the District of Columbia shall govern this agreement. If the District of Columbia’s conflict of law rules would apply another state’s or country’s laws, the parties agree that District of Columbia law shall govern. Any Court or arbitrator considering this agreement shall not apply any presumption or make any finding by reason of the rule or conclusion that a document should be construed more strictly against its drafter, and the parties hereto agree that each participated in the preparation of this agreement upon consultation with legal counsel or the fair opportunity for same before execution of this agreement. Client hereby acknowledges and agrees that he/she/it is subject to personal jurisdiction in any court located in the District of Columbia, and hereby waives any rights to challenge or deny same and/or challenge or dispute service of process by any means at any location should any action by the Company be taken to enforce this Agreement.

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