##### SERVICES CONTRACT

This Agreement fiJr professional services and other deliverables (this '"Agreement''), made and effective as of July 5, 2012 ("Effective Date"), by and between the State of Iowa ('"State"), acting by and through the Iowa Department of Public Defense, Homeland Security and Emergency Management Division (the '"Department'') and MB3 INC., a corporation organized under the laws of Delaware (the "Vendor"). The parties agree as follows:

**SECTION** I. **PURPOSE AND TERM**

I.I **Purpose.** The parties have entered into this Agreement for the purpose of retaining Vendor to provide professional services and other deliverables in connection with the development and implementation of the Iowa HSEMD Disaster Grants System and the installation, configuration, customization, and hosting of the Software fr1r the Department and the State of Iowa (the '"State"), as more fully described in this Agreement, including the Statement(s) of Work.

**1.2 Term.** The initial term of this Agreement is one year beginning on the Etlective Date, unless terminated earlier in accordance with the terms of this Agreement. After expiration of the initial term, the Department shall have the option to extend/renew this Agreement for up to five (5) additional one-year renewal terms. The decision to extend the Agreement will be at the sole option of the Department and may be exercised by the Department by providing written notice to Vendor.

**SECTION 2. DEFINITIONS**

In addition to any other terms that may be defined elsewhere in this Agreement, the following terms shall have the following meanings:

**""Acceptance"** means that the Department has determined that one or more Deliverables satisfy the Department's Acceptance Tests. Final Acceptance means that the Department has determined that all Deliverables to be provided under a Statement of Work satisty the Department's Acceptance Tests. Non-acceptance means that the Department has determined that one or more Deliverables have not satisfied the Department's Acceptance Tests.

**··Acceptance Criteria"** means the Specifications, goals, performance measures, testing results and/or other criteria designated by the Department and against which the Deliverables may be evaluated for purposes of Acceptance or Non-acceptance thereof

**""Acceptance Tests" or ""Acceptance Testing"** mean the tests, reviews and other activities that arc performed by or on behalf of Department to determine whether the Deliverables meet the Acceptance Criteria or otherwise satisfy the Department, as determined by the Department in its sole discretion. Acceptance Testing may include testing of individual or multiple units, modules or components, system or integration testing, user-acceptance testing, load/stress testing, system security testing, network testing, recovery/backup testing, data transfer, migration and conversion testing, and Documentation review.

**""Authorized Contractors"** means independent contractors, consultants or other Third Parties who are retained or hired by the State, the Department or any other Governmental Entity of the State to use, maintain, support, modify, or enhance the System or to otherwise assist Department with its use of the System for other purposes.

**""Confidential Information"** means, subject to any applicable State and federal laws and regulations, including but not limited to Iowa Code Chapter *22,* any confidential or proprietary information or trade secrets disclosed by either party (a "disclosing party") to the other party (a ·'receiving party") that, at the time of disclosure, is designated as confidential ( or Iike designation), is disclosed in circumstances of confidence, or would be understood by the parties, exercising reasonable business judgment, to be confidential. Confidential Information does not include any information that: (i) was rightfully in the possession of the receiving party from a source other than the disclosing party prior to the time of disclosure of the information by the disclosing party to the receiving party (ii) was known to the receiving party prior to the disclosure of the information by the disclosing party; (iii) was disclosed to the receiving party vvithout restriction by an independent third party having a legal right to disclose the information; (iv) is in the public domain or shall have become publicly available other than as a result of disclosure by the receiving party in violation of this Agreement or in breach of any other agreement with the disclosing party; (v) is independently developed by the receiving party without any reliance on Confidential Information disclosed by the disclosing party; (vi) is disclosed or is required or authorized to be disclosed pursuant to law, rule, regulation, subpoena, summons, or the order of a court, lawful custodian, governmental agency or regulatory authority, or by applicable

regulatory or professional standards: or (vii) is disclosed by the rece1v111g party with the written consent of the disclosing party.

**··Content"** means any content, data or information provided or submitted by or through the State, the Department Governmental Entities and/or Users for use with the Software and/or the System.

**'"Deficiency"** means a defect, flaw, failure, error, bug. omission. interruption of service, or other problem of any nature whatsoever with respect to a Deliverable. including, without limitation, any failure of a Deliverable to conform to or meet an applicable Specification. Deficiency also includes the lack of something essential or necessary for completeness or proper functioning of a Deliverable.

**••Department"** means, from the Effective Date through June 30. 2012, the Iowa Department of Public Defense, Homeland Security and Emergency Management Division, and from and after July I. 2012, the Iowa Department of I fomeland Security and Emergency Management.

**"'Deliverables"** mean the System, Software, Source Code. object code, Documentation, goods, services, work, websites, screen layouts. report layouts, web layouts, data analyses, requirement definitions. process designs, graphics. copy, artwork, images, templates, forms, reports. work product items, materials. documents, information, content, and all other tangible and intangible works, materials and property of any kind and nature be created, developed, produced, delivered, performed or provided by or on behalf oC or made available through, Vendor (or any agent, contractor or subcontractor of Vendor) in connection with this Agreement, and all related legal rights to own or use the same.

**--Documentation"** means any and all technical information, commentary. explanations. design documents, system architecture documents, database layouts, code, test materials, training materials, guides, manuals. worksheets, notes, work papers, and all other information, documentation and materials related to or used in conjunction with the Deliverables, in any medium. including hard copy. electronic. digital, and magnetically or optically encoded media.

**··EMGrantsPro Materials"** mean the EMGrantsPro Implementation Guide dated February L 2012 and the EMGrantsPro marketing materials, both of which are attached to this Agreement.

.'1

**""Enhancements"** shall mean any and all updates, upgrades, bug fixes, patches, additions, improvements, modifications or other enhancements made to or with respect to the Software or the System (including, without limitation, any new releases or versions of Software) provided or made available by Vendor or any Third Party under this Agreement or any other agreement ( including, without limitation, any agreement for maintenance or support) and all changes to the Documentation and Source Code made by Vendor as a result of such Enhancements.

**""Governmental Entity"** shall mean any Governmental Entity, as defined in Iowa Code Section 8A. IO I, or any successor provision to that section. The term Governmental Entity shall also include agencies, independent agencies, the Judicial Branch, courts, boards, authorities, institutions, establishments, divisions, bureaus, commissions, committees, councils, examining boards, public utilities, offices of elective constitutional or statutory officers, and other units, branches, or entities of government ( including any state government and the government of the United States). For the sake of clarity, the term Governmental Entity shall also include the Federal Emergency Management Agency ("FEMA").

**""Project"** means the project to develop and implement the System and all services and Deliverables to be performed and provided by Vendor as described in a Statement of Work.

**""Project Completion Date"** means the date by which Vendor must complete all work and provide all Deliverables pursuant to any Statement of Work. For purposes of this Agreement, the Project Completion Date wi II be speci tied in a Statement of Work.

**""Project Plan"** means the Project Plan attached hereto as Schedule 8- as modified from time to time upon written agreement or the parties. The Project Plan is incorporated into this Agreement by this reference as i r fully set forth in this Agreement.

**""Software"** means the EMGrantsPro Version 4-Premium Edition software and all related modules, modifications and Enhancements, including, without limitation, those reflecting customizations requested by the Department and all software, programs, modules, applications, object code, Source Code, Documentation, Enhancements and customizations provided or licensed under this Agreement, the Software License Agreement and under any other agreement between the parties hereto and their successors and permitted assigns (including, without limitation,

any agreements relating to maintenance or support). and all other software, programs. applications. modules and components which comprise the System, in all forms. including Source Code and object code. all related Documentation and Enhancements. and all copies of the foregoing.

**""Software License Agreement"** means the Software License Agreement by and between Vendor and the Department dated effective as of July 5. *2012.*

**"Software Maintenance and Support Agreement"** means the Software Maintenance and Technical Support agreement by and between the Vendor and the Agency dated effective as of July 5, *2012.*

**""Source Code"** means the human-readable source code, source program. scripts and/or programming language, including HTML, ColdFusion. JavaScript and SQL, for or related to any program, application or software (including the Software). Source Code includes all source code listings. instructions (including compile instructions), programmer's notes, commentary and all related technical information and Documentation, including all such infrmnation and Documentation that is necessary or useful for purposes of maintaining. repairing or making modifications or enhancements to any source code, program, application or software (including the Software).

**""Specifications"** mean all specifications, requirements, technical standards, performance standards. representations and other criteria re lated to the Deliverables stated or expressed in this Agreement ( including in any Statement of Work), the EMGrantsPro Materials, and the Documentation. Specifications shall include the Acceptance Criteria and any specifications, standards or criteria stated or set forth in any applicable state, federal. foreign and local laws. rules and regulations. Specifications shall include, without limitation. to the extent applicable. the existing and planned data model fr)r the System. including all data elements. logical relationships and an entity relationship diagram, the functional requirements specifications and a functional design for the System, including descriptions of each System function and a functional hierarchy diagram. a definition of the existing and planned System modules. including a diagram showing the system design. interface design document including descriptions of all internal and external interfaces, final specifications of the System architecture. including hardware, software and operating system for all system components and interfaces. the detailed System security plan. detailed business and technical requirements. detailed system planning & design, functional hierarchy diagram. entity relationship diagram, data conversion and migration protocols, Software and

hardware configuration plan. The Specifications are incorporated into this Agreement by reference as if fully set fo11h in this Agreement.

**""Statement of Work"** means the initial statement of work set forth in Schedule A to this Agreement and any additional statement of work that may be executed by the parties, and any amendments thereto. Each Statement of Work will describe the Deliverables and services to be provided by Vendor and the fixed, not-to­ exceed compensation and final delivery dates associated therewith. Each Statement of Work is incorporated into this Agreement by this reference as if fully set forth in this Agreement.

**""System"** means the Iowa HSEMD Disaster Grants System as more fully described in the Agreement ( including the Statement(s) of Work) and all Sot1ware, component parts, modules and Deliverables which comprise the System.

**""Third Party"** means a person or entity (including, but not limited to any form of business organization, such as a corporation, partnership, limited liability corporation, association, etc.) that is not a pai1y to this Agreement.

**""Third Party Software"** means software, firmware and other programs licensed or acquired from Third Parties. Third Party Software shall be considered Software under this Agreement.

**""User"** means any Third Party that is authorized or permitted by the Department or a Governmental Entity to access or use the Software and its functions, including, hut not limited to members of the public, grantees, subgrantees, applicants and other persons associated with projects or programs administered by the Department or any Governmental Entity.

**SECTION 3. DOCUMENTS INCORPORATED**

* 1. **Incorporation.** The EMGrantsPro Materials are incorporated into this Agreement by this reference as if fully set forth in this Agreement.
  2. **Contractual Obligations.** The terms and provisions of the EMGrantsPro Materials are made contractual obligations of Vendor, except to the extent they conflict with the terms and provisions of this Agreement or applicable law, as reasonably determined by the Agency in its sole discretion.
  3. **Preference.** In the case of any inconsistency or conflict between the specific provisions of this Agreement (including each Statement of Work and any other schedules or exhibits to this Agreement). and the EMGrantsPro Materials. the specific provisions of this Agreement ( including each Statement of Work and any other schedules or exhibits to this document) will prevail over the specific provisions of the EMGrantsPro Materials.
  4. **No Inconsistency.** The failure of the parties to make reference to the terms of the EMGrantsPro Materials in this Agreement (including each Statement of Work and any other schedules or exhibits to this Agreement) shall not be construed as creating a conflict and will not relieve Vendor of the contractual obligations imposed by the terms and provisions of the EMGrantsPro Materials. Terms ottered in the EMGrantsPro Materials. which exceed the requirements of this Agreement (including each Statement of Work and any other schedules or exhibits to this Agreement). shall not be construed as creating an inconsistency or conflict with this Agreement. Notwithstanding anything herein to the contrary. the Department shall have only those obligations that arc expressly stated in this Agreement ( including each Statement of Work and any other schedules or exhibits to this Agreement). and the EMGrantsPro Materials do not create any express or implied obligations of the Department.

**SECTION 4. SCOPE OF WORK**

* 1. **Statement(s) of Work.** Vendor shall provide the Department with the Deliverables in accordance with the Statement(s) of Work and all other terms and conditions of this Agreement.
  2. **Amendments to Statement(s) of Work.** The parties agree that each Statement of Work may be amended. modified. or replaced at any time during the term of this Agreement upon the mutual written consent of the parties.
  3. **Delivery.** Vendor will deliver to the Department all Deliverables as set fr)rth in a Statement of Work. Vendor acknowledges and agrees that it shall deliver and provide to the Department all Source Code (subject to Section 8.17) and Documentation related to any Software or other Deliverables that are created. developed. produced. delivered. performed or provided by or on behalf o[ or made available through. Vendor under each Statement of Work. unless otherwise agreed to in writing by the Department. Except as specifically provided herein with respect to Source Code only. Vendor shall provide all such Deliverables in both

7

hard copy and electronic format (acceptable to the Department) and as otherwise required and noted herein or in the applicable Statement of Work.

* 1. **Performance Standards.** The parties agree that the performance standards and related payment monitoring and review provisions set forth in Schedule C are incorporated herein by this reference as if fully set f<xth in this Agreement.
  2. **Department Not Required to Accept or Install Enhancements.** Vendor shall not condition any of the Department's rights or Vendor's obligations under this Agreement, or any other contract related to the System or the Software, on the Department accepting or installing any Enhancements or additional functionality provided by Vendor.

**SECTION 5. COMPENSATION AND ADDITIONAL RIGHTS AND REMEDIES**

* 1. **Compensation.** In consideration of Vendor providing the Department with the Deliverables in accordance with the terms and conditions of this Agreement, Vendor shall be entitled to receive the fees or other compensation associated with such Deliverables as specified in a Statement of Work, subject to all terms and conditions of this Agreement, including, without limitation Section *5.2* (Invoices) and Section 5.3 (Retention). The Department shall not be obligated to pay any other compensation, fees, expenses, costs, charges or other amounts to Vendor in connection with this Agreement or any Statement of Work. All fees and compensation payable hereunder to Vendor are fixed, not-to-exceed amounts, and Vendor shall not be compensated on a time and materials basis. It is expressly understood and agreed that in no event will the total fees or compensation to be paid under the initial Statement of Work exceed the sum of $350,000. Vendor is not entitled to payment for a Deliverable provided under this Agreement or any Statement of Work if the Department reasonably determines that such Deliverable has not been satisfactorily or completely delivered or performed in accordance with this Agreement, or that such Deliverable fails to meet or conform to any applicable Specifications or that there is a material Deficiency with respect to such Deliverable. In no event shall the Department be obligated to pay Vendor any tees, costs, compensation or other amounts in excess of the amount specified in a Statement of Work for any one or more Deliverables, unless the Department otherwise agrees to pay such fees. costs. compensation other amounts pursuant to a written Change Order or an amendment to this Agreement executed by the Department. No payment. including final payment shall be construed as acceptance of any Deliverables with Deficiencies or incomplete work. and Vendor

8

shall remain responsible for full performance in strict compliance with the terms and conditions of this Agreement. Vendor's acceptance of the last payment from the Department shall operate as a release of any and all claims related to this Agreement that Vendor may have or be capable of asserting against the Department or the State. No advance payments shall be made fi)r any Deliverables provided by Vendor pursuant to this Agreement.

* 1. **Invoices.** Upon receipt of written notice of Acceptance from the Department with respect to one or more Deliverables, Vendor shall submit an invoice to the Department requesting payment of the tees or other compensation specified in the Statement of Work associated with such Deliverable(s), less the Retained Amount(s) to be withheld in accordance with Section 5.3. All invoices submitted by Vendor shall comply with all applicable rules concerning payment of such fees, charges or other claims and shall contain appropriate documentation as necessary to support the Ices or charges included on the invoice and all information reasonably requested by the Department. The Department shalL subject to the terms and conditions of this Agreement pay all approved invoices in arrears and in conformance with Iowa Code section 8A.514 and 11 Iowa Admin. Code 41.1 (:2). The Department may pay in less than sixty ( 60) days, as provided in Iowa Code section 8A.514. However, an election to pay in less than sixty (60) days shall not act as an implied waiver of Iowa Code section 8A.5 **l** 4. Notwithstanding anything herein to the contrary, the Department shall have the right to dispute any invoice submitted for payment and withhold payment of any disputed amount if the Department reasonably believes the invoice is inaccurate or incorrect in any way.
  2. **Retention.** To secure Vendor's performance under this Agreement the Department shall retain 15% of the fees or other compensation associated with each Deliverable and payable hereunder (the "Retained Amounts"). The Retained Amounts for Deliverables provided under any Statement of Work shall be payable upon the Department's delivery of written notice of Final Acceptance of such Deliverables to Vendor, subject to the terms and conditions hereof
  3. **Erroneous Payments and Credits.** Vendor shall promptly pay or refund to the Department the full amount of any overpayment or erroneous payment within ten ( 10) business days alter either discovery by the Vendor or notification by the Department of the overpayment or erroneous payment. In the event Vendor fails to timely pay or refund any amounts due the Department under this Section 5.4, the Department will charge interest of one percent (I%) per month compounded on the outstanding balance after the elate payment or refund is due, or the maximum amount allowed by law, whichever is greater. The Department may, in its sole

l)

discretion, elect to have Vendor apply any amounts due to the Department under this Section 5.4 against any amounts payable by the Department under this Agreement.

* 1. **Reimbursable Expenses.** There shall be no reimbursable expenses associated with this Agreement separate from the compensation referred to in this section. Vendor shall be solely responsible for all costs, charges and expenses it incurs in connection with its perf<.)rmance under this Agreement, including, but not limited to, travel, mileage, meals, lodging, equipment, supplies, personnel, salaries, benefits, insurance, training, conferences, telephone, utilities, start-up costs, and all other costs and expenses of Vendor.
  2. **Set-off Against Sums Owed by Vendor.** In the event that Vendor owes the Department or the State any sum under the terms of this Agreement, any other agreement, pursuant to a judgment, or pursuant to any law, the Department may set off such sum against any sum invoiced to the Department by Vendor in the Department's sole discretion unless otherwise required by law. Any amounts due to the Department as damages may be deducted by the Depaiiment from any money or sum payable by the Department to Vendor pursuant to this Agreement or any other agreement between Vendor and the Department.
  3. **Withholding Payments.** In addition to pursuing any other remedy provided herein or by law, the Department may withhold compensation or payments to Vendor, in whole or in part, without penalty or legal liability to the Department or work stoppage by Vendor, in the event the Department reasonably determines that: ( i) Vendor has failed to perform any of its duties or obligations as set forth in this Agreement; or (ii) any Deliverable has failed to meet or conform to any applicable Specifications or contains or is experiencing a Deficiency. No interest shall accrue or be paid to Vendor on any compensation or other amounts withheld or retained by the Department under this Agreement.
  4. **Correction/Cure.** The Department may correct any Deficiencies with respect to any Deliverable or cure any Vendor default under this Agreement without prejudice to any other remedy it may have if Vendor fails to correct such Deficiencies as required in this Agreement or if Vendor otherwise defaults or fails to perform any provision of the Agreement within any applicable time period specified in this Agreement or if not so specified, any time period specified in a notice of default from the Department. After the termination of any applicable cure period, the Department may provide or procure the services reasonably necessary to correct any Deficiencies or cure any Vendor default in which event Vendor

10

shall reimburse the Department for the actual costs incurred by the Department i<.)r such services ( or for the reasonable value of the time expended by any Department or State employees who provide such services). In addition, Vendor shall cooperate with the Department or any Third Parties retained by the Department who assist in curing such default, including by allowing access to any pertinent materials or work product of Vendor, provided that such Third Parties have entered into confidentiality or nondisclosure agreements obligating them to safeguard Vendor's Confidential Information and restricting their use of Licensor's Confidential Information to the provision of services to the Licensee.

* 1. **Error Correction.** With respect to each notice from the Department to Vendor during the term of this Agreement that notifies Vendor that any Deliverable delivered by Vendor (and previously accepted by the Department) contains or experiences a Deficiency, Vendor shall, at no cost to the Department. promptly (i) correct the Deficiency and repair the affected Deliverable, and ( ii) provide the Department with all necessary materials with respect to such repaired or corrected Deliverable, including without limitation the provision of updated Source Code (subject to Section 8.17), master program disks or other media acceptable to the Department and related Documentation.
  2. **Monitoring and Review.** The Department shall monitor and review Vendor's performance under this Agreement to ensure compliance with this Agreement. Such review and monitoring shall include the Department's assessment of invoices and reports furnished by Vendor pursuant to this Agreement.

**SECTION 6. ACCEPTANCE TESTS, PRO.JECT MANAGEMENT, KF:Y PERSONNEL AND LIQUIDATED DAMAGES**

**6.1.** Vendor shall commence and complete all work and provide all Deliverables in accordance with the deadlines, timelines, terms, conditions. Specifications and other requirements specified in this Agreement, including those which may be specified in a Statement of Work and the Project Plan. Vendor shall deliver, install and complete all services and provide all Deliverables with respect to a Statement of Work no later than the Project Completion Date.

* 1. All Deliverables shall be subject to the Department's Acceptance Testing and Acceptance, unless otherwise specified in a Statement of Work. Upon completion of all work to be performed by Vendor with respect to any Deliverable, Vendor shall deliver a written notice to the Department certifying that the Deliverable

11

meets and conforms to applicable Specifications and is ready for the Department to conduct Acceptance Tests: provided, however. that Vendor shall pretest the Deliverable to determine that it meets and operates in accordance with applicable Specifications prior to delivering such notice to the Department. At the Department's request, Vendor shall assist the Department in peri<Jrming Acceptance Tests at no additional cost to the Department. Within a reasonable period of time after the Department has completed its Acceptance Testing (which period shall not exceed seven (7) business days afl.er the Depa1iment has completed its Acceptance Testing), the Department shall provide Vendor with written notice of Acceptance or Non-acceptance with respect to each Deliverable that was evaluated during such Acceptance Testing. If the Department determines that a Deliverable satisfies its Acceptance Tests, the Department shall provide Vendor with notice of Acceptance with respect to such Deliverable. If the Department determines that a Deliverable fails to satisfy its Acceptance Tests, the Department shall provide Vendor with notice of Non-acceptance with respect to such Deliverable. In the event the Department provides notice of Non-acceptance to Vendor with respect to any Deliverable, Vendor shall correct and repair such Deliverable and submit it to the Depaiiment within ten ( I 0) days of Vendor's receipt of notice of Non-acceptance so that the Department may re-conduct its Acceptance Tests with respect to such Deliverable. In the event the Department determines, after re-conducting its Acceptance Tests with respect to any Deliverable that Vendor has attempted to correct or repair pursuant to this Section 6.2, that such Deliverable fails to satisfy its Acceptance Tests, then the Department shall have the continuing right, at its sole option, to: (i) require Vendor to correct and repair such Deliverable within such period of time as the Department may specify in a written notice to Vendor, but in any case such period shall not be less than ten ( 10) days: (ii) refuse to accept such Deliverable without penalty or legal liability and without any obligation to pay any fees or other amounts associated with such Deliverable (or receive a refund of any fees or amounts already paid with respect to such Deliverable): (iii) accept such Deliverable on the condition that any tees or other amounts payable with respect thereto shall be reduced or discounted to reflect, to the Department's reasonable satisfaction, the Deficiencies present therein and any reduced value or functionality of such Deliverable or the costs likely to be incurred by the Department to correct such Deficiencies; or

(iv) terminate this Agreement and/or seek any and all available remedies, including damages. Notwithstanding the provisions of Section IO of this Agreement, the Depar1ment may terminate this Agreement pursuant to this Section 6. without providing Vendor with any additional notice or opportunity to cure provided for in Section I 0. The Department's right to exercise the foregoing rights and remedies, including termination of this Agreement shall remain in effect until Acceptance

12

Tests arc successfully completed to the Department's satisfaction and the Department has provided Vendor with written notice of Final Acceptance. If the Department determines that all Deliverables satisty its Acceptance Tests, the Department shall timely provide Vendor vvith notice of Final Acceptance with respect to such Deliverables. Vendor's receipt of any notice of Acceptance. including Final Acceptance, with respect to any Deliverable(s) shall not be construed as a waiver of any of the Department's rights to enforce the terms of this Agreement or require performance in the event Vendor breaches this Agreement or any Deficiency is later discovered with respect to such Deliverable(s). In addition, Vendor's receipt of any notice of Acceptance with respect to any Deliverable(s) shall not be construed as a waiver by the Department's of its right to refuse to provide notice of Final Acceptance.

#### Project Management and Reporting.

* + 1. **Vendor or Project Manager.** At the time of execution or this Agreement, Vendor shall designate, in writing. a Project Manager acceptable to the Department to serve until the expiration of this Agreement. Vendor will assign a Project Manager of a management level sufficient to assure timely responses from all Vendor personneL timely completion of tasks and achievement of milestones, and whose resume and qualifications will be reviewed and approved by the Department prior to her or his appointment as Vendor's Project Manager. Vendor represents that its Project Manager will be fully qualified to perform the tasks required of that position under this Agreement. Vendor's Project Manager shall be able to make binding decisions pursuant to this Agreement on behalf of and for Vendor. Any written commitment by Vendor·s Project Manager and persons designated by her/him in writing for this purpose, within the scope of this Agreement. shall be binding upon Vendor. Vendor's Project Manager shall exercise her or his best efforts while performing under this Agreement. Vendor"s Project Manager shall be at the Department's site as needed during the course of work under this Agreement and will be available either in person. by telephone or E-mail to respond promptly (in no event more than :2 hours after receipt of a request or inquiry from the Department) during the business day to inquiries from the Department;
    2. **Review Meetings.** Commencing with performance of this Agreement. Vendor's Project Manager shall meet monthly or more frequently as requested by the Department with the Department's project manager and representatives. unless otherwise mutually agreed, to discuss progress made by the Vendor in

the performance of this Agreement. J\t each review meeting, Vendor's Project Manager shall provide a status report, which includes, at minimum, the information described in Section 6.3.3 and describes any problems or concerns encountered since the last meeting. *J\t* the next scheduled meeting after which any party has identified in writing a problem, the Vendor shall provide a report setting forth activities undertaken, or to be undertaken, to resolve the problem, together with the anticipated completion dates of such activities. Any party may recommend alternative courses of action or changes that will facilitate problem resolution. Vendor shall maintain records of such reports and other

communications issued in writin:°::,

this Agreement;

durin:°::,

the course of its performance under

* + 1. **Reports.** Vendor shall provide the Department with monthly status reports that describe, at a minimum, the previous month"s activities, including problems encountered and their disposition, results of tests, whether or not deadlines were met, status of Deliverables, proposed changes to the Project Plan, any problems that may have arisen that need to be addressed before proceeding to the next month's activities, and any other information the Depatiment may request. Vendor's proposed format and level of detail for its status reports shall be subject to the Department's approvaL
    2. **Problem Reporting Omissions.** The Department's receipt of a report that identifies any problems shall not relieve Vendor of any obligation under this Agreement or waive any other remedy under this Agreement or at law or equity that the Department may have. The Department's failure to identify the extent of a problem or Deficiency, or the extent of damages incurred as a result of a problem or Deficiency, shall not act as a waiver of performance under this Agreement;
    3. **Change Order Procedure.** The Department may at any time request a modification to the scope of a Statement of Work using a change order. The following procedures fix a change order shall be followed:

**6.3.5. l Written Request.** The Department shall specily in wnt111g the desired modifications to the Statement of Work with the same degree of specificity as in the original Statement of Work;

* + - 1. **Vendor's Response.** Vendor shall submit to the Department any proposed modifications to the Project Plan and a firm cost proposal, if applicable, fr)r the requested change order within five (5) business days of

1-l

receiving the Department's change order request. Modifications to the Statement of Work that incorporate additional detail with respect to any Deliverable will not have the effect of increasing the not-to-exceed cost of that Deliverable, unless Vendor can show by clear and convincing evidence to the Department that the process of gathering detailed requirements for the Project revealed information previously unknown to the Vendor, that such new information will cause the estimated time, and therefore cost, necessary to complete a particular Deliverable to increase, and that the incorporation of that information alone into the Project requirements is the sole cause of the additional time and cost

* + - 1. **Effect of Change Order.** Both parties must sign and date the change order to authorize the change in Deliverables described therein and incorporate the changes into the Statement of Work and this Agreement. No services shall be performed pursuant to the change order and no payment shall be made on account of the change order until the change order is fully executed by both patiies. Upon such execution, a change order shall alter only that portion of a Statement of Work to which it expressly relates and shall not otherwise affect the terms and conditions of this Agreement.
  1. **Key Personnel.** The Department considers Rod Thornhill, Chris Stassen, and Matt Blakely ("Key Personnel") to be essential to a successful project. Vendor acknowledges that a significant reason the Department has entered into this Agreement is because of the special qualifications of such Key Personnel. Vendor shall not remove, reassign, transfer, or replace any of the individual(s) identified in this section except in the event of death, illness, retirement, disability, or termination from employment, conditions permitting absence from employment under the Family and Medical Leave Act of 1993, or in the event of the Department's written consent. In the event Vendor requests the Department to consent to a removal, reassignment transfer or other replacement of any Key Personnel, the Department may review the qualifications of the proposed substitute personnel before providing its written consent or rejecting such replacement. Any such replacement shall have substantially equivalent or better ability, experience and qualifications than the Key Personnel being replaced. Vendor shall not charge the Department, and the Department shall not pay for any proposed replacement personnel while such replacement becomes acclimated to the Project, and acquires the necessary skills and project knowledge to proceed with the work under this Agreement. In no event shall this time period exceed twenty (20) business days. Any replacement personnel approved by the Department shall thereatler be deemed Key Personnel for purposes of this Agreement. If at any time during the

,

term of this Agreement. the Department becomes dissatisfied with the performance of any individual who is part of Vendor's personnel\_ the Department shall notify Vendor of the reasons for such dissatisfaction and may request replacement of such individual. Vendor will promptly investigate such request and the reasons for such dissatisfaction and report back to the Department on the corrective action Vendor believes is appropriate to address the Department's concerns and dissatisfaction. If the parties determine that such individual needs to be replaced. the replacement shall be effected promptly with a substitute individual having equal or greater ability, experience and qualifications than the departing individual.

* 1. **Security Regulation; Cooperation.** Vendor and Vendor's personnel shall comply with the Depm1menfs and the State's security regulations and procedures. including any regulation or procedure which the Department's personnel\_ contractors and consultants are normally asked to fi)llow. Vendor agrees to cooperate fully and to provide any assistance necessary to the Department in the investigation of any security breaches that may involve Vendor or Vendor's personnel.

**SECTION 7. OWNERSHIP AND INTELLECTUAL PROPERTY**

* 1. **Ownership of Vendor-Owned Deliverables.** Except as specifically granted or otherwise provided in this Agreement. Vendor shall exclusively own the EMGrantsPro Version 4 Premium Edition sotlware. including the Source Code for such software and any Department-requested Fnhancements or customizations that arc fully integrated into the Source Code for such software during the term or this Agreement (the --vendor-Owned Deliverables").
  2. **License to Vendor-Owned Deliverables.** Subject to the terms and conditions or this Agreement and the Sotlware License Agreement. and upon payment by the Department of the $175.000 set fr1rth in Section V.A. of the Initial Statement or Work (Schedule A). Vendor hereby grants to the Department and the State a nonexclusive. irrevocable, perpetual. fully paid up. \vorhhvide right and license to use. reproduce. modify. distribute copies oL perform. display. and prepare deri\ ative ,, orks based upon. the Vend or-( hvncd Deliverables. and to authorize others to do the same on the State·s and the Department's behalf. The foregoing grant shall be in addition to (and shall not be construed to limit) any rights. licenses and privileges as may be granted in any license agreement(s) applicable to Vendor-Owned Deliverables. Vendor agrees that neither Vendor nor any agent. affiliate or subcontractor of Vendor shall charge the Department or the State any royalty. license fee. or similar charge for any Vcndor-0\vned Deliverable

that was created or de\ eloped under a separate agreement using runds pnn ided by the LJ.S. l·ederal (10\ernrnent \vhether through a cooperati\e agreement or otherwise.

* 1. **Ownership and Assignment of Other Deliverables.** The State will own all Deliverables (excluding the Vendor-Owned Deliverables described in Section 7.1 ), and Vendor hereby irrevocably assigns, transfers and conveys to the Depai1ment and the State all right, title and interest in and to such Deliverables, and all intellectual property rights and proprietary rights arising out ot: embodied in, or related to such Deliverables, including copyrights, patents, trademarks, trade secrets, trade dress, mask work, utility design, derivative works, and all other rights and interests therein or related thereto (the "State-Owned Deliverables"). Vendor represents and warrants that the State and the Department shall acquire good and clear title to all State-Owned Deliverables, free from any claims, liens, security interests, encumbrances, intellectual property rights, proprietary rights. or other rights or interests of Vendor or of any Third Party, including any employee, agent, contractor, subcontractor, subsidiary or affiliate of Vendor. The Vendor (and Vendor's employees, agents, contractors, subcontractors, subsidiaries and affiliates) shall not retain any property interests or other rights in and to the State­ Owned Deliverables and shall not use any State-Owned Deliverables, in whole or in part, for any purpose, without the prior written consent of the Department and the payment of such royalties or other compensation as the Department deems appropriate. Immediately upon the request of the Department, Vendor will deliver to the Department or destroy, or both, at the Department's option, all copies of any State-Owned Deliverables in the possession of Vendor.
  2. **Waiver.** To the extent any of Vendor's rights in any State-Owned Deliverables are not subject to assignment or transfer hereunder, including any moral rights and any rights of attribution and of integrity, Vendor hereby irrevocably and unconditionally waives all such rights and enforcement thereof and agrees not to challenge the State's and the Department's rights in and to the State­ Owned Deliverables.
  3. **Acknowledgement.** Vendor acknowledges and agrees that the State and the Department, as owners and assignees of the State-Owned Deliverables, shall have all rights incident to complete ownership, and may, without limitation: (i) obtain, secure, file and apply for any legal protection necessary to secure or protect any rights in and to the State-Owned Deliverables, including the prosecution and issuance of letters patent, copyright registrations. and other analogous protection, and any extensions or renewals with respect thereto; ( ii) adapt, change, modify,

17

edit or use the State-Owned Deliverables as the Department or the State sees fit including in combination with the works of others, prepare derivative works based on the State-Owned Deliverables, and publish, display, perform and distribute throughout the world any State-Owned Deliverable(s) in any medium, whether now known or later devised, including, without limitation, any digital or optical medium: and ( iii) make, use, sell, license, sublicense, lease, or distribute *the* State­ Owned Deliverables (and any intellectual property rights therein or related thereto) without payment of additional compensation to Vendor or any Third Party.

* 1. **Further Assurances.** At the Department's request Vendor will (both during and after the termination or expiration of this Agreement) execute and deliver such instruments, provide all facts known to it, and take such other action as may *be* requested by the Department to: (i) establish, perfect or protect the State's and *the* Department's rights in and to the State-Owned Deliverables and to carry out the assignments, transfers and conveyances set forth in Section 7.3, and (ii) obtain and secure copyright registration or such other registrations or intellectual property protections as may be desirable or appropriate to the subject matter, and any extensions or renewals thereof In the event the Department is unable, after reasonable effort, to secure Vendor's signature on any letters patent, copyright, or other analogous protection relating to the State-Owned Deliverables, for any reason whatsoever, Vendor hereby irrevocably designates and appoints the Department, and its duly authorized officers, employees and agents, as Vendor's agent and attorney-in-fact, to act for and in its behalf to execute and file any such application or applications and to do all other lawfully permitted acts to further *the* prosecution and issuance of letters patent copyright registrations, and other analogous protection, including extensions and renewals thereon, with the same lega I force and effect as if executed by Vendor.
  2. **Third Party Intellectual Property.** In the event that a Deliverable is intellectual property owned by a Third Party ("Third Party Intellectual Property"), Vendor shall secure on behalf of and in the name of the State and the Department, an irrevocable, nonexclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies oC perform and display the Third Party Intellectual Property, and to authorize others to do *the* same on the Department's and the State's behalf In the event that a Deliverable created by Vendor under this Agreement is a derivative work based upon Third Party Intellectual Property, or is a compilation that includes Third Party Intellectual Property, Vendor shall secure on behalf of and in the name of the State and the Department an irrevocable, nonexclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies oC perform and

18

display the pre-existing clements or such Third Party Intellectual Property, and to authorize others to do the same on the State's and the Department's behalf

* 1. **Rights of the Federal Government.** Ir all or a portion of the funding used to pay for the Deliverables is being provided through a grant from the Federal Government, Vendor acknowledges and agrees that pursuant to applicable federal laws, regulations, circulars and bulletins, the awarding agency of the Federal Government reserves and will receive certain rights including, without limitation a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes, the Deliverables developed under this Agreement and the copyright in and to such Deliverables.

**SECTION 8. REPRESENTATIONS, WAIUUNTIFS AND COVENANTS**

* 1. Vendor represents and warrants that the Deliverables (in whole and in part) shall: (i) be free from material Deficiencies; and (ii) meet, conform to and operate in accordance with all Specifications and in accordance with this Agreement for one year following the date on which the Department provides Vendor with written notice of Final Acceptance (the "Warranty Period"). During the Warranty Period, Vendor shall, at its expense, repair, correct or replace any Deliverable that contains or experiences material Deficiencies or fails to meet conform to or operate in accordance with Specifications within ten ( 10) days of receiving notice of such Deficiencies or failures from the Department. In addition, the Vendor wi\L during the Warranty Period, fully support and maintain the Software, at no additional charge. Such support and maintenance will include, without limitation, all of the services, Enhancements and features that Vendor will provide under the Software Maintenance and Support Agreement. In the event Vendor is unable to repair, correct or replace such Deliverable to the Department's satisfaction, Vendor shall refund the tees or other amounts paid for the Deliverables and for any services related thereto. The foregoing shall not constitute an exclusive remedy under this Agreement, and the Department shall be entitled to pursue any other available contractual, legal or equitable remedies. Vendor shall be available at all reasonable times to assist the Department with questions, problems and concerns about the Deliverables, to inform the Department promptly of any known Deficiencies in any Deliverables, repair and correct any Deliverables not performing in accordance with the warranties contained in this Agreement, notwithstanding that such Deliverable may have been accepted by the Department, and provide the Department with all necessary materials with respect to such repaired or corrected

19

Deliverable. Acceptance testing will not in any way relieve the Vendor of its responsibilities to correct any Deficiency during the Warranty Period.

* 1. Vendor represents and warrants that it is fully aware of the Department"s business requirements and intended purposes and uses for the Deliverables, and the Deliverables shall satisfy such requirements in all material respects and are fit for such intended purposes and uses.
  2. Vendor represents and warrants that: (i) all Deliverables, excluding any Third­ Party Software, shall be wholly original with and prepared solely by Vendor; (ii) it owns, possesses. holds, and has received or secured all rights, permits, permissions, licenses and authority necessary to provide the services and Deliverables to the Department hereunder and to assign, grant and convey the rights, benefits, licenses and other rights assigned, granted or conveyed to the Department hereunder without violating any rights of any Third Party: ( iii) Vendor has not previously and will not grant any rights in any Deliverables to any Third Party that are inconsistent with the rights granted to the Department herein: and

(iv) the Department shall peacefully and quietly have, hold, possess. use and enjoy the Deliverables without suit, disruption or interruption.

* 1. Vendor represents and warrants that: (i) the Deliverables (and all intellectual property rights therein and related thereto): and (ii) the Depa1imenfs use ot: and exercise of any rights with respect to, the Deliverables (and all intellectual property rights therein and related thereto), do not and will not, under any circumstances, misappropriate a trade secret or infringe upon or violate any copyright, patent, trademark, trade dress or other intellectual property right, proprietary right or personal right of any Third Pa1iy. Vendor further represents and warrants that, to the best of its knowledge, there is no pending or threatened claim. litigation or action that is based on a claim of infringement or violation of an intellectual property right, proprietary right or personal right or misappropriation of a trade secret related to the Deliverables. Vendor shall inform the Department in writing immediately upon becoming aware of any actual, potential or threatened claim of or cause of action for infringement or violation or an intellectual property right, proprietary right or personal right or misappropriation of a trade secret. If such a claim or cause of action arises. then Vendor shalt with the agreement of the Department, and at the Vendor's sole expense: ( i) procure for the Department the right or license to continue to use the Deliverable at issue: (ii) replace such Deliverable with a functionally equivalent or superior Deliverable free of any such infringement, violation or misappropriation: (iii) modily or replace the affected p01iion of the Deliverable with a functionally equivalent or superior Deliverable

20

free of any such infringement violation or misappropriation; or ( iv) accept the return of the Deliverable at issue and refund to the Department all fees, charges and any other amounts paid by the Department under this Agreement or any related agreement with respect to such Deliverable. In addition, Vendor agrees to indemnity and hold harmless the Department and the State and their officers, directors, employees, officials and agents as provided in the Indemnification section of this Agreement including for any breach of the representations and warranties made by Vendor in this Section 8.4. The foregoing remedies shall be in addition to and not exclusive of other remedies available to the Department and shall survive termination of this Agreement.

* 1. All warranties made by Vendor in this Agreement whether or not this Agreement specifically denominates Vendor's promise as a warranty or whether the warranty is created only by Vendor's affirmation or promise, or is created by a description of the materials and services to be provided, or by provision of samples to the Department shall not be construed as limiting or negating any warranty provided by law, including without limitation, warranties which arise through course of dealing or usage of trade. The warranties expressed in this Agreement are intended to modify the warranties implied by law only to the extent that they expand the warranties applicable to the goods and services provided by the Vendor.
  2. Vendor represents, warrants and covenants that all services to be performed under this Agreement shall be performed in a professional, competent diligent and workmanlike manner by knowledgeable, trained and qualified personnel, all in accordance with the terms and Specifications of this Agreement and the standards of perfrmnance considered generally acceptable in the industry fr)r similar tasks and projects. In the absence of a Specification for the performance of any po11ion of this Agreement, the parties agree that the applicable specification shall be the generally accepted industry standard. So long as the Department notifies Vendor of any services performed in violation of this standard, Vendor shall re-perform the services at no cost to the Department such that the services are rendered in the above-specified manner. or if the Vendor is unable to perform the services as warranted, Vendor shall reimburse the Department any fees or compensation paid to Vendor for the unsatisfactory services.
  3. Vendor represents, warrants and covenants that it has complied with, and shall comply with, all applicable federal, state, foreign and local laws, rules, regulations, codes, and ordinances in connection with its pcrfrrnrnrnce under this Agreement.

*21*

* 1. Vendor represents. warrants and covenants that it has no interest and shall not acquire any direct or indirect interest that would conflict in any manner or degree with the performance of its obligations under this Agreement.
  2. Vendor represents and warrants that the Deliverables will comply with any applicable federal, state foreign and local laws. rules, regulations, codes, and ordinances in effect during the term of this Agreement. including applicable provisions of Section 508 of the Rehabilitation Act of 1973, as amended, and all standards and requirements established by the Architectural and Transportation Barriers Access Board, Priority One of the World Wide Web (W3C's) Web Accessibility Initiative. and the Iowa Department of Administrative Services, Information Technology Enterprise.
  3. Vendor covenants that it will comply with and adhere to all Department and State infrmnation technology standards, including. without limitation. all technical and security standards. procedures and protocols. and that Vendor will take all precautions necessary to prevent unauthorized access to the Department's and the State·s systems. networks. computers. property, records, data, and information.
  4. Vendor is not in arrears with respect to the payment of any monies due and owing the State or any Department, agency or other Governmental Entity thereot: including but not limited to the payment of taxes and employee benefits, and it will not become so during the Term of this Agreement, or any extensions thereof
  5. Vendor represents, warrants and covenants that for the duration of the Agreement and the Warranty Period, all Documentation will accurately reflect the operation of any Deliverable(s) to which the Documentation pertains and will enable the Department to use and maintain such Deliverable(s) for their intended purposes.
  6. Vendor's warranties provided in this Section 8 are in addition to and not in lieu of any other warranties provided in this Agreement. All warranties provided for in this Agreement shall be cumulative, shall be deemed consistent and not in conflict. are intended to be given full force and effect and to be interpreted expansively to give the broadest warranty protection to the Department.
  7. Vendor specifically represents. warrants and covenants that the Software and the System will at all times comply with all standards for financial management systems contained in 44 CFR 13.20.
  8. EXCEPT FOR TIIE REPRESENTATIONS AND WARRANTIES PROVIDED BY THE VENDOR IN THIS AGREEMENT (AND IN TIIE EMGRANTSPRO MATERIALS) AND IN ANY AND ALL OTHER AGREEMENTS BETWEEN THE PARTIES, VENDOR MAKES NO OTHER EXPRESS REPRESENTATIONS AND WARR ANTI ES.
  9. If any unauthorized modifications are made to the Software by the State, the Department or any Authorized Contractors during the Warranty Period, the Vendor's warranty under Section 8. I shall immediately be terminated. Correction for difficulties or defects caused solely by unauthorized modifications made to the Software by the State, the Department, or Authorized Contractors during the Warranty Period that are requested by the State or the Department shall be billed at Vendor's standard time and material charges provided that Vendor advises the Department of the cause of the difficulties or defects prior to performing corrections; and provided further that the cause of the difficulties or defects results solely from the unauthorized modifications made by the Department. For purposes of this Section 8.16, a modification to the Software will not be considered unauthorized if Vendor consents to such modification, or if the modification is authorized, permitted or otherwise contemplated by this Agreement or any Documentation or materials associated with the Software or other Deliverables.
  10. Subject to confidentiality provisions of Section 12.3 of this Agreement, Vendor shall furnish and deliver to the Department a complete copy of all Source Code (on a media and in an electronic format acceptable to the Department) and updated Documentation ( including any written information necessary or desirable for the maintenance, modification, compilation, and/or enhancement of the Software): ( i) upon the Department providing Vendor with its written notice of Acceptance with respect to the Software, (ii) when the Vendor or any Third Pm1y delivers, provides or makes available any Enhancements to the Department. and ( iii) within five (5) business days of receiving any written notice from the Department requesting the Source Code and Documentation. The Department shall keep all Source Code received in a media safe environment for the benefit of the State and the Department. The Department and the State shall be entitled to access and use all Source Code and Documentation after providing ten ( I 0) days written notice to the Vend or, upon the occurrence of any one or more of the following events: (i) Vendor (or any affiliate of Vendor, or any corporation, shareholder or entity having or owning a controlling interest in Vendor) violates or commits a breach of any term or condition of this Agreement, the Software License Agreement. or any agreement relating to maintenance and support of the

Software. and the Vendor fails to cure such breach within the time period established for curing such breach. if any: (ii) the Vendor (or any affiliate of Vendor. or any corporation. shareholder or entity having or owning a controlling interest in Vendor) assigns. transfers. delegates. or subcontracts any of its maintenance or support obligations or duties under. or any interest in. any agreement it may have with the Department or the State relating to maintenance or support of the Sofrware. without the prior written consent of the Department or the State: (iii) the Vendor (or any affiliate of Vendor. or any corporation. shareholder or entity having or owning a controlling interest in Vendor) ceases to provide maintenance and support to the Department or the State. whether due to its ceasing to conduct business generally or otherwise. including. but not limited to the Vendor's decision to no longer maintain or support the Software: (iv) Vendor (or any affiliate of Vendor. or any corporation. shareholder or entity having or owning a controlling interest in Vendor) terminates or suspends its business or ceases to do business: (v) Vendor (or any affiliate of Vendor, or any corporation. shareholder or entity having or owning a controlling interest in Vendor) becomes subject to any bankruptcy or insolvency proceeding under federal or state law: (vi) Vendor (or any affi Iiate of Vendor. or any corporation. shareholder or entity having or owning a controlling interest in Vendor) has become insolvent or unable to pay its obligations as they accrue or become due: (vii) Vendor ( or any affiliate of Vendor. or any corporation. shareholder or entity having or owning a controlling interest in Vendor) makes an assignment for the benefit of its creditors: ( viii) a receiver, trustee, liquidator, custodian or similar official has been appointed to act on behalf of the Vendor (or any affiliate of Vendor, or any corporation. shareholder or entity having or owning a controlling interest in Vendor) with respect to any of its operations or assets: (ix) Vendor (or any affiliate of Vendor. or any corporation. shareholder or entity having or owning a controlling interest in Vendor) merges. is sold or enters into an agreement to sell all or substantially all of its assets resulting in Vendor's failure to remain a party to. or otherwise retain all of its rights and obligations under. this Agreement or any agreement relating to maintenance and support of the Software, and the survivor or acquirer does not assume all of Vendor's rights and obligations under such agreements. whether by operation of law. written agreement or otherwise: or (x) Vendor. or any affiliate. subsidiary or subcontractor of Vendor. violates or commits a breach of any term or condition of the Hosting Services Agreement. which breach has not been cured by Vendor within any applicable time period stated therein t,Jr curing such breach. In the event the Department or the State accesses the Source Code and Documentation in accordance with the terms of this Section 8.17. all of the rights and privileges granted under this Agreement and the Software License Agreement with respect to the Software and Vendor-Owned Deliverables shall apply to the Source Code and

21

Documentation, and the Department, the State, Governmental Entities. and their Authorized Contractors shall be entitled to exercise all of such rights and privileges with respect to the Source Code and Documentation. including all rights to maintain, support, modify, enhance. and prepare derivative works based upon, the Software, Vendor-Owned Deliverables and/or the Source Code.

**SECTION 9. INDEMNIFICATION**

* 1. Vendor and its successors and permitted assigns shall indemnity and hold harmless the Department, the State and their employees. officers. board members. agents. representatives. and officials ('"I ndemnitees") from and against any and all claims, actions. suits. liabilities. damages. losses. settlements. demands. deficiencies, judgments. costs and expenses (including. without limitation, the reasonable value of time of the Attorney General's Office and the costs. expenses and attorney fees of other counsel retained by any Indemnitee) directly or indirectly related to, resulting from. or arising out of this Agreement, including but not limited to any claims related to. resulting from, or arising out of:
     1. Any violation or breach of any material term or condition of this Agreement by or on behalf of Vendor, including, the furnishing or making by Vendor of any statement, representation, warranty or certification in connection with this Agreement that is false, deceptive, or misleading; or
     2. Any negligent act or omissions, intentional or willful misconduct, or unlawful acts of Vendor, its officers. employees, agents. board members. subsidiaries. affiliates. contractors or subcontractors: or
     3. Failure by Vendor or its employees. agents. officers. directors. subsidiaries. affiliates. contractors or subcontractors to comply with any applicable local, state. and federal laws. rules. ordinances and regulations: or
     4. Any failure by Vendor or its employees, agents, officers. directors. contractors or subcontractors to make all reports. payments and withholdings required by Federal and state law with respect to Social Security. worker's compensation. employee income and other taxes. tees or costs required by the Vendor to conduct business in the State; or
     5. Any claim of misappropriation of a trade secret or infringement or violation of any intellectual property rights, proprietary rights or personal rights of any Third Party. including any claim that any Deliverable or any use thereof

(or the exercise of any rights with respect thereto) infringes, violates or misappropriates any patent copyright trade secret trademark, trade dress, 111ask work, utility design\_ or other proprietary right or any Third Party.

* + 1. Any clai111 for violation or infringe111ent of any statutory or common law rights or any other rights of any person or entity, including, without li111itation, any claims or causes of action involving torts, personal injury, defamation, or rights of publicity, privacy, confidentiality, misappropriation or security.
  1. Vendor shall have no obligation under subsection 9.1.5 above to the extent any claim of infringement or misappropriation results solely fro111 the Depart111ent's use of the Software in co111bination with any other software product not provided or recommended by the Vendor frH use with the Software or the Syste111 if the infringement would not have occurred but for such co111bination.
  2. Vendor's obligations under this Section 9 are not limited to third-party claims, but shall also apply to any claims that either party may assert against the other.
  3. Vendor shall be liable fi)r any personal injury or damage to property caused by the fault or negligence of Vendor, its officers, directors, employees, agents and approved contractors or subcontractors. In no event shall the State or Treasurer be liable for injuries suffered by Vendor, or Vendor's employees, related to the work performed under this Agreement.
  4. Vendor's duties as set forth in this Section 9 shall survive the termination of this Agreement and shall apply to all acts or omissions taken or 111ade in connection with the performance of this Agree111ent regardless of the date any potential claim is made or discovered by the Depart111ent or any other lndemnitee.

**SECTION 10. DEFAULT AND TERMINATION**

I **0.1 Termination for Cause by the Department.** The Depart111ent 111ay terminate this Agree111ent upon written notice for the breach by Vendor of any material ter111, condition or provision of this Agreement, if such breach is not cured within the cure period specified in the Department's written notice or breach delivered by the Department to Vendor, which cure period shall not be less than ten ( I 0) days, provided cure is feasible. Any ti111e allowed for cure or a default shall not eliminate or reduce any liability Vendor 111ay have for liquidated damages under this Agreement. In addition, the Department 111ay ter111inate this Agree111ent effective

immediately without penalty or legal liahility and vvithout advance notice or opportunity to cure for any of the following reasons:

* + 1. Vendor furnished any statement, representation, warranty or certification in connection with this Agreement that is false, deceptive, or materially incorrect or incomplete:
    2. Vendor or any of Vendor's officers, directors, employees, agents, subsidiaries, affiliates, contractors or subcontractors has committed or engaged in fraud, misappropriation, embezzlement, malfeasance, misfeasance, or bad faith:

**I 0.1.3** Dissolution of Vendor or any parent or affiliate of Vendor owning a controlling interest in Vendor:

* + 1. Vendor terminates or suspends its business:
    2. Vendor's authorization to engage in business either 111 Iowa or where organized is suspended, terminated, revoked or forfeited:

**I0.1.6** Vendor has failed to comply with any applicable international, federal, state, or local laws, rules, ordinances, regulations or orders when performing within the scope of this Agreement:

**10.1.**7 The Department determines or believes the Vendor has engaged in conduct that has or may expose the Department or the State to material liability:

**I0.1.8** Vendor or the Sofl:ware infringes or allegedly infringes or violates any patent, trademark, copyright, trade dress or any other intellectual property right or proprietary right, or that Vendor has misappropriated a trade secret with respect to the Software or any other Deliverable: or

* + 1. Any of the following has heen engaged in by or occurred with respect to Vendor or any corporation, shareholder or entity having or owning a controlling interest in Vendor:
       1. Commencing or penrnttmg a filing against it which isn't discharged within ninety (90) days. of a case or other proceeding seeking liquidation, reorganization, or other relief with respect to itself or its dehts under any bankruptcy, insolvency, or other similar law now or hereafter in

*27*

effect: or filing an answer admitting the material allegations of a pet1t1on filed against it in any involuntary case or other proceeding commenced against it seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts: or consenting to any such relief or to the appointment of or taking possession by any such official in any voluntary case or other proceeding commenced against it seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts:

* + - 1. Seeking or suffering the appointment of a trustee, receiver, liquidator. custodian or other similar official of it or any substantial part of its assets:
      2. Making an assignment for the benefit of creditors:
      3. Failing, being unable, or admitting in writing the inability generally to pay its debts or obligations as they become due or failing to maintain a positive net worth and such additional capital and liquidity as is reasonably adequate or necessary in connection with Vendor's performance of its obligations under this Agreement: or
      4. Taking any action to authorize any of the foregoing.

The Department's right to terminate this Agreement shall be in addition to and not exclusive of other remedies available to the Department and the Department shall be entitled to exercise any other rights and pursue any remedies, in law, at equity, or otherwise.

* 1. **Termination for Convenience.** Following thirty (30) days written notice, the Department may terminate this Agreement in whole or in part for convenience without the payment of any penalty or incurring any further obligation or liability to Vendor. Termination for convenience can he for any reason or no reason at all.
  2. **Termination Due to Lack of Funds or Change in Law.** Notwithstanding anything in this Agreement to the contrary, and subject to the limitations set forth below, the Department shall have the right to terminate this Agreement without penalty or liability and without any advance notice as a result of any of the i<Jllowing:

28

* + 1. The legislature or governor fail in the sole opinion of the Department to appropriate funds sufficient to allow the Department to meet its obligations under this Agreement\_ operate as required, operate the System, or to otherwise fulfill any obligations related to this Agreement; or
    2. If funds arc de-appropriated, reduced, not allocated, or receipt of funds is delayed, or if any funds or revenues needed by the Department to make any payment hereunder are insufficient or unavailable for any other reason as determined by the Department in its sole discretion; or
    3. If the Department's authorization to conduct its business or engage 111 activities or operations related to the subject matter of this Agreement 1s withdrawn or materially altered or modified; or
    4. If the Department's duties, programs or responsibilities arc modified or materially altered; or
    5. If there is a decision of any court administrative law judge or an arbitration panel or any law, rule, regulation or order is enacted, promulgated or issued that materially or adversely affects the Department's ability to fulfill any of its obligations under this Agreement or the operation of the System.

The Department shall provide Vendor with written notice of termination pursuant to this section.

**I 0.4 Limitation of the State's Payment Obligations.** In the event of termination of this Agreement for any reason by either party (except for termination by the Department pursuant to Section I 0.1), the Department shall pay only those amounts, if any, due and owing to Vendor ft)r Deliverables for which Acceptance has been provided by the Department up to and including the date of termination of this Agreement and for which the Department is obligated to pay pursuant to this Agreement provided however, that in the event the Department terminates this Agreement pursuant to Section I 0.3, the Department's obligation to pay Vendor such amounts and other compensation shall be limited by, and subject to, legally available funds. Payment will be made only upon submission of invoices and proper proof of Vendor's claim. Notwithstanding the fi)regoing, this Section I 0.4 in no way limits the rights or remedies available to the Department and shall not be construed to require the Department to pay any compensation or other amounts hereunder in the event of Vendor's breach of this Agreement or any amounts withheld by the Department in accordance with the terms of this Agreement. The Department shall not be liable, under any circumstances, for any of the following:

* + 1. The payment of unemployment compensation to Vendor's employees:
    2. The payment of workers' compensation c )aims, which occur during the Agreement or extend beyond the date on which the Agreement terminates:
    3. Any costs incurred by Vendor in its performance of the Agreement, including, but not limited to, startup costs, overhead or other costs associated with the perfrm11ance of the Agreement:
    4. Any damages or other amounts, including amounts associated with the loss of prospective profits, anticipated sales, goodwill, or for expenditures, investments or commitments made in connection with this Agreement:
    5. Any taxes Vcndor may owe in connection with the performance of this Agreement, including, but not limited to, sales taxes, excise taxes, use taxes, income taxes or property taxes.
  1. **Vendor's Duties.** Upon termination of this Agreement, or at any time at the Department's, Vendor shall:
     1. Cease work under this Agreement and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within thirty (30) days of the date of notice of termination, describing the status of all work performed under the Agreement and such other matters as the Department may require:
     2. Immediately cease using and return to the Department any property (including, without limitation, Department Property) or materials, whether tangible or intangible, provided by the Department to Vend or:
     3. Cooperate in good faith with the Department and its employees, agents and independent contractors during any transition period specified by the Department in connection with the transition of work, services and Deliverables to be provided by any replacement service provider (regardless of whether the replacement service provider is the Department, any other depmiment or agency of the state, or an independent contractor):
     4. Immediately return to the Department any payments made by the Department for services or Deliverables that were not rendered or provided by Vendor:
     5. Immediately deliver to the Department any and all Deliverables (including State-Owned Deliverables. object code. Source Code. Sofi:ware. and Documentation) for which the Department has made payment ( in whole or in part) that is in the possession of under the control of the Vendor or its agents or subcontractors in whatever stage of development and fr)rm of recordation such property is expressed or embodied as that time.
     6. Immediately deliver and transfer to the Department all Content and comply with any request of the Department related to the delivery. transfer. handling or other handling or disposition of Content.
     7. Comply with any other request of the Department related to this Agreement. the transition of work. services and Deliverables to be provided by a replacement service provider or by the Department or any other agency of the State.

I 0.6 Termination for Cause by Vendor. Vcndor may only terminate this Agreement upon written notice of the breach by the Department of any material term. condition or provision of this Agreement. if such breach is not cured within sixty (60) days of the Department's receipt of Vendor's written notice of breach.

**SECTION 11. INSURANCE**

**1** I.I Insurance Policies. Vendor shall. at its sole expense. maintain in full force and effect, with insurance companies admitted to do business in the State of Iowa. insurance covering its work of the type and in amounts required by this

AQ. reemcnt. Vcndor·s insurance shall. amonQ.

other thinQ...\_ s, insure aQ. ainst anv\_,

loss

or damage resulting from or related to Vendor·s perfrrnnance of this Agreement regardless of the date the claim is filed or expiration of the policy. All insurance policies required by this Agreement shall: (i) remain in full force and effect for the entire term of this Agreement and (ii) not be reduced. changed (to the detriment of the Department or the State). or canceled (without being simultaneously replaced by another policy meeting the requirements of this Section 11 ). The State of Iowa and the Department shall be named as additional insureds on all such policies. and all such policies shall include the i<Jllowing endorsement: "It is hereby agreed and understood that the State of Iowa and the Department arc named as additional

31

insured, and that the coverage afforded to the State of lmva and the Department under this policy shall be primary insurance. If the State or Iowa or the Department have other insurance which is applicable to a loss, such other insurance shall be on an excess, secondary or contingent basis. The amount of the insurer's liability under this policy shall not be reduced by the existence of such other insurance." Notwithstanding the foregoing, the requirement that the State of Iowa and the Department be named as additional insureds on all policies of insurance shall not apply to Vendor"s Workers Compensation Insurance.

Unless otherwise requested by the Department. Vendor shall cause to be issued insurance policies with the coverages set forth below:

***Type of /11s11ra11ce***

General Liability (including contractual liability) written on an occurrence basis

**LIMIT AMOUNT**

General J\o*bb*ore*b*oate $1 million Products -

Comp/Op $1 million

**A0 0 re0 ate** $1 million

*bb b*

|  |  |  |  |
| --- | --- | --- | --- |
|  | Personal injury | $1 | million |
| Each Occurrence |  |  |
| Excess Liability, umbrella fi)rm | Each Occurrence | $1 | million |
|  | Aggregate | $1 | million |
| Errors and Omissions Insurance | Each Occurrence | $1 | million |
| Workers Compensation and Employer | As Required by |  |  |
| Liability | Iowa law |  |  |

* 1. **Claims Provision.** All insurance policies required by this Agreement. with the exception or the policy for Errors and Omissions Insurance, must provide coverage on an "occurrence basis" for all claims arising from activities occurring during the term of the policy regardless of the date the claim is filed or expiration of the policy. The policy for Errors and Omissions Insurance will provide coverage on a "claims made" basis, provided hmvever, that such policy includes Extended Reporting Period or Tail Coverage acceptable to the Department.
  2. **Certificates of Coverage.** At the time of execution of this Agreement Vendor shall deliver to the Department certificates of insurance certitying the types and the amounts of coverage, certifying that said insurance is in full tc)rce and effect before the Vendor starts work, certifying that said insurance applies to, among other things, the work, activities, products and liability of the Vendor related to this Agreement certifying that the State of Iowa and the Department are named as additional insureds on the policies of insurance by endorsement as required herein, and certifying that no cancellation or modification of the insurance will be made without at least thirty (30) days prior written notice to the Department. All certificates of insurance shall be subject to approval by the Department.
  3. **Liability of Vendor.** Acceptance of the insurance certificates by the Department shall not act to relieve Vendor of any obligation under this Agreement. It shall be the responsibility of Vendor to keep the respective insurance policies and coverages current and in force during the life of this Agreement. Vendor shall be responsible for all premiums, deductibles and for any inadequacy, absence or limitation of coverage, and the Vendor shall have no claim or other recourse against the State or the Department fr1r any costs or loss attributable to any of the foregoing, all of which shall be borne solely by the Vendor. Notwithstanding any other provision of this Agreement, Vendor shall be fully responsible and liable for meeting and fulfilling all of its obligations under Section 11 of this Agreement.
  4. **Waiver of Subrogation Rights.** Vendor shall obtain a waiver of any subrogation rights that any of its insurance carriers might have against the Department or the State. The waiver of subrogation rights shall be indicated on the certificates of insurance coverage supplied to the Department for all policies except for the policy frff the Errors and Omissions Insurance.
  5. **Filing of Claims.** In the event either the Department or the State suffers a loss and is unable to file a claim under any policy of insurance required under this Agreement the Vendor shall, at the Department's request, immediately file a proper claim under such policy. Vendor will provide the Department with proof of filing of any such claim and keep the Department fully informed about the status of the claim. In addition, Vendor agrees to use its best efforts to pursue any such claim, to provide information and documentation requested by any insurer providing insurance required hereunder and to cooperate with the Department and the State. Vendor shall pay to the Department and the State any insurance proceeds or payments it receives in connection with any such claim immediately upon Vendor"s receipt of such proceeds or payments.

\_)\_,

* 1. **Proceeds.** In the event the Department or the State suffers a loss that may be covered under any of the insurance policies required under this Section 11, neither the Vendor nor any subsidiary or affiliate thereof shall have any right to receive or recover any payments or proceeds that may be made or payable under such policies until the Department and/or the State have fully recovered any losses, damages or expenses sustained or incurred by it (subject to applicable policy limits), and Vend or hereby assigns to the Department and the State all of its rights in and to any and all payments and proceeds that may be made or payable under each policy of insurance required under this Agreement.

**SECTION 12. CONTRACT ADMINISTRATION**

* 1. **Independent Contractor.** Vendor is an independent contractor performing services fr)r the Department. Vendor shall not hold itself out as an employee or agent of the Department. The Department shall not provide Vendor with office space, support statl equipment or tools, or supervision beyond the terms of this Agreement. Neither Vendor nor any of its staff are eligible for any State employee benefits, including, but not limited to, retirement benefits, insurance coverage or the like. Vendor and its staff shall not be considered employees of the Department or the State for any purpose, including for federal or State tax purposes. The Department shall not withhold taxes on behalf of Vendor. Vendor shall be responsible for payment of all taxes in connection with any income earned from performing this Agreement.

##### Compliance with the Law and Regulations.

* + 1. Vendor and its employees, agents, officers, directors, approved contractors and subcontractors shall comply with all applicable federal, state, international. and local laws, rules, ordinances, codes, regulations and orders when performing within the scope of this Agreement, including without limitation, all laws applicable to the prevention of discrimination in employment. the administrative rules of the Iowa Department or Management and the Iowa Civil Rights Commission which pertain to equal employment opportunity and affirmative action, laws relating to prevailing wages, occupational safety and health standards, prevention or discrimination in employment. payment of taxes, gift laws, lobbying laws, and laws relating to the use of targeted small businesses as subcontractors or suppliers. Vendor shall comply with any applicable reporting and compliance standards of the Iowa Department or Management regarding equal employment. Vendor may he

required to submit its affirmative action plan to the lmva Department of Management to comply with the requirements of 541 Imva Admin. Code Chapter 4. Vendor shall make the provisions or this section a part or its contracts with any subcontractors providing goods or services related to Vendor's perfrmnance orthis Agreement;

* + 1. Vendor shall give notice to any labor union with which it has a bargaining or other agreement of its commitment under this section of the Agreement. Vendor shall make the provisions of this section a part of its contracts with any subcontractors providing goods or services related to the fulfillment or perfi)rmance of this Agreement:
    2. The Department may consider the failure of Vendor to comply with any law or regulation as a material breach of this Agreement.

##### Confidentiality.

1. Vendor and its employees, agents, approved contractors and subcontractors may have access to Confidential Information, Content data, software, hardware, programs or other information or property possessed, owned or maintained by the Department or the State ("Depa1iment Property") to the extent necessary to carry out its responsibilities under the Agreement. Such Department Property shall at all times remain the property of the Department and/or the State, and Vendor shall not, under any circumstances, acquire any right, title or interest in and to such Department Prope1iy. Vend or shall preserve the confidentiality of Department Property disclosed or furnished by the Department to Vendor and shall maintain procedures for safeguarding such prope1iy. Vendor will designate one individual who shall remain the responsible authority in charge of all Department Property collected, used, or disseminated by Vendor in connection with the performance of this Agreement. Vendor shall accept responsibility for providing adequate supervision and training to its agents. employees and any approved contractors and subcontractors to ensure compliance with the terms of this Agreement. Vendor and its employees, agents. and any approved contractors or subcontractors may be required by the Department to execute confidentiality or non-disclosure agreements to obtain access to certain Department Property. Vendor and its employees, agents. approved contractors and subcontractors shall not disclose, publish. reproduce. disseminate or otherwise use any Department Property received. collected. maintained, or used in the course of performance of the Agreement except as permitted by the Department to enable Vendor to perform its obligations under this Agreement and except as required by applicable laws. rules or regulations. either during the term or this Agreement or thereafter. Vendor

agrees to return any and all Department Property received, collected, accessed, maintained, created, or used in the course of the performance of the Agreement in whatever frm11 it is maintained promptly at the request of the Department. In the event that Vendor receives a request fr)r access to any Department Property, Vendor shall immediately communicate such request to the Department for consideration and handling.

1. Except as provided or contemplated herein. and subject to applicable laws, rules or regulations (including, without limitation, Iowa Code Chapter *22* and 605 Iowa Admin. Code 5) the Depa1iment shall not disclose to Third Parties (excluding Governmental Entities, and excluding Authorized Contractors who have entered into confidentiality or nondisclosure agreements obligating them to safeguard Vendor's Confidential Infrmnation and restricting their use of Vendor's Confidential Information to the provision of services to the State or the Department) any Confidential Information of Vendor that Vendor has clearly and conspicuously identified as confidential and is determined by the Department to be entitled to confidential protection pursuant to Iowa Code Section *22.*7, without the prior written consent of Vendor. Vendor shall limit such identification to information it reasonably believes is entitled to confidential protection pursuant to Iowa Code Section *22.*7 Notwithstanding the foregoing, the State or the Department may disclose Vendor"s Confidential Information: (i) pursuant to any legal, judicial, or administrative proceedings, subpoena, summons, order, ruling or other legal or administrative processes: (ii) pursuant to any applicable laws, rules, or regulations: (iii) if the State or the Department determines, in its sole discretion, that such information is not a confidential record pursuant to Iowa Code Section

*22.7* or other applicable laws, rules and regulations: and/or (iv) if the State or the Department determines, in its sole discretion. that it does not have sufficient facts or infcxmation or is otherwise unable to make a determination whether such information constitutes a confidential record under Iowa Code Section *22.*7 or other applicable laws, rules and regulations. In such event. the Department shall provide prompt notice to Vendor of the circumstances giving rise to its disclosure. Vendor acknowledges that the State and the Department arc subject to and required to comply with Iowa Code Chapter *22* and other laws, rules and regulations governing public records. If a request is made of a party to view or otherwise access Vendor's Confidential Information pursuant to such laws, rules or regulations, the Department will promptly notify Vendor of the request.

1. Vendor shall indemnity the Department. the State and all other Indemnitees in the manner provided for indemnification elsewhere in this Agreement for a violation of this section. In the event of a breach of this section, the Depa1iment

may terminate this Agreement immediately without notice or de fault and opportunity to cure. Vendor acknowledges that the disclosure or any Confidential Information of the Department or the State will immediately give rise to continuing irreparable injury to the Department and others that is inadequately compensable in damages at law. Accordingly, and without prejudice to any other remedy available to the Department, the Department will be entitled to injunctive relief Vendor's obligations under this section shall survive expiration or termination of this Agreement.

(cl) The provisions 111 this Section *12.3* shall survive the termination of this Agreement.

* 1. **Amendments.** This Agreement may *be* amended in wntmg from time to time by mutual consent of the parties. Both parties must execute all amendments to this Agreement.
  2. **Third Party Rights.** No person other than the parties hereto, their respective successors and permitted assigns, the State and Governmental Entities may rely on or derive any rights pursuant to or under this Agreement. This Agreement is intended to benefit only the Department the State, Governmental Entities and the Vendor.

#### Choice of Law and Forum.

* + 1. This Agreement shall be governed in all respects by, and construed in accordance with, the laws of the state of Iowa, without giving effect to the choice of law principles thereof:
    2. Any and all litigation or actions commenced in connection with this Agreement, including after expiration or termination of this Agreement shall he brought in Des Moines, Iowa, in Polk County District Court for the State or Iowa, ifjurisdiction is proper. However, irjurisdiction is not proper in the Iowa District Court for Polk County, but is proper only in a United States District Court, the matter shall be commenced in the United States District Court fr)r the Southern District of Iowa, Central Divis ion. Vendor irrevocably: ( i) consents and agrees that any legal or equitable action or proceeding arising under, in connection with or arising out of this Agreement shall be brought and maintained exclusively in the afi.)resaid courts: ( ii) submits to and accepts, with respect to any such action or proceeding, for it and in respect of its properties and assets regardless or the physical or legal situs thereot: generally and

unconditionally. the jurisdiction of the aforesaid courts: and (iii) vvaives any objection to such jurisdiction based on forum non conveniens or otherwise:

* + 1. This provision shall not be construed as waiving any immunity to suit or liability. in state or federal court, which may be available to the Department or the State. including sovereign immunity, governmental immunity. immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise:
    2. Vendor irrevocably consents to service of process by certified or registered mail addressed to the Vendor's designated agent. The Vendor appoints lnCorp Services. Inc. at 604 Locust St., Suite *222.* Des Moines, IJ\ 50309-3*723* as its agent to receive service of process. If i<..)r any reason the Vendor's agent for service is unable to act as such or the address of the agent changes. Vendor shall immediately appoint a new agent and provide the Department with written notice of the change in agent or address. J\ny change in the appointment of the agent or address will be effective only upon actual receipt by the Department. Nothing in this provision will alter the right of the Department to serve process in any other manner permitted by law:
    3. This Section 12.6 shall survive termination of this Agreement.
  1. **Assignment and Delegation.** This Agreement may not be assigned, transferred or conveyed in whole or in part without the prior written consent of the other party. except that the Department may assign, transfer. or convey this Agreement, in whole or in part, to any State agency. Governmental Entity or unit of State government that succeeds the Department's duties hereunder or otherwise assumes responsibility frH functions or duties currently assumed by the Department to which the Deliverables relate. For purposes of construing this clause. a transfer of a controlling interest in Vendor. a merger. sale or consolidation of Vendor, or a sale of substantially all of Vendor's assets shall be considered an assignment. Vendor agrees that it shall provide the Department with the earliest possible advance notice of any proposed sale or transfer or any controlling interest in or substantial assets of Vendor and of any proposed merger. sale or consolidation of Vendor. Vendor agrees that it shall not use this Agreement, or any portion thereof: for collateral or to otherwise secure any financial obligation of Vendor or any affiliate thereof without the prior written consent of the Department.
  2. **Use of Subcontractors/Third Parties.** None of the services to be provided by Vendor pursuant to this Agreement shall be subcontracted or delegated to any

**38**

Third Party other than MB3 Technologies Inc. without the prior written consent of the Department. The Department's consent shall not be deemed in any way to provide for the incurrence of any additional obligation of the Department whether financial or otherwise. Any subcontract to which the Department has consented shall be in writing and shall in no way alter the terms and conditions of this Agreement. All subcontracts shall be subject to the terms and conditions of this Agreement and to any conditions of approval that the Department may deem necessary. Vendor is solely liable for any and all payments that may be due to a subcontractor pursuant to any subcontract. Vendor shall indemnify and hold harmless the Department and the State from and against any and all claims. demands. liabilities, suits, actions, damages. losses. costs and expenses of every kind and nature whatsoever arising as a result of Vendor's breach of any subcontract into which it enters, including Vendor's failure to pay any and all amounts due to any subcontractor. In addition, the Department is not responsible for any failure of any subcontractor to pay any amounts that may be due to Vendor, and Vendor may not refuse to perform its obligations under this Agreement for any such failure. If Vendor fails, neglects or refuses to pay promptly, as due, any claim for labor or services furnished to Vendor or any subcontractor by any person in connection with the Deliverables provided under this Agreement. the Department may pay such claim and charge the amount of the payment against funds due or to become due Vendor under this Agreement. The payment of a claim in the manner authorized in this paragraph shall not relieve Vendor or its surety from any obligation with respect to any unpaid claims. All subcontracts shall contain provisions which allow the Department to access the subcontractor's books. documents, and records and for inspections of work, as required of Vendor herein. No subcontract or delegation of work shall relieve or discharge Vendor from any obligation, provision, or liability under this Agreement. Vendor shall remain responsible for such performance and shall be fully responsible and liable for all acts or omissions of any such contractor or subcontractor. Any action of a subcontractor, which. if done by Vendor. would constitute a breach of this Agreement, shall be deemed a breach by Vendor and have the same legal effect.

* 1. **Integration.** This Agreement represents the entire agreement between the parties concerning the subject matter hereof: and neither party is relying on any representation that may have been made which is not included in this Agreement. The Department shall not be bound by any "shrink-wrap" agreement, "click-wrap" agreement, or "sneakwrap'' agreement (or any other similar agreement) that may accompany or relate to a Deliverable. Vendor acknowledges that it has thoroughly read this Agreement and all related schedules, exhibits, and other documents and has had the opportunity to receive competent advice and counsel necessary frff it to

form a complete understanding of all rights and obligations herein and to accept same freely and without coercion of any kind. Accordingly, this Agreement shall not be construed or interpreted against the Department on the basis of draftsmanship or preparation thereof.

* 1. **Obligation Beyond Agreement Term.** This Agreement shall remain in full force and etkct to the end of the specified term or until terminated or canceled pursuant to this Agreement. Obligations of the Vendor under this Agreement which by their nature would continue beyond the termination of this Agreement including, by way of illustration and not by limitation, those obligations set forth in Sections 4, 5, 7, 8, 9, **l** 0.4 - I 0.6, l I, 12.2, 12.3, 12.6-12.8, 12. IO - 12. 16, 12.18, 12. I 9, 12.24, 12.25, 12.26, 12.28, 12.30, 12.32, 12.33, 12.37 -- 12.39, and 12.42-

12.53 shall survive termination of this Agreement and/or termination of Support.

* 1. **Supersedes Former Agreements.** This Agreement supersedes all prior Agreements between the Department and Vendor for the goods, services and other Deliverables provided in connection with this Agreement.
  2. **Waiver.** Except as specifically provided for in a waiver signed by duly authorized representatives of the Department and Vendor, failure by either party at any time to require performance by the other party or to claim a breach of any provision of this Agreement shall not be construed as affecting any subsequent breach or the right to require performance with respect thereto or to claim a breach with respect thereto. No term or condition of this Agreement shall be held to be waived, modified, or deleted except by an instrument, in writing, signed by the parties hereto.

##### Notices.

* + 1. **Notices.** Notices under this Agreement shall be in writing and delivered to the representative of the party to receive notice ( identified below) at the address of the party to receive notice as it appears below or as otherwise provided for by proper notice hereunder. The eflective date for any notice under this Agreement shall be the date of delivery of such notice (not the date of mailing) which may be effected by certified U.S. Mail return receipt requested with postage prepaid thereon or by recognized overnight delivery service, such as Federal Express or UPS:

If to the Department:

Department of Iowa I lomeland Security and Emergency Management 7105 NW 70 t h Ave.

Camp Dodge Bid. W--1- Johnston, IA 50313

If to Vend or: MB3 Inc.

7512 Dr. Phillips Blvd., Suite 50-1 *12*

Orlando, FL 328 19

* + 1. Any notice or communication sent by certified U.S. Mail under this Agreement shall be deemed given upon receipt as evidenced by the U.S. Postal Service return receipt card, or if sent by overnight delivery service, upon receipt as evidenced by the signature attained by the carrier;
    2. From time to time, the parties may change the name and address of a party designated to receive notice. Such change of the designated person shall be in writing to the other party and as provided herein.
  1. **Cumulative Rights.** The various rights, powers, options, elections and remedies of the Department and the State provided in this Agreement shall be construed as cumulative and no one of them is exclusive of the others or exclusive of any rights, remedies or priorities allowed the Department and the State by law, and shall in no way affect or impair the right of the Department or the State to pursue any other contractual, equitable or legal remedy to which the Department and the State may be entitled. The election by the Department or the State of any one or more remedies shall not constitute a waiver of the right to pursue other available remedies.
  2. **Severnbility.** If any provision of this Agreement is determined by a court of competent jurisdiction to he invalid or unenforceable, such determination shall not aflect the validity or enforceability of any other part or provision of this Agreement.
  3. **Time is of the Essence.** Time is of the essence with respect to Vendor's performance of its obligations under this Agreement. Vendor shall ensure that all personnel and any other subcontractors of Vendor providing services to the Department are responsive to the Department's requirements and requests in all respects.

I

* 1. **Authorization.** Vendor represents and \varrants that it has the right power and authority to enter into and perform its ohligations under this Agreement and that it has taken all requisite action (corporate, statutory, or otherwise) to approve execution, delivery and performance of this Agreement, and this Agreement constitutes a legal, valid and hinding obligation of Vendor, enforceable in accordance with its terms.
  2. **Successors in Interest.** All the terms, prov1s1ons, and conditions of the Agreement shall be binding upon and inure to the benefit of the parties' hereto and their respective successors, assigns, and legal representatives.
  3. I **9 Records Retention and Access.** The Vendor shall maintain accurate, current. and complete hooks, documents and records that sufficiently and properly document the Vendor's performance under this Agreement including records that document all lees and other amounts charged during the term of this Agreement, for a period of at least five (5) years following the later of the date of final payment, termination or expiration of this Agreement, or the completion of any required audit. If any litigation, claim, negotiation, audit or other action involving the books, documents and records has been started before the expiration of the five-year period, the Vendor must retain the records until completion of the action and resolution of all issues which arise from it, or until the end of the above­ described five year period, whichever is later. The Vendor shall permit the Department, the Auditor of the State of Iowa, or any authorized representative of the State, and where federal funds arc involved, the Comptroller General of the United States or any other authorized representative of the United States government, at no charge, to access and examine, audit, excerpt and transcribe any pertinent books, documents, and records, electronic or optically stored and created records or other records of the Vendor relating directly or indirectly to the Vendor's perfixmance under this Agreement, wherever located. At the request of the Department, Vendor shall deliver and provide, at no charge, complete copies of such books, documents and records to the Department or its designce in such frm11ats and within such time period as may be specified by the Depa11ment in its request. The Vendor shall not impose a charge or seek payment for any fee, charge, or expense associated with any audit. examination or delivery of such books, documents and records. The Vendor shall require its subcontractors to agree to the same provisions of this section. Based on the audit findings, the Department reserves the right to address the Vendor's board or other managing entity regarding performance and expenditures. When state or federal law or the terms of this Agreement require compliance with Iowa Code Chapter 34A, 0MB Circular A-87, A-11 (), or other similar provision addressing proper use of

government funds. the Vendor shall comply with these additional records retention and access requirements:

* + 1. Records of financial activity shall include records that adequately identify the source and application of funds. When the terms of this Agreement require matching funds. cash contributions made by the Vendor and third party in-kind (property or service) contributions must be verifiable from the Vendor's records. These records must contain information pertaining to contract amount, obligations, unobligated balances. assets, liabilities, expenditures. income and third-party reimbursements.
    2. The Vendor shall maintain accounting records supported by source documentation that may include hut arc not limited to cancelled checks. paid bills, payroll. time and attendance records, and contract award documents.

**111.** The Vendor. in maintaining project expenditure accounts. records and reports. shall make any necessary adjustments to reflect refunds. credits. underpayments or overpayments, as well as any adjustments resu Iting from administrative or compliance reviews and audits. Such adjustments shall be set forth in the financial reports tiled with the Department.

**iv.** The Vendor shall maintain a sufficient record keeping system to provide the necessary data for the purposes of planning. monitoring and evaluating its program.

* 1. **Headings or Captions and Terms.** The section headings or captions are for identification purposes only and do not limit or construe the contents of the sections. Unless the context of this Agreement otherwise clearly requires, references to the plural include the singular, references to the singular include the plural, and the word ··or" has the inclusive meaning represented by the phrase "and/or." The words "include" and ··including" shall be deemed to be followed by the phrase "without limitation." The words ··thereoC' "herein," "hereunder:· and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement.
  2. **Multiple Counterparts.** This Agreement may be executed in several counterparts, all of which when taken together shall constitute one contract binding on all parties, notwithstanding that all parties arc not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
  3. **Not a .Joint Venture.** Nothing in this Agreement shall be construed as creating or constituting the relationship of the partnership, joint venture (or other

...I'.,

association of any kind or agent/principal relationship) between the parties hereto. No party. unless otherwise specifically provided for herein. has the authority to enter into any agreement or create an obligation or liability on behalf oC in the name oL or binding upon. another party to this Agreement.

* 1. **Additional Provisions.** The parties agree that if an Addendum. Rider. Schedule. Appendix or Exhibit is attached hereto by the parties. and referred to herein. then the same shall be deemed incorporated herein by reference.
  2. **Further Assurances and Corrective Instruments.** The parties agree that they will. from time to time. execute. acknowledge and deliver. or cause to be executed. acknowledged and delivered. such supplements hereto and such further instruments as may reasonably be required for carrying out the expressed intention of this Agreement.
  3. **Obligations of Joint Entities.** If Vendor is a joint entity. cons1st111g of more than one individual. partnership, corporation or other business organization. all such entities shall be jointly and severally liable for carrying out the activities and obligations of this agreement. and for any default of such activities and obligations.
  4. **Delays or Impossibility of Performance.** Neither party shall be in default under this Agreement if performance is prevented. delayed or made impossible to the extent that such prevention. delay. or impossibility is caused by a "force majeure." The term "force majeure" as used in this Agreement includes an event that no human foresight could anticipate or which if anticipated. is incapable of being avoided. Circumstances must be abnormal and unforeseeable, so that the consequences could not have been avoided through the exercise of all due care. such as acts of God. war. civil disturbance and other similar catastrophic events or causes. ter!·orist acts, and communication or utility failures. The delay or impossibility of performance must be beyond the control and without the fault or negligence of the parties. "Force majeure" does not include: financial difficulties of the Vendor or any parent subsidiary. affiliated or associated company of the Vendor or any subcontractor used by the Vendor. claims or court orders that restrict vendor's ability to deliver the Deliverables contemplated by this Agreement: strikes: labor unrest. or supply chain disruptions. If delay results from a subcontractor's or supplier's conduct. negligence or failure to perform. the Vendor shall not be excused from compliance with the terms and obligations of the Vendor unless the subcontractor or supplier is prevented from timely performance by a "force majeure" as defined in this Agreement. If a "force majeure" delays or

-1-l

prevents a party's performance, the party shall immediately use its hest efforts to directly provide alternate, and to the extent possihlc, comparable performance. Comparahility of performance and the possibility of comparahlc performance shall he reasonahly determined solely by the nondefaulting party. The party seeking to exercise this provision and not perform or delay performance pursuant to a "force majeure" shall immediately notify the other party of the occurrence and reason for the delay. The parties shall make every effort to minimize the time of nonperformance and the scope of work not heing performed due to the unforeseen events. Dates by which a party's performance obligations are scheduled to he met will he extended only for a period of time equal to the time lost due to any delay so caused.

* 1. **Material Breaches.** The references in this Agreement to specific material breaches of this Agreement shall not he construed as implying that other breaches of this Agreement are not material.
  2. **Right of Inspection.** Vendor shall a!low the Department, or anyone designated by the Department, to inspect its facilities and books and records at all reasonable times in order to monitor and evaluate performance of this Agreement.
  3. **Taxes.** Vendor shall be responsible for paying any taxes incurred hy Vendor in the performance of this Agreement. The Department and the State are exempt from the payment of State sales and other taxes.
  4. **Title to Property.** Title to all property ( including Department Property) furnished by the Department and/or the State to Vendor to facilitate the performance of this Agreement shall remain the sole property of the Department and/or the State. All such property shall only be used hy Vendor for purposes of fulfilling its obligations under this Agreement and shall be returned to the Department upon the earliest of completion, termination, or cancellation of this Agreement or at the Department's request. Vendor acknowledges that it shall acquire no interest or rights in and to such property. Except as expressly provided in this Agreement, Vendor shall not disclose or use such property for any purpose,

***b***

includin***b***o l)lcd<***b*** "'in***b***o or encumberino***b***

it sellin***b***° or usin***b***° it lex monetary**.,,**

0 a in, usin***b***° it

to compile mailing lists, solicit business or pursue other business activities, or otherwise. Title to all property purchased by Vendor, for which Vendor has heen reimbursed or paid by the Department under this Agreement shall pass to and vest in the Department and/or State, except as otherwise provided in this Agreement.

* 1. **Exclusivity.** This Agreement is not cxc lusive. During the term of this Agreement the Department may obtain similar services from other service providers.
  2. **Award of Related Agreements.** The Department may undertake or award supplemental or successor agreements for work related to this Agreement. Vendor shall cooperate fully with other contractors, consultants and other persons who may be engaged by the Department or the State in connection with this Agreement. Vendor will ensure that any of its contractors or subcontractors that have been approved by the Department will abide by this provision.
  3. **Sovereign Immunity.** The Department and the State do not waive sovereign immunity by entering into this Agreement and specifically retain and reserve the defense of sovereign immunity and all defenses available to them under State and federal laws, rules and regulations for any claim arising out of or related to this Agreement.
  4. **Disclaimer.** All information provided by the Department to Vendor reflects the information available to the Department at the time the information was provided. The Department docs not warrant the accuracy of any such information and shall not be liable for any errors or omissions, or the results of errors or om1ss1ons, which may be discovered, at any time, to exist in those documents.
  5. **Procurement by other Governmental Entities.** Vendor acknowledges and agrees that other State agencies, courts, boards, commissions, establishments, units and other Governmental Entities may procure services and Deliverables from Vcndor under this Agreement.
  6. **Assignment of Third Party Warranties.** Vendor hereby assigns and shall assign to the Department any and all existing and future warranties, indemnities and other benefits obtained or available from the licensor of any Third Party sotlware or the manufacturer of any equipment or replacement parts provided or otherwise furnished in connection with this Agreement.

##### Intentionally Omitted.

* 1. **Contract Compliance Audit.** Vcndor agrees that the Department or a representative of its selection may conduct a complete contract compliance audit at least once annually during the term of this Agreement and after termination or

### *.u,*

expiration of this Agreement to determine whether or not the Vendor is complying with the terms or this Agreement, criteria established for access to Department Property, State and federal laws regarding Confidential Information, and any other applicable laws and regulations. Vendor shall promptly comply with and correct any deficiencies noted in the audit report as audit exceptions and will promptly implement any recommendations reasonably requested by the Department or its representatives. Vendor shall not impose any charge or fee in connection with any contract compliance audit.

* 1. **Care of Property.** Vendor shall he responsible fr)r the proper custody and care of any property, data, databases, software, interfaces, hardware, telecommunications lines and equipment, intellectual property and Department Property furnished by the Department for Vendor's use in connection with the performance of the Agreement. Vendor shall exercise its best etforts to prevent damage to all such prope11y and shall, at the Department request, restore damaged property to the extent possible to its condition prior to the damage at the sole expense of Vendor. Such restoration shall be complete when judged satisfactory by the Department. In addition, at the Department's request, Vendor will reimburse the Department for any loss or damage to such property caused by Vendor, or any agent, contractor or subcontractor employed or utilized by Vendor. Vendor shall not take any action that would impair the value ot: or goodwill associated with, the name, property and intellectual property rights of the Department and the State. Vendor shall obtain the prior advance written approval from the Department prior to Vendor's use (in advertising, publicity, public contract bidding, or otherwise) of the marks or intellectual property rights of the Department or the State.
  2. **Notification of Events.** Vendor shall notity the Department in wntmg if any of the following has been engaged in by or occurred with respect to Vendor or any corporation, shareholder or entity having or owning a controlling interest in Vendor:
     1. Vendor files or permits the filing against it of a case or other proceeding seeking liquidation, reorganization, or other relief with respect to itself or its debts under any bankruptcy, insolvency, or other similar law now or hereafter in effect or filing an ansvver admitting the material allegations of a petition filed against it in any involuntary case or other proceeding commenced against it seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts: or consenting to any such relier or to the appointment of or taking possession by any such official in any voluntary case or other

..J7

proceeding commenced against it seeking liquidation. reorganization or other relief under any bankruptcy. insolvency. or other similar law now or hereafter in effect with respect to it or its debts: or

* + 1. Seeking or suffering the appointment of a trustee. receiver. liquidator. custodian or other similar official of it or any substantial part of its assets: or
    2. Making an assignment fix the benefit of creditors: or
    3. Failing. being unable. or admitting in \vriting the inability generally to pay its debts or obligations as they become due or failing to maintain a positive net worth and such additional capital and liquidity as is reasonably adequate or necessary in connection with Vendor's performance of its obligations under this Agreement; or
    4. An order is entered approving an involuntary petition to reorganize the business of Vendor for all or part of its property: or
    5. If a writ or warrant of attachment. execution. distraint, levy. possession or any similar process that may materially affect the operation of Vendor is issued by any court or administrative agency against all or any material portion of Vendor's property: or
    6. Taking any action to authorize any of the foregoing.
  1. **Federal Procurement Requirements.** The Vendor will comply with all applicable provisions of44 CFR13.36(b)-(i).
  2. **Certification regarding Suspension and Debarment.** The Vendor certifies that neither it nor its principals: (a) arc presently debarred, suspended. proposed for debarment, declared ineligible or voluntarily excluded from covered transactions or participation in this Agreement by any federal department or agency: (b) have. within a three (3) year period preceding this Agreement, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal otrcnse in connection with obtaining, attempting to obtain or perfrm11ing a public (federaL state or local) transaction or contract under a public transaction: violation of federal or state anti-trust statutes or commission of embezzlement, theft, f<.)rgery, bribery, falsification or destruction of records, making false statements or receiving stolen property: ( c) are presently indicted of or otherwise criminally or civilly charged by a governmental entity with the

commission or fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (fcderaL state or local) transaction or contract under a public transaction; violation of tederal or state anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property. and

1. have, within a three (3) year period preceding this Agreement, had one or more public transaction (federal, state or local) terminated for cause or default. Vendor agrees to comply with the regulations implementing executive order 12549 regarding debarment and suspension.
   1. **The Vendor's Certification regarding Lobbying.** The Vendor certifies that:
      1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the Vendor, to any person f<.)r influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewaL amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
      2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with any Federal contract, grant loan, or cooperative agreement, the Vendor shall complete and submit Standard Form-LLL ·'Disclosure Form to Report Lobbying" in accordance with its instructions.
      3. The Vendor shall require that the language of this section be included in the award documents for all subawards at all levels (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.
      4. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section *1352,* Title *31,* U.S. Code of Federal Regulations. Any person who fails to file the required certification shall be subject to a civil penalty of not less than$ I 0,000 and not more than $100,000 for each such failure.

-I')

* 1. **Audits.** Vendor agrees to comply with, and assist the Department in complying with, all applicable provisions and requirements of the Single Audit /\ct of 1984, the Single Audit /\ct Amendments of 1996, 0MB Circular J\-133 (Audits of States, Local Governments, and Non-Profit Organizations), all 0MB Circular Compliance Supplements, Government Auditing Standards, and all other federal and state laws, rules, regulations, circulars and requirements applicable to auditing the expenditure of federal and/or state funds (the ""Audit Requirements"). If an annual financial audit repoti is required by the Audit Requirements, Vendor will provide the Department with financial audit reports which meet all criteria, standards, requirements and prov1s1ons stated in the applicable Audit Requirements, and such reports shall include all management letters and the Vendor's response to all findings, including corrective actions to be taken. In the event an audit shows that the entire funds paid hereunder, or any portion thereof: were not spent in accordance with the provisions of this Agreement or any applicable federal and state laws, rules, regulations, circulars and requirements (including, without limitation, the Audit Requirements), the Vendor shall be liable for and reimburse the Department for all funds not spent in accordance with such provisions, laws, rules, regulations, circulars and requirements (including, without limitation, the Audit Requirements) within thirty (30) days after the Department has notified the Vendor of such noncompliance. The Vendor shall have all required audits completed by an independent certified public accountant (IPA) who shall state that the audit complied with all applicable Audit Requirements. The Vendor shall provide the Department with a copy of any written audit findings or reports, whether in draft or final form, within *24* hours following receipt by the Vendor, as well as all written responses produced by Vendor. The requirements of this paragraph shall apply to the Vendor as well as any subcontractors utilized by the Vendor. At the Department's request, Vendor wilL at no charge, provide the Department with all information, reports and documentation as may be requested by the Department, and will cooperate in good faith with the Department in connection with any audit affecting or related to the Department the State or the Vendor.
  2. The Vendor will comply with all applicable provisions of 44 CFR 13.36(b)­ (i). Vendor will also comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air /\ct, section 508 of the Clean Water Act, Executive Order 11738- Environmental Protection Agency regulations, and any mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

'i()

* 1. **Compliance with lmva Code chapter 8F.** If this Agreement is subject to the provisions of Iowa Code chapter 8F, the Vendor shall comply with Iowa Code chapter 8F with respect to any subcontracts it enters into pursuant to this Agreement. The Vendor shall provide the Department with any compliance documentation, including but not limited to certifications, received from subcontractors by the Vendor.
  2. **Qualifications of Staff.** The Vendor shall be responsible frx assuring that all persons, whether they are employees, agents, subcontractors or anyone acting for or on behalf of the Vendor, are properly licensed, certified or accredited as required under applicable State law. The Vendor shall provide standards for service providers who are not otherwise licensed, certified or accredited under applicable State law.
  3. **Repayment Obligation.** In the event that any State and/or federal funds are delcrred and/or disallowed as a result of any audits or expended in violation of the laws applicable to the expenditure of such funds, the Vendor will be liable to the Depai1ment and the State fix the full amount of any claim disallowed (or the amount of funds expended in violation of such applicable laws) and for all related penalties incurred. In addition, if the Department or any state or federal agency concludes that Vendor has been paid for any cost that is unallowable, unallocable, or unreasonable under this Agreement, Vendor will be liable to the Department and the State for such cost. The Vendor shall pay to the Department all amounts for which the Vendor is liable under this section within ten ( I 0) business days of receiving the Department's written demand or written notice. The Department may withhold any payment under this Agreement if Vendor fails to timely make any payment required by this section. The requirements of this section shall apply to the Vendor, its atliliate and subcontractors.
  4. **Conflict of I ntercst.** The Vendor represents, warrants. and covenants that no relationship exists or will exist during the Agreement period between the Vendor and the Department that is a conflict of interest. No employee, officer or agent of the Vendor or subcontractor shall participate in the selection or in the award or administration of a subcontract if a conflict of interest, real or apparent, exists. The provisions of Iowa Code ch. 68B shall apply to this Agreement. If a conflict of interest is proven to the Department, the Department may terminate this Agreement and the Vendor shall be liable for any excess costs to the Department as a result of the conflict of interest. The Vendor shall establish safeguards to prevent employees, consultants, or members of governing bodies from using their positions for purposes that arc, or give the appearance of being, motivated by the desire for private gain for themselves or others with

I

whom they have family, business, or other ties. The Vendor shall report any potential. real. or apparent conflict of interest to the Department.

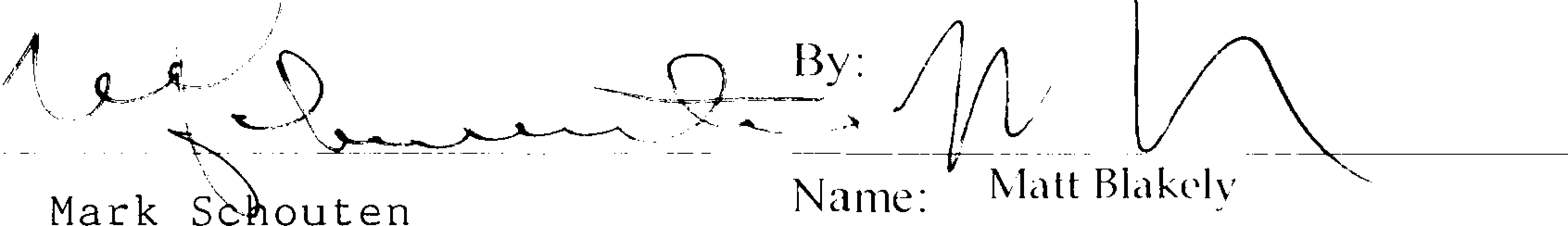
* 1. **Certification regarding sales and use tax.** By executing this Agreement the Vendor certifies it is either: (a) registered with the Iowa of Revenue, collects, and remits Iowa sales and use taxes as required by Iowa Code chapter 423: or (b) not a "retailer" or a "'retailer maintaining a place of business in this state'' as those terms arc defined in Iowa Code subsections 423.1 (42) & (43). The Vendor also acknowledges that the Depariment may declare the Contract void if the above certification is false. The Vendor also understands that fraudulent certification may result in the Department or its representative filing for damages for breach of contract.
  2. **Immunity from Liability.** Every person \Vho is a party to the Agreement is hereby notified and agrees that the State, the Department and all of their employees, agents, successors, and assigns are immune from liability and suit for or from the Vendor's and/or subcontractors' activities involving third parties and arising from the Agreement.
  3. **Use of Name or Intellectual Property.** The Vendor agrees it will not use the Department and/or State's name or any of their intellectual property, including but not limited to, any State, State depariment, board, agency or commission trademarks or logos in any manner, including commercial advertising or as a business reference, without the express prior written consent of the Department and/or the State.
  4. **Taxes.** The State is exempt from federal excise taxes, and no payment will be made for any taxes levied on the Vendor's employee's wages. The State is exempt from State and local sales and use taxes on the Deliverables.

/ *F\'f,,'Cl/T/ON\' ON NEXT />AGL/*

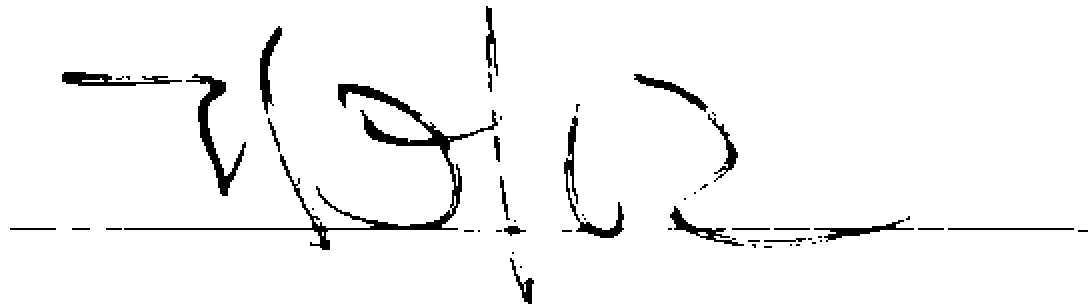
**IN WITNESS WHEREOF,** in consideration of the mutual covenants set forth above and for other good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, the parties have entered into the above Agreement and have caused their duly authorized representatives to execute this Agreement.

##### State of Iowa, acting by and through the M 83 INC. Iowa Department of Public Defense--

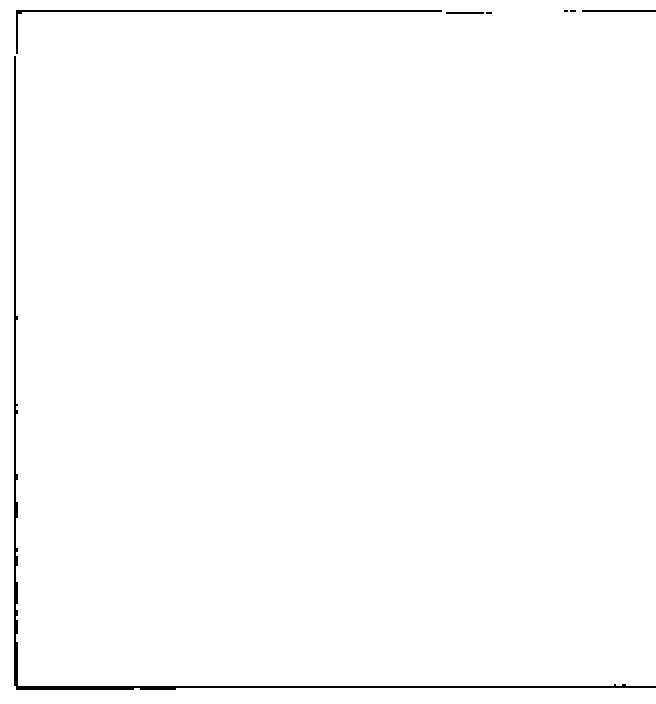
**Iowa Homeland Security and Emergency Management Division**

By: Name:

Title: Administrator Title: President & CEO

Date: Date: July 6, 2012

**SCHEDULE A**



**INITIAL STATEMENT OF WORK**

Pursuant tu Section 4.1 nl'thc Services ;\grccmcnt. Vendor will provide the lkpartmcnt with all ol'thc following Iklivcrahles on or before the corresponding dates or completion as set forth in this Agreement. ;\II Dcli\crables will he subject to the Ikpartmcnt"s Acceptance Testing and Acceptance in accordance with the terms of the Agreement. including. \vithout limitation. Section 6.2 or the Agreement. In performing all services and pnn iding all Deliverables. the Vendor\\ ill comply\\ ith and meet all applicable State or Iowa information technology standards. including those established by the lm\a Department or Administrative Services-Information Technology 1-:ntcrprisc (""[);\S-ITI·:··). and any applicable standards or requirements established by l·TM;\. including those standards ltll· linancial management systems set out in 44 CTR 13.20.

1. **EMCrantsPro Base Software, enabled for Public Assistance (PA) grants.** The Vendor will install and conligurc. to the Dcpar1mcnt·s satisfaction. LM(irantsPro Version 4 (Premium Edition) on the Vcndor·s host server. The installation ol'thc Solt\\ilrC shall include all ofthc features and meet and conform to all Spccilications. including. without limitation. those described in the Documcntatiun and 1-:M(irantsPro Materials. The Software features and corresponding configuration includes:

;\\_ Grant Administration for the Public Assistance (P;\) (irant Program.

* 1. Applicant Management. The ability to manage applicant and other l lscr data and contacts through the entire process !'or grant application and then closeout.
  2. Project Tracking. All project information is stored in the S) stem allowing quick

\\Cb-based access to monitor deadlines. compile quarterly reports. and close projects.

* 1. Process Payments. Payments arc automatically triggered \\hen projects arc obligated or l'unds requested. Transactions can then be compiled in a payment for routing and processing.

I·:. C'ollaboratinn. The following collaboration options arc included in the Software: rnanagl.? issul.?s. niutl.? ltmns. semi messages. and schedule meetings.

I·. Reporting. t-:M(irantsPro provides a birds-eye vie\\ of your organi/.ation \\ith countless real-time reports. Other features include Lxccl exporting. quick sl.?arch. and documl.?nt managl.?rnl.?nt.

Ci. /\dministrati\L: Conliguration. !'his includes setting up disaster core inltinnation. user and group pcrmis-.ions. module administration. email notification content.

,,cbsitc content. type management and general settings.

11. Project Version Importing ( 1-1:M,i\ Data). The ability to import data from 11 Mi\ based tiles that arc generated from Nt-:MIS and 1:MMII:.

1. **Customization of Software for Mitigation Grants.** The Vendor shall customize the Soth"arc for Mitigation (irants. including application forms. to enable the Solh":irc to manage the I lazard Mitigation (I IM) (irant Program. and all lTM/\ presidential disaster grants. including Pre-disaster Mitigation (PDM). I lood Mitigation /\ssistancc (FM/\). Repetitive 1-'lood Claims (RFC) and Severe Repetitive Loss (SRL).

**Ill. Analysis and Additional Customization.** The Vendor shall \\ork ,, ith the Department to (.ktcrminc. and document. an) custom requirements. The analysis\\ ill. among other things. include analy1ing State-specific documents and forms and idcntil) ing the Dcpartmcnt·s business needs as ,,ell as idcntil) ing and data import needs. l ising the results or this analysis the Vendor will perform the necessary customization ,,ork to satisli the lkpartmcnt"s requirements. This customization and other lklivcrables ,, ill include the following:

/\\_ Document Templates. The Vendor will create a State-specific payment form and payment notification letter (optional) and a State-local Funding Agreement template.

* 1. Data Import. Vendor ,,ill import all of'thc Department's Prcc:,.;isting Data (Grants.

/\pplicants. Projects. and Payments assuming that all data can be provided in a uniform format in Microsolt 1-:xccl tiles) - including. "ithout limitation:

* + - Data transfer from NI-:MIS. l:MMIL and the Department's grant tracking records for disasters declared in 2004 and fon,\ard:
* Data transfer from c-grants and the Department ·s grant records for other 11:vard Mitigation /\ssistancc (I IM/\) grants approved in 2005 and fornard:
* Data transfer from c-grants and the Department's grant tracking records for I-Mi\ grants denominated as I M/\2004 through I M/\2006:
* Data transfer from the lkpartmcnt"s grant tracking records ltH RI-C grants denominated as RIT200(1.
  1. Custom Reports. Vendor \\ill \\ork \\ith the Department to rcvic,, c:,.;isting reports and analyz.c any gaps in reporting t'unctionalit). and Vendor ,viii make all modilications to the Soli,,arc necessary to ensure that the Department can report on the following items:
     + Obligation/c:,.;pcnditurc reports b) federal undertaking (program)
     + Ohligationh:-.:pcnditurc reports h: disaster. h: applicant. h: Work Category . by assigned /\rca I.cad. by project. h: Count). and b: congressional district
* lh1dget c-.:penditurc reports
* Balance reports
* Spend plan/projections
* (irant Management Budgets *(324* budget). obligations. and spending rcpo11s
* Direct /\dministration Budgets. (D/\C budgets). obligations and spending reports
  1. State 1-'inancial System Integration. Vendor\\ ill make all modifications or customi1ations to the Software necessar: to provide e-.:port and import functions that will allow the Sotiware/System to integrate \\ith the llma State financial accounting

system. ab ··113 Financial...

I·:. Training. Vendor \\ill. at its sole e-.:pcnse. pnnide staffonsite (at a location and on days/times specified by the Department) for at least t\\O full days (8 hours each day) for implementation and training of personnel designated by the Department. Vendor will also provide up to 15 hours of remote training.

***1:\_*** Public hKing Website. Vendor will design. create. and fully implement a Public facing website satisfactory to the Department for the operation of the System at the Internet location of my.iowahomelandsecurity.org or such other address that the

/\gcncy should specify.

1. **Support Services & Budgeting Module Add-Ons.** Vendor \\.ill make all modifications or customin1tions to the Sotiware necessary to ensure that the Sofhvare \\.ill include the following modules and applications:

/\. Support Services./\ module or added functional it: that enables the Department and the Sofhvarc/Systcm to ti.ill: and completely track all support sen ices including.

\\.ithout limitation. time recording. travel vouchers. purchase requisitions. obligation/e-.:pcnditurc reports b) disaster. b: applicant. by \\ork category. by assigned area lead. hy project. by county. by congressional district. In addition the Sotiware and System shall include functions to prepare and report grant management

budgets *( .. 32-t* budgets..). obligations. spending reports. direct administration budgets. and spending reports.

1. Budgeting Module. lnterl:.1ce \\ ith other modules in the overall program for 1-c\enuc and c-.:pcnditurc budgets that,, ill track obligated amounts and authori1cd-but-not­ ubligated amounts separately. Vendur \\ ii I make al I modi licat ions to the Soli,, arc and take all steps necessary tu ensure that the budgeting module,, ill spccificall: do the following:
   * Roll up subgrantec project-based budgets and grantee operating budgets by grant a,,ard and grant program:

* Correspond\\ ith the lkpartmcnt·s state liscal :-cars ltlr the entire period or each grant program:
* Correspond \\ ith the State or Im\ a·s chart or accounts and accounting codes:
* Correspond\\ ith the Statc·s hudgcting codes:
* Perform hudgct-to-actual comparisons:
* I rack original hudgct and hudgct amendments and other changes separately:
* Include built-in chcck-and-halancc components and stop-gaps to prevent overspending and to cnkH"cc grant funding restrictions.

1. Mohile Application. An I-Pad application that will allow the remote preparation and wireless transmission or initial Iowa damage surveys and federal Joint Preliminary Damage Assessments to the System.

Customization to he provided hy Vendor under Sections II. Ill and IV include 150 hours of customization services to be allocated as needed.

1. **Scheduk of Deliverables and Payments.**
   1. Vendor shall deliver. provide. perform and complete all Deliverables specified in Section I ahovc on or hefore the 31st day ol'.luly.2012. The total Ices for such Deliverahles: $175.000.00. The $175.000 f'ce set forth in this Section V. A. shall constitute the total license kc lt)r all Vendor-Owned Dclivcrahles and Software (as such term is defined in the Sollware License Agreement) and upon payment by the Department or this $175.000 kc. the Department \viii have a full) paid up license for the Vendor-Owned Deliverables and Software (as delined in the Soli\\a1-e I 1cense Agreement).
   2. Vendor shall deliver. provide. perform and complete all Deliverables specilied in Section 11 ahove on or he fore the 31st day or August.2012. The total Ices for such Deliverables: $75.000.
   3. Vendor shall deliver. prm idc. perftll"m and complete all Deliverables specified in Section 111 above on or before the *3* I st (ht) or August.2012. The total Ices for such Deliverables: $50.000.

I)\_ Vendor shall deliver. provide. perform and complete all lklivcrahlcs specified in Section IV ahove on or before the 31st day of August. 2012. !he total Ices for such Deliverables: $50.000.

I·:. An) Retained Amounts for Deliverables provided under this Statement or \Vork \viii he payable upon the Department·s delivery to Vendorol'\Hittcn notice ofl·inal Acceptance. subject to all ot'the terms and conditions of the Agreement.

***1:.*** The Dcpartmcnt·s obligation to make payment or any Ices. compensation. Retained Amounts or any other amounts pa)able to the Vendor under the /\grccment is suh\_jcct

to all of the terms and cunditions set li1rth in the Agreement. including.\\ ithout limitation. Sections 5.1 and *5.2.*

1. **Ownership of Deli,ernhks.** Consistent with and without limiting Section 7 of the Agreement. the State and the Department\\ ill m, n all State-0\\ ned lkli, erablcs (and all intellectual property rights and proprietary rights arising out oL embodied in. or related to such Deliverables. including copyrights. patents. trademarks. trade secrets. trade dress. mask work. utility design. derivative works. and all other rights and interests therein or related thereto}, including.\\ ithout limitation. the folltming: (I) all Dcpartmcnt-spccilic Documentation and other Documentation created for the Department: (2) the Website to be created by Vendor and all Deliverables associated with or related to the creation of the public-facing Website. including all content (including Content). graphics. images. videos. lilcs. links. designs. creative ,vorks. \\ork product. art\\Ork and all other clements. information. and intellectual property that arc incorporated in. a pa11 oL arising out oL embodied in. or othcnvisc related to the Website.
2. **Project Completion Date.** The Project Completion Date for the Project outlined in this Initial Statement of Work is August *>I.* 2012.
3. **Optional Dcliwrahks.**
   1. At the Dcpartmcnt·s option and for the cost ofup to $50.000. the Vendor shall add modules to incorporate the Department's 1-:MP(i. HSGP. I IMEP. MMRS. and other non-disaster grant programs and import all existing grant information for 2009 and all later grant years. This option shall continue for a period of 18 months from the date the Department provides Vendor with its \Hittcn notice of Final Acceptance of the System.
   2. Vendor shall. at the Departmcnt·s request. furnish additional customization at the rate of $190 per hour. In connect ion \V ith an) such request. Vendor and the Department shall prepare a Statement of Work that idcntilics the customization services and Deliverables that Vendor\\ ill be providing to the Department.

**Date: .July 5, 2012**

**SCIIEl)llLE B- PRO.IECT PLAN**

lill.l'l{O.IICll'l:\'\Sll1\II Ill l'Rll'\Rll)IIYV!t\l)OR\\lllll'-J:Hl1>\YSOI IIIII.ITICII\I l)·\II

\Nl)SIL\I.I IIIRIVll\,\ll)\Nl)\i'l'l{()\11)1\Y 1111 Dll'.\Rl\11'\I.

**SCHEIWLE C- PERFORMANCE STANDARDS: PAYMENT, MONITORIN(; AND REVIEW PROVISIONS**

The parties acknowledge and agree that high quality and timely delivery of the Deliverables that Vendor is required to provide as part of this Agreement is important and essential to the overall success of this Agreement.

##### PAYMENT FOR PERFORMANCE

* + Vendor compensation is tied to performance as provided in Sections *5.2.* 5.3, 5.7, 5.10, 6.2, and 8.1 of the Agreement.
  + Vendor will submit to the Department detailed invoices requesting payment of compensation and all such supporting information to justify the requested compensation and such other information as the Department may request in accordance with Section *5.2* of the Agreement.
  + Vendor is required by this Agreement to provide the Department with detailed monthly reports in accordance with Section 6.3 of this Agreement.
  + Vendor will comply with the Monitoring and Review provisions of this Agreement.
  + The Department will perform Acceptance Testing 111 accordance with this Agreement.

##### MONITORING

In order to allow the Department to elkctively monitor the Vendor's compliance with and performance under this Agreement, the Vendor will in accordance with this Agreement provide the following documentation:

* + Detailed invoices with supporting information as required by Section *5.2* of the Agreement.
  + Monthly activity status reports as defined in Section 6.3 of this Agreement.
  + The Department will use the Acceptance procedures described in Section 6.2

(,()

of the Agreement to monitor the quality of Deliverables and to determine whether Deliverables meet Acceptance Criteria.

##### REVIEW

The Department will use the following measures and documentation in reviewing performance under this Agreement:

* + Monitoring the Project schedule and timely completion of scheduled tasks.
  + Detailed invoices with supporting information as required by Section 5.2 of the Agreement.
  + Monthly activity status reports as defined in Section 6.3 of this Agreement.

*<,I*

**Softwan· License Agreement**

This Sothvan: License Agreement (this ..Agreement"·) is cfkctivc as of Jul\_\ 5.2012 (--1:rtccti\c Date..). and is made by and bct\\ccn l'v1B3 INC. ( .. licensor··) and the State of' il)\\a (..State..). acting by and through the lmva lkpartmcnt of' Public Defense. I lomcland Sccurit\_\ and 1:mcrgcncy Management Division c·Agcncy··) (the State and the Agency shall be referred to individually and collectively as ..Licensee..).

**SF:CTION I. DEFINITIONS**

In addition to any other terms that may be defined clsC\\hcrc in this Agreement. the following terms shall have the ftllkl\\ ing meanings:

**"Authorized Contractors"** mean independent contractors. consultants or other Third Parties\\ ho arc retained or hired b.\ Licensee or a Gmcrnmcntal Lntit., to host. maintain. modify. support or enhance the Soll\\,11-C or lo othcn, isc assist Licensee or Governmental

Lnt it ics \\ it h their use or the Sofl\\ arc consistent \\ it h the rights granted here in.

**"Confidential Information"** means. sub\_jcct lo any applicable Stale and federal lav,s and regulations. including but not limited to ilrna Code Chapter *22.* any confidential or proprietary inftirmalion or trade secrets disclosed by either part\_\ (a ··disclosing party..) lo the other pa11y (a

..receiving party..) that. al the time of disclosure. is designated as confidential (or like designation). is disclosed in circumstances of' confidence. or \vould be understood b\_\ the parties. exercising reasonable busincss\_judgmcnt. to be confidential. Confidential lnftmnation docs not include any information that: (i) ,,as rightfully in the possession of the receiving party from a source other than the disclosing party prior to the time of disclosure oft he information by the disclosing party to the receiving party: (ii) \\as kno\,n to the receiving party prior to the disclosure oft he information by the disclosing part\_\: ( iii) was disclosed to the receiving party without restriction by an independent third party ha,ing a legal right to disclose the inf<.Jrmalion:

(iv) is in the public do111ain or shall have become publicly available other than as a result of' disclosure by the receiving party in violation of this Agreement or in breach of an\_\ other agreement with the disclosing party: (v) is independent!\_\ dncloped b\_\ the receiving part\_\

\\ ithoul an\_\ reliance on Confidential Information disclosed by the disclosing part\_\: (vi) is disclosed or is required or authori/.ed lo be disclosed pursuant to l,m. rule. regulatinn. subpllena. summons. or the order ofa court. tm ful custodian. govcrn111ental agcnC\_\ or regulatory authorit\_\. or by applicable regulatory or professional standards: or (\ii) is disclosed b\_\ the receiving part\_\

,,ith the \Hillen consent of the disclosing parl\_\.

**"Content"** means any content. data or inli.lrmation provided or sub111ittcd hy or through iccnscc. ( iovcrn111ental Lntitics and/or l lsers for use,, ith the Soll\\ar-c.

**"l)eficienc:v"** means a defect. Ihm. error. bug. ano111al\_\. failure. 0111ission. interruption of service. or other problem ot'any nature ,vhatsoc,er \\ ith respect to the Soll\\are. including.

\\ ithout limitation. any failure of the Soli\\are to cnnfor111 to or meet an applicable Specilication.

[kficicnc\_' also includes the lack ol'sot11cthi11g essential or necessary li\_ir cot11plctcncss or proper functioning of the Soli\\!JrC.

**"Documentation"** t11cans an) and all technical information. cot11mcntar). c:-..:planations. design and systct11 architecture documents. database layouts. test materials. training t11atcrials. guides. 111anuals. \\orbhccts. notes. \\lffk papers. and all other i11for111ation. docut11c11tatio11 and 111atcrials related to or used in conjunction\\ ith the Soll ware. in any 111cdiut11. including hard copy. electronic. digital. and t11ag11ctically or optical!) encoded 111cdia.

**"Enhancements"** mean all updates. upgrades. bug lixcs. patches. additions. i111provcmcnts. modifications or other cnha11cc111cnts to the Sollwarc (including. without li111itation. any nc,, releases or versions ol'thc Soll,,arc) provided or made available by Licensor or an) Third Party under this i\grccmcnt or an) other agrcc111cnt (including. \\ithout lit11itation. the Services Contract. this J\grcct11cnt. and an) agrcc111c11t for or relating to t11ai11tc11ancc or support) and all changes to the Docu111c11tatio11 and Source Code as a result of such l·:11ha11cc111c11ts.

**"Governmental Entity"** 111ca11s an) (imcrnt11cntal Lntity. as dclincd in Iowa Code Section 8/\.101(-l). or any successor provision to that section. The tcr111 (iovcrn111cntal Lntity shall also include agencies. independent agencies. the Judicial Branch. cout1s. boards. authorities. institutions. cstablisht11cnts. divisions. bureaus. cot11missions. cot11111ittccs. councils. examining boards. public utilities. oniccs of elective constitutional or statutory oniccrs. and other units. branches. or entities of government (including any state government and the government or the United States). hff the sake of clarity. the term Govcrn111cntal **l'.ntit)** shall also include the Federal Lmcrgcncy Management /\gene) ('"FLM/\ ..).

**"Public Code"** means one or more or the following: (I) any soilware that contains or is derived in any manner (in whole or in part) frot11 open source soll\\at-c or solhvarc subject to similar licensing or distribution requirements: and (2) any software that requires as a condition or its use. 111odificat ion or distribution that such soil\\ arc ( or other soil ware incorporated into. derived from or distributed \Yith such soll\\arc) be either (a) disclosed or distributed in source code form: (b) licensed for the purpose or t11ak ing dcrivat ivc \\orb: or (c) redistributable at no charge.

**"Services Contract"** means the Sen ices Contract made and effect ivc as or.I uh :'i. 2012. by and between the i\gcncy and I.iccnsor. including all schedules. exhibits. and other attach111cnts to that agreement. including. \\ ithout lim ital ion. the Statc111c11t(s) or Work.

**"Software"** means the I M(irantsPro Version -l-Prc111iu111 Ldition soll\,arc and all related t11odulcs. modifications and l·:11ha11cct11c11ts. including.\\ ithout lit11itatio11. those rcllccting custot11izatio11s requested by the Dcpartt11c11t and all soll\,at-c. prngra111s. modules. applications. object code. Source Code. Docut11c11tat ion. I·:nhanccmcnts and custo111izat ions prO\ idcd or licensed under this i\grcc111c11t. the Services Contract. and under an) other agrcct11cnt bct\\CCn the pat1ics hereto and their successors and permitted assigns (including.without limitation. an) agrcc111cnts relating to maintenance or support). and all other solt\\arc. programs. applications.

modules and components \\hich comprise the S)stc111. in all for111s. including Source Code and object code. all related Documentation and Lnhanccmcnts. and all copies of the lixcgoing.

**"Source Code"** 111cans the human-readable source code. source program. scripts and/or progra1111ning language. including I ITMI .. JavaScript. Cold Fusion. and S()L. for or related to the Software. Source Code includes all source code listings. instructions (including compile

instruct ions). programmer·s notes. commcnliir) and a11 re lated tcchn ica I in format ion and Documentation. including all such information and Documentation that is necessary or useful for purposes of maintaining. repairing. or making modilications or enhancements to the Soft\\ilrC and the Source Code.

**"Specifications"** mean all spccilications. requirements. technical standards. performance standards. representations and other criteria related to the Software stated or expressed in this

/\grccmcnt. the Services Contract. the LM(irantsPro Materials. and the Documentation. Spccilications shall include the Acceptance Criteria and any spccilications. standards or criteria stated or set forth in any applicable state. kdcral. foreign and local l:ms. rules and regulations. The Spccilications arc incorporated into this /\grccmcnt hy rclcrcncc as if fully set forth in this

/\grccmcnt.

**"Statement of Work"** shall have the meaning ascribed to it in the Services Contract.

**"Third Party"** means a person or entity (including.but not limited to any form of business organization. such as a corporation. partncrshir. limited liability corporation. association. etc.) that is not a party to th is /\grccmcnt.

**"User"** means any Third Part) that is authorized or pcnnittcd by the I .iccnscc or a (iovcrnmcntal Lntity to access or use the Soft\,:irc and its functions. including. but not limited to members of the public. grantees. subgrantccs. applicants and other persons associated with projects or programs administered by Licensee or any (iovcrnmcntal Fntity.

**"Warranty Period"** shall have the meaning ascribed to it in the Services Contract.

/\II other capitalized terms not othcn, isc de lined herein shall ha\c the meaning ascribed to them in the Services Contract.

**SECTION 2. SOFTWARE LICENSE**

* 1. **License.** Licensor hereby grants to Licensee and to (iovcrnmcntal 1-:ntitics a nonexclusive. irrC\ocable. perpetual. Ii.illy paid up. nontranskrahlc (except as provided in Section 9.7) and workhv idc right and license to:
     1. Lise. install. host. access. cxcculL'. mp). modil\ edit. format. translate. maintain. suppor1. repair. enhance. test. demonstrate. and displa) the Soft\\ar-c. and prepare derivative works based on the Soft\,:irc. in all media now kno,,n or hereafter created:
     2. Combine and use the SPll\,arc \\ ith other sPll\\atT. lirnn\arc. Public Code and hard,, arc:
     3. (irant an:, or all ol"thc rights set forth/granted in Subsections 2.1.1 and *2.1.2* alxnc lo Authorized Contractors: and
     4. (irant rights to access and use the Sollwarc and its runctions to lJscrs.

All Sollwarc subject to this Agreement may be used on any one or more orthe computers. data center locations. networks. Internet or intranct sites. servers or other systems or Licensee. any (iovcrnmcntal Lntity. or any Authorized Contractor ("'Licensee Systems..). In addition. all Sollv,arc subject to this Agrcc111cnt ma:, he used on any server. computer. nct,,ork. Internet or intranct sites. or other system maintained by. or on bchalr ot: Licensor if Licensor is providing hosting services to or for the bcnclit or I .iccnscc (the **··1** lost Server..). The license and all or the rights and privileges granted hereunder shall he valid and apply regardless of \\hcthcr the Solh,a1-c is being used or accessed on the I lost Scner or on a l.iccnscc System. I-or purposes of this Agreement. the parties agree that i!'thc Licensor. the Licensee or an:, Governmental Lntity makes any Lnhanccmcnt to the Solh,arc (,,hethcr directly or indirect!:, through an Authorized Contractor) during the Vvarranty Period. such Lnhanccment shall be owned by the Licensor. with the Licensee having all orthc rights set l<)rth in this Agreement (including. without limitation. those rights set forth under Section 2.1) ,,ith respect to all such

I-:nhanccmcnts.

The foregoing license grants and rights include a license under any current or future patents owned or licensable by Licensor to the c:,.;tcnt necessary: (i) to e:,.;crcisc any license right granted herein: and ( ii) to co111bine the Soll ware with any other Deliverables provided under the Services Contract. including with any hard,,a,-c and solhvarc.

* 1. **Dcli,cry of Source Code.** Licensor shall rurnish and deliver to Licensee a complete copy or all Source Code (on a media and in an electronic format acceptable to Licensee) and updated Documentation (including any \\rittcn inl(irtnation necessary or desirable for the maintenance. 111odirication. compilation. and/or enhancement or the Sollwarc): ( i) upon I .iccnscc providing either Vendor or Licensor ,,ith l.icensee·s \\rittcn notice or Acceptance with respect to the Soll,,:11-c. (ii),, hen I .iccnsor or any Third Part:, deli, ers. pnn ides or makes :l\ailablc any Lnhanccmcnts to Licensee. and (iii) ,,ithin rive (:'i) business da:,s or receiving any written notice from Licensee requesting the Source Code and Docu111cnt:1tion. The Licensee shall be entitled to access and use all Source Code and Documentation alter providing ten ( I 0) days\\ ritten notice to the Licensor. upon the occurrence of any one or more of the llllkl\\ ing events: (i) Licensor (or any affiliate of Licensor. or any corporation. shareholder or entity having or O\\ning a controlling interest in I .iccnsor) violates or commits a breach or any term or condition of this Agrce111cnt or

any agreement relating to maintenance and support of the Soll\,are. and the Licensor fails tu cure such breach ,,ithin the time period established 1;,ir curing such breach. i!'any: (ii) the Licensor (or any affiliate or I ,iccnsor. or any corporation. shareholder or entity having or o\vning a controlling interest in I .iccnsor) assigns. transfers. delegates. or subcontracts any of its maintenance or support obligations or duties under. or any interest in. any agreement it may have\\ ith the Licensee relating to maintenance or support oft he Soll\\ arc.\\ ithout the prior,, rillcn consent of

thl' Lil'ensl'l'. llthn than a sulxontract to MID ll'chnologil's Inc.: (iii) thl' l.icl'nsor (or an) aniliatl' of l .icl'nsor. or any corporation. shar-choldn or l'ntil) ha, ing or O\\ ning a controlling inll'tTsl in I.icl'nsor) Cl'asl's to providl' mainll'n:rncl' and support to till' **l** .icl'llSL'l'. ,, IKthl'r dul' to its Cl'asing to conduct husinl'ss gl'nl'rally or othl'r\visl'. including. but not limitl'd to thl' l.icl'nsor's Lkcision to no longl'r maintain or support thl' Soti,\.trl': ( iv) l.icl'ns(ir (or an) artiliatl' of l.il'l'nsor. or any corporation. shar-choldn or l'ntity having or owning a controlling intl'rl'st in Licl'nsor) tnminatl's or suspl'nds its businl'ss or cl'asl's to do businl'ss: (v} 1.icl'nsor (or an) aniliatl' of Licl'nsor. or any corporation. sharl'l10kkr or entity having or owning a controlling inll'rl'sl in Licl'nsor) bl'coml's subjl'cl to any bankruptcy or insolvl'ncy procl'l'ding umkr fi.xkral or stall' law: (vi) l.icl'nsor (or any alTiliall' of 1.icl'nsor. or any corporation. shard1oldn or l'ntit) having or owning a controlling intl'tTst in Licensor) has bl'coml' insolvent or unabk to pay its ohligations as thl'y accrul' or bl'coml' dul': (vii) Licensor (or any affiliatl' of Licl'nsor. or an) corporation. sharl.'110 kkr or l'llt ity having or O\\ ning a contro II ing intl'tTsl in **l.** icl'nsor) makl's an assignnwnt for thl' bl'nl'fit of its ct-editors: (viii) a rl'cl'iver. trustl'l'. liquidator. custodian or similar official has bl'l'll appoinll'd to act on bl'lialf of the Licensor (or any artiliate of Licensor. or any corporation. shareholdn or entity having or o,,ning a controlling interl'st in Licensor) with 1-cspect to any of its operations or assl'ts: ( i:-;) **l** .icl'nsor (or any alTiliatl' of **l** .icensor. or an) corporation. shareholder or l'ntity having or O\\ ning a controlling intnest in l .icl'nsor) nKrgl's. is sold or l'nll'rs into an agr-ceml'nt to sl'll all or substantial I) all of its assl'ls resulting in Licl'nsor's failur-c to 1-cmain a party to. or otherwisl' rl'lain all of its rights and ohligations under. this J\grel'ment or any agr-cl'ment 1-clating to mainll'nancl' and support ofthl' Sotlware. and the survivor or acqu irn dol's not assurnl' all or I.icensor's rights and ohligations under such agreernl'nts. whl'ther by operation of law. written agr-ceml'nt or othnwisc or(:\) Licensor or any subsidiary. affiliate or subcontractor of **l** .icl'nsor violall's or commits a hrl'ach or any term or condition ofthl' I losting Servicl's Agreement. ,,hich breach has not been cured by Licensor within any applicable time pL'riod stated ther-cin for curing such breach. In the evl'nt the

Licensl'e accesses the Source Code and Documentation in accordance with the terms ur this SL'ction 8.17. all or the rights and privileges grantl'd under this Agreement and the Services Contract with respect to the Software shall appl) to till' Source Code and Documentation. and the Licensee. (,overnmental Lntitil's. and their J\uthori/ed Contractors shall be entitled to e:-;ercise

all of such rights and privileges\\ ith respect to the Source ( 'ode and Documentation. including all rights to maintain. support. modify. enhancl'. and prepare derivative ,vorks based upon. the So tiware and/or the Source Code.

* 1. **Licensee Not Required to Accept 01· Install Enhancements.** Licensor shall not condition any of till' I .icensee·s rights and rl'nll'dies. or till' I.icensur·s obligations. u11Lkr this J\grl'l't11ent or an) other agr-cement 1-clatl'd to the Solh,are (including. but not limited to. any agrl'ement relatl'd to maintenance or support of the Sotl,,:irl'). on thl' l.icl'nsel' accepting or installing an) Lnhancernents or additional functionality proviLkd b) Licensor.
  2. **Ownership.** Licensor shall O\\ll all right. title. and interest in the Solh,are. Documentation and all intellectual propet1) rights inherl'nt thnein. including. ,vithout limitation. all changl's. improvements and customi/ations tTl]Ul'Stl'd or suggl'stl'd by Licensee in the support and maintenance ol'the Soti,,are.

**SECTION 3. TERM**

I he term of this !\grccmcnt and the license granted hereunder shall be perpetual unless terminated b) either party only in accordance\\ ith the c:,,;prcss terms of this !\grccmcnt.

**SECTION 4. RISK OF LOSS.**

Licensor shall bear all freight. shipping. handling and insurance costs for delivery of the Soll ware and shall bear all risk of loss with respect to the Sotl\\a1-c. including any losses resulting from any damage to or destruction of the Sotl,\a1-c. in whole or in part. \\hich may

occur prior to Licensee·s delivery of written notice of Acceptance to Licensor with respect to the Soll,\ arc.

**SECTION 5. LICENSE FEE.**

**5.1 License Fee.** lipon payment by Licensee of the l'cc set forth in Section V.!\. of the Initial Statement of Work (Schedule;\ to the Services ( 'ontract) in the amount of $175.000. I .iccnscc will have a fully paid up license for the Sollwarc and Vcndor-(hvncd lklivcrables. and I ,censor is not entitled to an) other fees. compensation or considnation for the license.

**SECTION 6. REPRESENTATIONS, WARRANTIES AND COVF.NANTS.**

* 1. Lin:nsor represents and warrants that during the Warranty Period. the So flware ( in who le and in part) shall: ( i) be free from material Delicicncics: ( ii) conform to and operate in accordance with all Specifications: and ( iii) be compatible with and interoperate fully and correctly with the Licensee Systems and with any I lost Server. Licensor warrants that all media containing or relating to the Software ti.irnishcd hereunder shall be free from defects in material and workmanship. During the Warranty Period. Licensor shall. at Licenscc·s request and at Liccnsor·s expense. repair. correct or replace any Solhvarc that fails to co111ply with the warranties and requirements of this Section 6.1 promptly upon receiving notice of such failure from Licensee. but in no event more than ten ( I 0) days a Iler the date or receipt of such notice. In addition. the Licensor \\ill. during the Warrant) Period. fully support and maintain the Software. at no additional charge. Such support and maintenance\\ ill include. without limitation. all of the services. Lnhanccmcnts and l'caturcs that Licensor\\ ill prov idc under the Software Maintenance and Suppo11 Agreement. In the event Licensor is unable to repair. correct or replace such Solt\\arc to l.iccnscc·s reasonable satisfaction. I .iccnsor shall refund the fl'cs or other amounts paid for such Sofh\arc \\ithin ten ( 10) business da)S alicr Liccnscc·s request for such refund. The l()ITgoing shall not constitute an c:,,;clusivc remedy under this !\grccmcnt. and Licensee shall he entitled to pursue any other available contractual. legal t1r equitable remedies.
  2. Licensor represents and warrants that Licensor is l'ull) ,mare or Liccnscc·s business requirements and intended uses for the Sotl,,arc. and the Sotl\\arc shall sat isl such requirements in all 111atcrial respects and is fit for such intended uses.
  3. Licensor represents and warrants that: (i) it is the O\\ncr of the Solhvarc and an) and all intellectual property rights in and to such Soli\\,irc. including. hut not limited to. copyrights.

6

tradcmarb. trade secrets. trade dress. and/or patent rights: ( ii) it ll\\ ns.possesses. holds. and has received all rights. per111its. pcr111issions. licenses and authority necessary to provide all Sollwarc to Licensee hereunder and to grant and convey the hcnclits. licenses and other rights granted or conveyed to Licensee and (iovcrn111cntal Lntitics hereunder \\ithout violating any rights of any Third Party: ( iii) the Soll ware shall he wholly original\\ ith and prepared solely hy Licensor:

( iv) I,iccnsor has not previously and\\ ill not grant any rights in the Soll ware to any Third Party that arc inconsistent with the rights granted herein: and ( v) Licensee and (iO\crnmcntal Lntitics shall peacefully and quietly have. hold. possess. use and enjoy all Solt\\arc \\ ithout suit. disruption or interruption.

* 1. Licensor represents and warrants that: ( i) the Sollv\arc (and all intellectual property rights and proprietary rights arising out ol: cmhodicd in. or related to. the Solhvarc): (ii) Liccnscc·s (and any (iovcrn111cntal Lnt ity"s) use of the Soll ware in accordance with the tcr111s of this

/\grccmcnt: and (iii) Liccnscc·s (and any (iovcrnmcntal I:ntity ·s) exercise ofthc rights. licenses and bcnclits granted or conveyed hereunder. do not and\\ ill not 111isappropriatc a trade secret or infringe upon any copyright. patent. trademark. trade dress or other intellectual property right. proprietary right or personal right of any Third Party. Licensor further represents and \varrants that. to the best or I ,iccnsor·s knowledge. there is no pending or threatened clai111. litigation or action that is based on a claim of infringc111cnt or violation ofan intellectual property right. proprietary right or personal right or misappropriation of a trade secret related to the Solt\\ arc. Licensor shall i,rnnediatcly inform Licensee in \Hiting upon becoming aware of any actual. potential or threatened claim of infringement or violation of any intellectual property right. proprietary right or personal right or misappropriation of a trade secret related to the Solhvarc.

Ir such a claim arises. then I ,iccnsor shall. with the agreement of the Licensee: ( i) procure for the Licensee and (iovcrnmcntal Fntitics the right or license to continue to use the Software at issue:

(ii) replace such Sotlwarc with functionally equivalent or superior Sotlvvarc free of any such infringement. violation or misappropriation: or (iii) modify or replace the affected p011ion of the Soll ware with functionally equivalent or superior Solhvarc free of any such infringement. violation or misappropriation. In the event Licensor is unahle to fullill its ohligation under (i).

(ii) or (iii) ahovc. Licensor shall accept the return of the Sollwarc and refund to the Licensee all Ices. charges and any other amounts paid hy the Licensee with respect to such Sotlware. In addition. Licensor agrees to fully indemnify and hold harmless the Licensee. (iovcrnmcntal Lntitics and their oniccrs. directors. employees. onicials and agents as provided in the lndcmnilication section of this /\grccmcnt. The foregoing remedies shall he in addition to and not exclusive of other remedies available to the Licensee and shall survive termination of this

/\grecmcnt.

* 1. l'hc Licensor represents and warrants that all Soll\\ arc prov idcd under this /\grcc111cnt which uses date data shall accurately process data. including but not limited to. calculating. co111paring and sequencing from. into. hct\\ccn and a111ong the nineteenth. t\\Cntieth and t\\Cnty­ lirst centuries. including leap year calculations. integral calculations. day-in-year calculations. day-or-\,cck calculations and vvcck-of-ycar calculations: and not experience ahnor111al ending and/or produce invalid or incorrect results in the operation of the Solh,arc or Liccnscc·s Systc111. If the Solhvarc is to perform as a system\\ ith other hard\\arc and/or software. then this warranty shall apply to the Solh,arc as it processes. translcrs. sequences data. or otherwise interacts\\ ith other solhvarc. h:ml\varc. co111poncnts or other parts of the systc111. pnn idcd that such other

7

soll\\alT. hard\\arc. components or parts do not fail to meet an) applicable requirements of this Section (1.5. The remedies a,ailablc to the Licensee li\_ir breach of this ,,a1-ranty include. but arc not limited to. repair or replacement of non-compliant Sollwarc. Nothing in this \\arrant) shall be construed to limit an) rights or remedies of the Licensee umkr this !\grccmcnt with respect to [)clicicncics in the Sollwarc other than data processing compliance.

* 1. The Licensor represents and warrants that all Solt\\arc and l-:nhance111cnts do not and shall not as delivered or provided by Licensor contain an anti-use device. a disabling device. lockup progra111. a so-called ··time bomb.. or ..drop dead.. device... back door:· instructions. conta111inants. viruses. Trojan I lorses. worms. cancclbots. or any other 111cchanis111. code or co111putcr progra111111ing routine that \\ill disable. da111age. impair or i111pede. lock-up. alter. halt. abnormally end. surrcpt it ious ly intercept. expropriate or interlcre vv it h the Soll\\ arc. L iccnscc Systems or any data or information of Licensee. I.iccnsor further represents and ,varrants that all Solhvare and Lnhancements do not contain any other programming or device of any kind that would allow unauthorized access to the Soll ware b) I .icensor or any other person or any Third Party. Licensor covenants that it will not under all) circumstance. including enforcement of a valid contract right. (i) install or trigger a lockup program or disabling device. or (ii) take any step that would in any manner interlcrc with Licensee's use of the Soll\\,ire. Licensee Systems. or I lost Server. or restrict I .icensce from accessing its data liles or in any way intcrlcrc with the transaction of Licensee·s business. l·or any breach of this prm ision. Licensor shall. immediately a tier receipt of notilication of the breach. cure the breach to Licensee·s satisfaction. including. without limitation. repairing. at l.icensor·s expense. any damage done to the Software or Licensee Syste111s or any other property.
  2. Licensor represents. warrants and covenants that it has complied with. and shall comply with. all applicable lcdcral. state. local and international laws. rules. regulations. codes. orders and ordinances in connection with its performance of this !\greement.
  3. Licensor represents and warrants that it has no interest and shall not acquire any direct or indirect interest that would conflict in any manner or degree,, ith the performance of its obligations under this !\gn:cment.
  4. Licensor represents and vvarrants that the Soti,,arc and the license. use and other rights granted hereunder comply,, ith. and shall comply\\ ith. all applicable lcdcral. state. local and international laws. rules. regulations. codes. orders and ordinances in effect as of the date of this

!\grccmcnt. including applicable provisions of Section 508 ofthe Rehabilitation *!\ct* of 1973. as

amended. and all standards and requirements established by the !\rchitectural and Transprn1ation Barriers !\ccess Board and the lovva Department of !\dministrative Sen ices. In format ion Technology 1:nterprisc.

* 1. Licensor represents and warrants that it has not incorporated and ,, ill not incorporate. ,,ithout the prior written consent of Licensee. an) Public Code. in ,,hole or in part, into any part of the Soll ware or an) Lnhancement. or use Public Code. in whole or in part. in the development of any part of the Soti,,a1T or any I-:nhanccment in a manner

that may subject the Soll ware or any I-:nhancement. in,, hole or in part. to all or part of

the license obligations of an) Public Code. Licensor represents and ,,arrants that nothing

8

in I .iccnsor·s agreements\\ ith Third Parties 1;\_1r use and incorporation or Public (·ode into the Soll,,are conflicts or\\ ill conflict,, ith the terms of this Agreement. or interferes or

,,ill interfere in any manner with l.iccnsee·s (and a11., successor entity ·s or (iovcrnrncntal

Lntit\_v·s) full exercise of the rights. licenses and bcnelits granted or conveyed herein.

* 1. Licensor represents and ,varrants that all Documentation will accurately reflect the operation of the Soll ware or other Deliverables to ,,hich the Documentation pertains and,, ill enable the Licensee to use. modi!) and maintain the Software full) and completely.
  2. Liccnsor·s warranties provided in this Section 6 arc in addition to and not in lieu of any other warranties provided in this Agreement. All ,,arrantics provided for in this Agreement shall be cumulative. shall be deemed consistent and not in conflict. arc intended to be given full force and clkct andto be interpreted expansively to give the broadest warranty protection to the Licensee.
  3. If any unauthori/cd modifications arc made to the Soll,,arc by the Licensee during the Warranty Period. the Licensor's ,,arranty under Section 6.1 shall immediately be terminated. Correction for dinicult ics or defects caused solely by unauthorized modifications made to the Solhvare by the I .iccnscc during the Warranty Period that arc requested by the Licensee shall be billed at Licensor's standard time and material charges provided that Licensor advises the Licensee of the cause of the diflicultics or dcli:cts prior to performing corrections: and provided further that the cause of the difficulties or dcli:cts results solely from the unauthorized modifications made by the I .iccnscc. For purposes of this Section 6.1J. a modification to the Solhvare will not be considered unauthorized if I .iccnsor consents to such modification. or if the modification is authori/\_cd. permitted or othcrvvisc contemplated by this Agreement or any Documentation or materials associated with the Software or other Deliverables.

**SECTION** 7. **TERMINATION.**

* 1. **Termination hy Licensee fi-)r Cause.** The Licensee may terminate this Agreement. without penalty or legal liability. upon written notice for the breach by Licensor of any material

term. condition or provision of this Agreement. if such breach is not cured ,,ithin any cure period specilicd in the notice of breach or any subsequent notice deli, ercd by Licensee to Licensor.

,,hich cure period shall not be less than ten ( 10) days. provided cure is feasible. The l.iccnscc·s right to tcr111inatc this /\gn:crncnt shall be in addition to and not exclusive of other rc111cdics available to the Licensee.

* 1. **Termination hy Licensee for Reasons Other Than Cause.** Licensee rnay terminate this Agreement for any of the reasons for ,,hich the Agency may terminate the Services Contract (including Sections 10.2 and 10.J. but excluding Section 10.1) upon pnniding any applicable written notice expressly required tn be prov idcd pursuant to the Services Contract. For purposes or th is Sect ion 7*.2.* all re fercnccs in the Scrv ices Contract to the terms --state:· ..Agreement.··

--Dcli,crablcs:· and ··vendor:· shall be deemed to include and additionally refer to the terms

--1,iccnscc:· ..Agreement.·· --soll w arc:· and --1.iccnsor:· respect ivc ly. as used here in. L iccnscc· s

right to terminate this Agreement for any of the reasons provided herein shall survive termination of the Services Contract.

()

* 1. **Tcnnination hy Licensor for Cause.** I ,iccnsor may only terminate this i\grcc1nc11t and revoke the license and other rights granted under this i\grccmcnt if l ,iccnscc co111111its a material breach of Section 9,:2 of this i\grcc111cnt. provided that Licensor lirst gi,cs Licensee ,uittcn notice of the alleged breach and a 60-day period in ,,hich to cure the hrcach. l lpon tcrrnination of this i\grccmcnt b) Licensor in accordance\\ ith this Section *7.3.* Licensee will return the Sothvarc to Licensor or will certify in \\riting to Licensor that it has destroyed all copies of the Sotlwarc. 1-:xccpt as express!) provided in this Section 7.3. Licensor shall not be entitled to terminate this i\grccrncnt or revoke the license and other rights granted herein.
  2. **Limitation of the Licensee's Payment Obligations.** The Licensee (and (iovcrnmcntal 1-:ntitics) shall not be liable. under any circumstances and regardless of termination of this i\grccrncnt. for any of the fol km ing:

**7.-LI** The payment ofunc111ploy111cnt compensation to [,iccnsor·s employees:

* + 1. The pa:,rncnt of,,orkc1-s" compensation claims. ,,hich occur during the Agreement or extend beyond the date on,, hich the i\grccmcnt terminates:
    2. All) costs incurred hy I ,iccnsor in its pcrli.\_1rmancc of the i\grccmcnt. including. but not limited to. startup costs. overhead or other costs associated\\ ith the performance of the i\grccmcnt and/or the Services Contract:
    3. i\ny damages or other amounts for or relating to the loss of prnspcctivc prolits. anticipated sales. good\\ ill. or for expenditures. investments or commitments made in connection with this i\grccmcnt. the Services Contract or any agreement ,,ith Third Parties:
    4. ;\ny taxes Licensor may owe in connection,, ith the performance of this Agreement or the Services Contract. including. but not limited to. sales taxes. excise taxes. use taxes. income taxes or property taxes.

**SECTION 8. INDElVINIFIC/\TION.**

**8.1** I ,iccnsor and its successors and permitted assigns shall indc11111il': and lwld harmless the

I ,iccnscc and ( iovcrn111cnta I I ,nt it ics and their employ ccs. orticcrs. d ircctors. agents. and oflic ials (individually and collectively ··1ndc111nitccs--) li-0111 and against any and all claims. actions. suits. liabilities. damages. losses. scttlc111cnts. demands. dcliciencics. \_judgments. costs and expenses (including. ,,ithout limitation. the reasonable ,alue of time of the Attorney (icncral"s Onicc and the costs. expenses and attorney Ices of other counsel retained by an) lndenmitcc) related to. resulting ti-0111 or arising out of this i\grcc111cnt. including. but not limited to. ,Ill) claims related to. resulting from. or arising out of:

* + 1. /\n) violation or breach of any material term or condition of this Agreement by I, iccnsor: or

10

* + 1. An: negligent acts m omissi(1ns. intentional or\\ illl"ul misconduct. or unl,m l"ul acts of l,iccnsor. its ulTiccrs. cmplo:ccs. agents. directors. contractors or subcontractors: or
    2. Failure b::, Licensor or its cmplo:ccs. agents. officers. or directors to comp!) with any applicable local. state. and federal !,ms. rules. ordinances or regulations: or
    3. i\n) claim of misappropriation ol"a trade secret or infringement or violation ol"any intellectual property rights. proprietary rights or personal rights of an) Third Party. including any claim that the Sofl,.,\at-c or any use thereof (or the exercise or any rights with respect thereto) infringes. violates or misappropriates any patent. copyright. trade secret. trademark. trade dress. mask work. utility design. or other proprietary right of any Third Partv.
  1. Licensor shall ha\C no obligation under subsection 8.1 *A* ahmc to the extent am claim of infringement or misappropriation results sole!) from the Licensee's use of the Sotl\\at-c in combination \\ith any other software product not provided or recommended by the Licensor for use \\ith the Sothvarc or the System il"thc infringement ,,ould not have occurred hut for such comhinat ion
  2. Liccnsor·s obligations under this Section 8 arc not limited to third-party claims. but shall also apply to any claims that either party may assert against the other.
  3. Licensor shall he liable for any personal injury or damage to property caused by the fault or negligence of Licensor. its orticers. directors. employees. agents. contractors and subcontractors.
  4. Liccnsor·s duties as set forth in this Section 8 shall survive the termination ofthis Agreement and shall apply to all acts or omissions taken or made in connection\\ ith the performance of this i\grccrncnt regardless of the date an::, potential claim is made or discovered by the Licensee or any other lndcmnitcc.

**SECTION 9. CONTRACT ADMINISTRATION.**

* 1. **Independent Contractor.** I he status ol"thc Licensor shall he that ofan independent contractor. Licensee shall not provide the Licensor\\ ith of"ticc space. support staff equipment or tools. or supervision bc::,ond the terms of this i\grccmcnt. Neither the Liccnsur nor its

employees shall be considered cmplo;-ccs ol"thc State of lov,a. Neither the I .iccnsor nor its employees arc eligible for any State employee benefits. including but not limited to. retirement benclits. insurance coverage or the like. Neither the I .iccnsor nor its employees shall be considered cmplo;-ccs of the Licensee or the State of l(l\\a ftlt" federal or state tax purposes.

I,iccnsce sha11 not ,, it hho Id taxes on bcha If or the I, icensor (unless rcqu ired by la\\). I he

I ,iccnsor shall be responsible for pa) mcnt of all taxes in connection,, ith an::, income earned in connection,, ith this i\grccmcnt.

* 1. **Confidentiality.** Lxccpt as provided or contemplated herein. and subject to applicable la\vs. rules or regulations (including." ithout limitation. Iowa Code Chapter *22* and 605 l(l\\a i\dmin. Code 5) the Licensee shall not disclose to Third Parties (excluding (iovcrnmcntal

11

l·ntitit:s. and t:xcluding /\uthori/t:d Contractors \\ho ha\l'. cntnt:d into conlidt:ntialit) or nondisclosurt: agrt:l'.llll'.nts obligating tht:111 to sakguard Yt:ndor·s Conlidential lnfor111ation and restricting their ust: ol'l.it:ensor·s Conlidt:ntial lnl(mnation to the rrovision ol'servit:es to tht: l.ict:nst:t:) any infor111ation of Licensor that is 111arked or othernist: clearly idt:ntilied h: Licensor as Confidt:ntial lnfor111ation \\ithout tht: prior \\rittcn consent or l.icensor. l.iccnsor shall li111it such identification to infor111ation it rt:asonably belit:vt:s is entitled to confidential rrott:ction rursuant to Iowa Code Section *22.*7. Nol\\ ithstanding the fort:going. tht: I .icenst:l'. may disclose l.icensor·s Confidential Information: (i) pursuant to any legal. \_judicial. or ad111inistrati,t: prot:t:t:dings. subroena. summons. ordn. ruling or other legal or administrativt: processes:

(ii) rursuant to any applicable laws. rules. or regulations: (iii) if Licensee determines. in its sole discretion. that such information is not a conlidcntial rernrd pursuant to llma Code Section *22.7*

or otht:r applicable laws. ru ks and rt:gu lat ions: and/or (iv) ir I. ict:nsel'. ddermint:s. in its so le

discretion. that it dot:s not have surticient facts or inl(mnation or is othernise unable to make a ddermination whdher such infor111at ion cons! itull'.s a conlidential record under Iowa Code Section *22.7* or other applicable la\\s. rules and regulations. In such e,ent. the Licensee shall provide pro111pt notice to Licensor of the cirn1111stances giving rist: to the 1.ict:nsee·s disclosure. Lict:nsor acknowledgt:s that the Licensee is subject to and required Ill co111pl\_\ ,v ith llma Code Chapter *22* and other l,ms. rules and regulations govt:rning public reu1rds. lfa request is 111adt: to vit:w or othl'.r\\ ise access l.icensor·s Confickntial lnfor111ation pursuant to such 1,1\\s. rules or regulations. the Licensee \V ill pro111ptly notify Licensor of the reqm:st. The provisions in this St:ction 9.2 shall survive the lt:nnination of this /\grt:emt:nt.

* 1. **Compliance with Laws.** Licensor and its employees. agents. onicers. directors. contractors and subcontractors shall co111rly with all applicable federal. state. international and local 1,ms. rules. ordinances. regulations and orders when performing within the scope of this /\greement. including. without limitation. all lmvs applicable to the prevention of discrimination in employment. the ad111inistrative rules of the llma Department or Management or the Iowa Civil Rights Commission which pertain to equal employment opportunity and artir111ative action. laws relating to prevailing wages. occupational safety and health standards. prevention or discrimination in emrloyment. payment of taxes. gill Im, s. lobbying la\\s and l,m s relating to the ust: of targeted small businesses as subcontractors or suppliers. Licensor shall colllply \\ ith any applicable reporting and colllpl iance standards of the lo\\a Depart111ent of Manage111ent regarding equal elllployment. Licensor 111ay he required to submit its aflir111at ive action plan to the Iowa Deparllllt:nt ofManagt:111t:nt to co111ply with the requirt:111ents of5--ll l(rna /\dmin. Codt:

-+. I .ict:nsor represt:nts and ,,arrants that it has complied ,, ith all federal. stall'.. foreign and local

la\\s. codt:s. rules. ordinanct:s. orders and rt:gulations applicable to tht: perltmnance of its obligations undn this /\gret:mt:nt.

**9A Amendments.** This /\gr-ce111t:nt Illa) be a111t:mkd **in** ,vriting li-0111 time to ti111e b) mutual const:nt of tht: partit:s. /\II a111end111ents to this /\greemt:nt 111ust ht: full:- l'.:\l'.cuted b) the parties.

* 1. **Third-Party Rights.** No pt:rson otlwr than tht: parties hert:to. tht:ir rt:specti,t: successors and pt:rmittt:d assigns. (iovern111ental Lntitit:s. l lsers and /\uthorizt:d Contractors ma\_\ rt:ly on or dt:rive any rights pursuant to or unckr this /\greemt:nt. This /\greemt:nt is intt:nded to bt:ndit

nn Iv the I. icenset:. ( iovnnmt:nta I t-:nt it ies. ll sers. /\uthori/ed Contractors. and the Licensor.

1.1

* 1. **Choice of Law and Forum.** I his Agreement shall he g(lverned in all respects h). and construed in accordance \\ith. the l,I\\S of'the state of' lo\\a. \\ithout gi,ing eflcct to the choice of' la\\ principles thereof Any and all litigation or actions C(lmmenced in connection\\ ith this Agreement. including afier e:,.;piration or termination of'this Agreement. shall be brought in

Iks Moines. Iowa. in Polk County District Court for the State of Iowa. if'\_jurisdiction is proper. I hmever. if'\_jurisdiction is not proper in the l(ma District Court for Polk Count::,. but is proper only in al lnited States District Court. the matter shall be commenced in the l lnited States District Court for the Southern District of Iowa. Central Division. 1-icensor herd,::, irrevocably: ( i) consents and agrees that any legal or equitable action or proceeding arising under. in connection *v,* ith or arising out of this Agreement shall be brought and maintained e:,.;c lusively in the aforesaid courts: (ii) suhmits to and accepts. with respect to any such action or proceeding. for it and in respect of its properties and assets regardless of the physical or legal situs thereof: generally and unconditionally. the \_jurisdiet ion of the aforesaid courts: and ( iii) \\aives an::,

objection to such \_jurisdiction based on forum non conveniens or othen, ise. This pnl\ ision shall not he construed as waiving any immunity to suit or liability. in state or federal court.,, hich may be available to the Licensee. including sovereign immunity. governmental immunity. immunit) based on the Lleventh Amendment to the Constitution of'the l lnited States. or othern ise.

1-icensor irrevocably consents to service of process by cert ilied or registered mai I addressed to the Licensor·s designated agrnt. The I icensor appoints lnCorp Services. Inc. at 60-t Locust St.. Suite *222.* Des Moines. I A 50309-3*723* as its agcnt to receive service of process. Ir llir an::, reason the Licensor·s agent for service is unable to act as such or the address of the agent changes. Licensor shall immediately appoint a new agent and provide the Agency with v,ritten notice of the change in agent or address. Any change in the appointment of the agent or address will be clfrctive only upon actual receipt hy the Licensee. Nothing in this provision,, ill alter the right of the Licensee to serve process in any other manner permitted hy lav,. 1"11is

Section 9.6 shall survive termination of'this Agreement.

* 1. **Assignment and Delegation.** This Agreement may not be assigned. transferred or conveyed in whole or in part without the prior written conscnt of the other party. e:,.;cept that the Licensee may assign. transfer. or convey this Agreement. in whole or in part. to any State agency. (iovernmental 1-:ntity or unit of State government that succeeds the Agency"s rights hereunder or otherwise assumes responsibility for functions or duties currently assumed hy the Agency to \\hich the Soli\\aIT relates. hir purposes of construing this clause. a transfer of a controlling interest in the 1-icensor. a merger. sale or consolidation of 1-icensor. or a sale of substantially all of l.icensor·s assets shall be considered an assignment. Licensor agrees that it shall provide I .icensee ,, ith the earliest possible advance notice of any proposed sale or translcr or any controlling interest in or substantial assets of I .icensor and of any proposed merger. sale or consolidation of 1-icensor. I .icensor agrees that it shall not use this Agreement. or any portion thereof: for collateral or to othen, ise secure any linancial obligation of Licensor or any aniliate thereor \\ ithout the prior \vritten consent or 1-icensee.
  2. **Integration.** This Agreement represents the entire agreement bet\\een the parties concerning the grant of the perpetual license. distribution rights and other rights granted to Licensee and (iovernmental 1-:ntities under this Agreement. and neither party is relying on any representation that ma::, have heen made\\ ith respect thereto which is not included in this Agreement. This Agreement shall not supersede the Services Contract. Licensee shall not he

I'

hound hy any ..shrink-\Hap·· agreement. ··click-\Hap·· agreement. ··sncakv,rap·· agrccn1cnt. or any other similar agreement that may accomJXllly or relate to the Soft\,arc. l.iccnsor acknowledges that it has thoroughly read this ;\grccmcnt and all related schedules. exhibits and other documents and has had the opportunity to receive compl'tcnt advice and counsel necessary for it to form a complete understanding of all rights and obligations herein and to accept same freely and without coercion ol'any kind. Accordingly. this Agreement shall not he construed or interpreted against the Licensee on the hasis of draftsmanship or preparation hereof:

* 1. **Headings or Captions and Terms.** The paragraph headings or captions arc for identification purposes only and do not limit or construe the contents of the paragraphs. Unless the context of this Agreement othcn-visc clearly requires. relcrcnces to the plural include the singular. relcrenccs to the singular include the plural. and the \vord ..or·· has the inclusive meaning represented by the phrase "'and/or\_·· The ,,ords '"include·· and ··including"· shall be deemed to be followed by the phrase--\, ithout limitation.·· The \Vords ··thcreoc· ··hert:in."· '"hereunder."· and similar terms in this Agreement rt:lcr tu this Agreement as a\\ hole and not to any particular provision of this Agreement.
  2. **Not a .Joint Venture.** Nothing in this Agreement shall be construed as creating or constituting the relationship of a partnership. \_joint venture. (or other association of any kind or agent and principal relationship) hct\\Ccn the pa11ics hereto. No pa11y. unless otherwise specifically provided for herein. has the authority to enter into any agreement or create an obligation or liability on bchalfoL in the name oL or binding upon another part\_\ to this Agreement.
  3. **Obligations Beyond Agreement Tenn.** l'his Agreement shall remain in full force and clkct perpetually unless terminated pursuant to Section 7 of this Agreement. The obligations of Licensor under this Agreement ,,hich by their nature would continue beyond the termination of this Agreement. including. by way of illustration and not by limitation. those obligations set forth in Sections *2.1-2.J.* 6-8. 9.J- 9.8. 9.1 1-9.19. *9.22.* 9.24. 9.26. 9.27 and 9.29-9.34 shall sun ive termination of this Agreement.
  4. **Use ofThinl Parties.** None of the sen ices to be provided by Licensor pursuant to this Agreement shall be subcontracted or delegated to any Third Party other than **MB]** Technologies Inc. ,vithout the prior \Hillen consent ol'Liccnscc. Liccnscc·s consent shall not he deemed in

an) ,,ay to provide for the incurrcncc of any additional obligation of I .iccnscc. \\ hcthcr financial or otherwise. Any subcontract to \,hich the Licensee has consented shall be in \\riling and shall in no way alter the terms and conditions of this Agreement. ;\II subcontracts shall he sub\_jcct to the terms and conditions of this Agreement and to any conditions of approval that Licensee ma) deem necessary. Licensor is sole I) liable l(1r any and all payments that ma) be due to the subcontractor pursuant to its subcontract agreement \\ith Licensor. Licensor shall indcmnil). and hold harmless the Licensee from and against any and all claims. demands. liabilities. suits. actions. damages. losses. costs and expenses of every kind and nature ,,hat soever arising as a result of I .iccnsor·s breach of any subcontract into\\ hich it enters. including I .iccnsor·s foilurc to pay any and all amounts due by Licensor to an) subcontractor. No subcontract or delegation of work shall relieve or discharge Licensor from any obligation. pro,ision. or liability under this Agreement. Licensor shall remain responsible for such performance and shall be full)

1--1

responsible and liable li\_ir all acts or omissions of any such contractor or subcontractor. ;\m

action or a subcontractor.\\ hich. if done b) I.iccnsor. \\Otild constitute a breach of this

;\grccrncnt. shall be (kerned a breach by l.iccnsor and have the same legal effect.

* 1. **Waiver.** Lxccpt as spccilically provided for in a ,,aiver signed b) duly authoriicd representatives or Licensee and the Licensor. failure b) either party at any time to require performance by the other par1y or to claim a breach of any provision of the Agreement shall not be construed as afkcting any subsequent breach or the right to require performance\\ ith respect thereto or to claim a breach with respect thereto.
  2. **Notices.** Notices under this Agreement shall be in writing and delivered to the representative ol'the party to receive notice (identified below) at the address ol'the party to receive notice as it appears below or as other,, ise provided for by proper notice hereunder. The dlcctive date for any notice under this Agreement shall be the date of delivery or such notice (not the date or mailing) which may be elkcted by certified l 1.S. Mail return receipt requested with postage prepaid thereon or by recogni/cd overnight deli,ery service. such as Federal Lxprcss or lJPS:

Irto Licensee:

Department or Iowa I lomcland Security and Lrncrgency Management

7105 NW 701

1,

Ave.

Camp Dodge Bid. W-4

.Johnston. I;\ 50313

lfto Licensor:

MB3 Inc.

7512 Dr. Phillips Blvd .. Suite 50-112 Orlando. FL 32819

Any notice or comrmmication sent by certilicd l !.S. l'vlail under this Agreement shall he deemed given upon receipt as e,idenced by the ll.S. Postal Service return receipt card. or irsent b) overnight delivery service. upon receipt as e, idenced by the signature attained b) the carrier.

From time to time. either party may change the name and address ora party designated to recci\c notice. Such change of the designated person shall he in \Hiling to the other party and as provided herein.

* 1. **Cumulative Rights.** The \arious rights. po\\ers. options. elections and remedies or Licensee provided in this Agreement shall be construed as cumulative and not one ofthcrn is exclusive of the others or exclusive or any rights. remedies or priorities alltmcd Licensee b) l,m. and shall in no way alkcl or impair the right or I .icensec lo pursue any other contractual. equitable or legal remedy to which Licensee may he entitled. Liccnscc·s election of any one or more remedies shall not constitute a \\aiver or the right to pursue any other available remedies.

I:,

* 1. **Severahility.** Ir any pnl\ision orthis Agrcc111cnt is dctcnnincd by a court orco111pctcnt

\_jurisdiction t,1 he invalid or uncnltirccable. such dctcr111ination shall not affect the validity or enforceability of any other part or pnl\ is ion or this Agreement.

* 1. **Authorization.** Licensor represents and \\a1-rants to Licensee that:

**9.17. 1** It has the right. power and authority to enter into and pcrfor111 its ohligat ions under this Agreement:

**9.17.2** It has taken all requisite action (corporate. statutory. or othcrn isc) to approve execution. delivery and performance of this Agreement. and this Agreement constitutes a legal, valid and binding obligation upon itself cnlt.irccable in accordance \\ith its terms.

* 1. **Successors in Interest.** All the tcr111s. provisions. and conditions orthc Agreement shall be binding upon and inure to the hcnclit or the parties hereto and their respect ivc successors. permitted assigns. and legal representatives
  2. **Record Retention And Access.** 1"11c I .iccnsor shall maintain books. records. and documents which sunicicntly and properly document all services and deliverables pn1\ idcd under this Agreement and calculate all charges hilled to the Licensee throughout the term of this Agreement for a period or at least live ( 5) years ltl Ilowing the later or the date of tinal pay mcnt. termination or expiration of this Agreement. or completion or any required audit. The Licensor shall permit the Licensee. the Auditor of the State of lo'Ml or any authorized rcprcscntat ivc of the State and where federal funds arc involved. the Comptroller (icncral or the llnitcd States or any other authorized representative of the llnitcd States government. to access and examine. audit. excerpt and transcribe any directly pertinent books. documents. papers. electronic or optically stored and created records or other records of the Licensor relating to orders. invoices. or payments or any other documentation or materials pertaining to this Agreement. The Licensor shall not impose or seek payment for any charge. Ice or expense associated\\ ith any audit or examination of the Liccnsor·s hooks and records conducted in accordance\\ ith this provisi,1n.
  3. **Counterparts.** This Agreement may be executed in several counterparts. all of\\hich when taken together shall constitute one contract binding on all parties. not\\ ithstanding that all parties arc not signatories to the same counterpart. l·:ach copy of this Agreement so executed shall constitute an original.
  4. **Additional Provisions.** The parties agree that ifan Addendum. Schedule. Rider or Lxhibit is attached and rclcrred to in this Agreement then the same shall be deemed incorporated herein by reference.
  5. **Further Assurances and C'on-ective Instruments.** Licensor agrees that it \\ill. from time to time. execute. ackmrn ledge and deliver. or cause to be executed. ackrnrn ledged and delivered. such supplements hereto and such further instruments as may reasonably he required for c.11Ty ing out the expressed intention of this Agreement.

*I(,*

* 1. **Award of Related Agr·eements.** lhc Licensee may undertake or ;l\\ard supplemental or successor agreements for work related to this Agreement. the Services Contract or\\ ith respect to the Software. I .iccnsor shall cooperate fully \\ ith other contractors. consultants and other persons ,,ho may be engaged by Licensee in connection\\ ith this Agreement. the Sen ices Contract or with respect to any ol'thc Soft,,arc. Licensor will ensure that its subcontractors. ii' any. will abide by this provision.

**9.2..i Sovereign hnmunit)·.** The Agency. (iovcrnmcntal t-:ntitics and the State do not ,vai,c sovereign immunity by entering into this Agreement and specifically retain and rcscnc the dcknsc or sovereign immunity and all defenses available to them under State and federal laws. rules and regulations, including. without limitation. Iowa Code Chapter ()69 and the Constitution of the State of Iowa.

* 1. **Reserved for any unique provisions required hy Agency or FEMA**
  2. **Care of Property.** I .iccnsor shall be responsible for the proper custody and care of any Licensee property furnished for l.iccnsor·s use in connection\\ ith the performance of the Agreement. and Licensor will reimburse the Licensee for any loss or damage to such property caused by Licensor. or any person. agent or subcontractor employed or utilized by Licensor. normal,, car and tear excepted.
  3. Licensor shall notify Licensee in writing if any ol'thc following has been engaged in by or occurred with respect to Licensor or any corporation. shareholder or entity having or owning a controlling interest in Licensor:
     1. Licensor files or permits the filing against it or a case or other proceeding seeking liquidation. reorganization. or other relief with respect to itself or its debts under any bankruptcy. insolvency. or other similar law now or hereafter in effect: or filing an answer admitting the material allegations or a petition filed against it in any involuntary case or other proceeding commenced against it seeking liquidation. reorganization. or

other relief under any bankruptcy. insolvency. or other similar law now or hereafter in effect with respect to it or its debts: or consenting to any such relief or to the appointment ofor taking possession by any such onicial in any voluntary case or other proceeding commenced against **it** seeking liquidation. rcorganiz.ation or other relief under any bankruptcy. insolvency, or other similar Im, ntl\\ or hereafter in clTcct v, ith respect to it

or its debts:

* + 1. Seeking or suffering the appointment of a trustee. receiver. liquidator. custodian or other similar onicial or it or any substantial part or its assets: or
    2. Making an assignment ftll" the benefit of creditors: or
  1. **A** Failing. being unable. or admitting in vHiting the inability generally to pay its debts or obligations as they become due or failing to maintain a positive net \\Orth and such additional capital and liquidity as is reasonably adequate or necessary in connection

,, ith Liccnsor·s performance of its obligations under this Agreement:

17

**9.27.S** i\n order is entered approving an imoluntar: petition to reorgani/e the business of I ,icensor frir all or pa11 or its property: or

* + 1. Ira writ or ,,arrant orattachmenL execution. distrainL levy. possession or an) similar process that may materially arfcct the operation or Licensor is issued by an) court or administrative agency against all or any material portion or I,iccnsor's property: or
    2. Taking any action to authori/.c any of the rorcgoing.
  1. **Material Breaches.** The references in this i\grccmcnt to specific material breaches or this Agreement shall not be construed as implying that other breaches of this i\grccmcnt arc not material.
  2. **Taxes.** Licensor shall be responsible for paying any taxes incurred by Licensor in the performance orthis Agreement. The State and the Agency arc exempt from the payment ofhrna sales and other taxes.
  3. **Obligations of.Joint F,ntities.** lf'Licensor is a joint entity. consisting of more than one individual. partnership. corporation or other business organization. all such entities shall he jointly and severally liable for carrying out the activities and obligations orthis agrccmcnL and for any default of such activities and obligations.
  4. **Intentionally Omitted.**
  5. **Time is of the F,ssence.** Time is of the essence with respect to Licensor's performance of its obligations under this i\grccmcnt. Licensor shall ensure that all personnel providing services to Licensee arc responsive to Liccnscc·s requirements and requests in all respects.
  6. **Use of Name or Intellectual Property.** The Licensor agrees it will not use the Liccnsce·s name or any of their intellectual property. including but not limited to. any State. state department. agency. board or commission trademarks or logos in any manner. including commercial advc11ising or as a business reference. without the express prior ,vrittcn consent of the Licensor.

**9.3..i Delays or Impossibility of Perfornrnnce.** Neither party shall be in default under this Agreement if performance is prC\ cntcd. delayed or made impossible to the extent that such prevention. delay. or impossibility is caused by a ..fLircc majcurc:· The term ..force majcurc.. as used in this Agreement includes an event that no human foresight could anticipate or\\ hich ir anticipated. is incapable of being avoided. Circumstances must be abnormal and unforeseeable. so that the consequences could not ha\c been an1idcd through the exercise of all due care. such as acts of (iod. war. civil disturbance and other similar catastrophic events or causes. terrorist acts. and communication or utility 1:1ilurcs. I he delay or impossibility ofpcrfonnancc must be beyond the control and without the fault or negligence of the parties. --1-orce majcurc" docs not include: financial difficulties of the I .iccnsor or any parcnL subsidiary. affiliated or associated company of the Licensor or any subcontractor used by the I .iccnsor. or claims or court orders that restrict Licensor's ability to perform under this Agreement: strikes: labor unrest. or supply

18

chain disruptions. If delay results from a suhcontractur·s or supplier's cunduct. negligence or failure to perform. the I .iccnsor shall not be excused from compliance\\ ith the terms and obligations of the Licensor unless the subcontractor or supplier is prevented from time!) pcrl(nmancc by a --force majcurc·· as dclincd in this Agreement. lfa ..force ma\_jcurc.. dcla)s or prevents a party·s performance. the party shall immediately use its best efforts to directly provide alternate. and to the extent possible. comparable performance. Comparabilit) of performance and the possibility of comparable performance shall be reasonably determined solely by the nondcfaulting party. The party seeking to exercise this provision and not perform or delay performance pursuant to a "force ma\_jcurc·· shall i111111cdiatcly notify the other party of the occurrence and reason for the delay. I'hc parties shall make every effort to minimize the time of nonperformance and the scope of work not being performed due to the unforeseen events. Dates by which a party's performance obligations arc scheduled to be met will be extended only for a period of time equal to the time lost due to any delay so caused.

IN WITNI :ss WI ILRLOF. in consideration of the mutual covenants set forth above and for other good and valuable consideration. the receipt. adequacy and legal sufficiency of \\hich arc hereby acknm\ !edged. the parties have entered into the above Agreement and h,nc caused their duly authorized representatives to execute this Agreement.

MB3 IN/} *I*

By: *'}', \_----+,,--l* \_ Date: July 6, 2012

*L,*

- -- -- ---------

Tit le: President & CEO

I.iccnscc:

State of Iowa. acting by and through the hrna Department of Public Defcnse--lmrn I lomeland Security and Manageme vision '-. , \

**}ricy**

I)>y:

*i(*···*, /\) J* .....-- 1,atc:- \,,.,

'--"' : ..·,i 1-:/-...-....

Title: Administrator

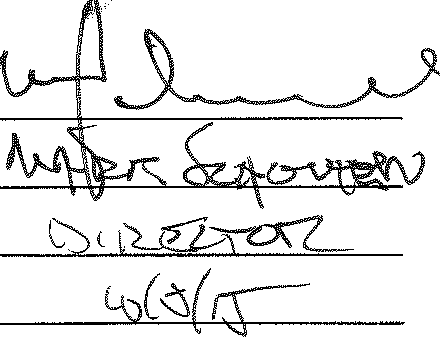
# >)MB3

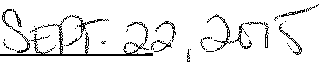
#### my.iowahomelandsecurity.org Final Acceptance Sign-off

This final acceptance of the EMGrantsPro Software (System) confirms that the System performs without material defects and in accordance with the requirements outlined in Schedule A of the Services Contract. MB3 will continue to provide ongoing product updates and bug fixes, however any further product changes requested by the Iowa Homeland Security Emergency Management Division will be considered as System enhancements and subject to the terms of a mutually agreed upon enhancement contract.

**State Approval MB3 Approval**



BY:

Name:

BY:

Name: Matt Blakely

Title: Date:

Title: Date:

President & CEO

MBl INC. 7512 Dr. Phillips Blvd., S.uiteS0-112., Orlando, FL 32819 I 321.206.3784 MBlONLINE. COM

**From:** Hoing, Laurie [DAS]

**To:** Rieder, Bonnie [HSEMD]

**Cc:** Clark, Pat [DAS]

**Subject:** FW: Sole Source Procurement Justification

**Date:** Wednesday, April 04, 2012 8:00:41 AM

Bonnie,

Here is your sole source approval for the MB3 system.

Laurie Hoing, CPPB Purchasing Agent III

Iowa Department of Administrative Services General Services Enterprise

1305 E Walnut

Des Moines, IA 50319 515-281-0656

515-725-0137 (Fax) BE GREEN

Please consider the environment before printing this email.

-----Original Message----- From: Fischer, Kirk [DAS]

Sent: Friday, March 30, 2012 9:47 AM

To: Schmitz, Lois [DAS]; Hoing, Laurie [DAS] Subject: FW: Sole Source Procurement Justification

See below.

Kirk Fischer

Deputy Chief Operating Officer Chief Procurement Officer Hoover Building, 1305 E. Walnut Des Moines, Iowa 50319

Phone: 515-725-2272

[kirk.fischer@iowa.gov](mailto:kirk.fischer@iowa.gov)

-----Original Message----- From: Carroll, Mike [DAS]

Sent: Friday, March 30, 2012 9:38 AM To: Fischer, Kirk [DAS]

Subject: Re: Sole Source Procurement Justification Approved.

----- Original Message ----- From: Fischer, Kirk [DAS]

Sent: Friday, March 30, 2012 08:09 AM To: Carroll, Mike [DAS]

Subject: FW: Sole Source Procurement Justification Director Carroll,

Please find below the justification for a sole source request. Numerous hours have gone into this, as the $360,000 price tag would seem on the surface something that could be competitively bid. You will see in the write-ups by both Bonnie and Laurie that it truly is a sole source procurement item.

Thanks ,

Kirk Fischer

Deputy Chief Operating Officer Chief Procurement Officer Hoover Building, 1305 E. Walnut Des Moines, Iowa 50319

Phone: 515-725-2272

[kirk.fischer@iowa.gov](mailto:kirk.fischer@iowa.gov)

-----Original Message-----

From: [bonnie.rieder@iowa.gov](mailto:bonnie.rieder@iowa.gov) [<mailto:bonnie.rieder@iowa.gov>] Sent: Monday, March 26, 2012 11:02 AM

To: DAS GSE Purchasing Mailbox

Subject: Sole Source Procurement Justification Submitted: 03/26/12

Dates the sole source request appeared on the bid opportunities website. 3/19/12 - 3/24/12

Agency Name: Emergency Management Contact Name: Bonnie Rieder Telephone: 515-729-4815

Email: [bonnie.rieder@iowa.gov](mailto:bonnie.rieder@iowa.gov) Vendor: MB3, Inc.

Amount: $360,000

1. Has this item(s) already been purchased? no
2. Has the vendor ever been an employee of the State of Iowa? No 3- Description of item:

MB3 Disaster and Emergency Management Portal is an online management tool for state departments in managing the Public Assistance (PA) and the Hazard Mitigation (HM) disaster grant programs. The entire PA and HM Programs become automated from damage tracking [Preliminary Damage Assessments (PDA)] to the Presidential Declaration process to the application for assistance to the closing out of the disaster. The portal allows applicants to do business with the state exclusively online while the state and FEMA are able to easily process and manage each account.

1. Explain why the recommended vendor is the only one qualified to provide the requested item(s) at the exclusion of all others.

MB3 INC. delivers web-based software to help clients achieve accelerated disaster recovery. Based in Orlando, Florida, MB3 specializes exclusively in web portals designed to aid state government and applicants to effectively manage emergency management and disaster grants.

1. Describe the research that has been completed to insure that no other competition exists. Provide names of vendors contacted who are unable to provide the item(s) or perform the service.

Dulles Technology was contacted but could not provide this off-the-shelf disaster software without major customization. The Sole Source Procurement was posted with 68 people accessing the bid; however, none responded. This disaster software is used in Louisiana, Florida, Mississippi, Alabama, California, Virginia, and South Carolina.

1. Have you requested a contract with the vendor at any time during the past twelve months? No 7- How did you determine that the vendor's price was reasonable?

Vendor's standard price paid by 7 other states. Iowa negotiated the price down from $580,000 to $350,000 as a

package price for one system to perform all modules -- PA, Mitigation (HMGP, PDM, FMA, RFC, SRL), time reporting to meet federal standards, travel vouchers, and purchase requisitions.

8- Which of the following best describes this sole source procurement? You may select more than one.

One vendor is the only one qualified or eligible or is quite obviously the most qualified or eligible to provide the good.

The procurement is of such a specialized nature or related to a specific geographic location that only a single source, by virtue of experience, expertise, proximity, or ownership of intellectual property rights, could most satisfactorily provide the good.

Explain how this procurement fits the sole source situation(s) selected above. Please see answers to questions 3, 4, and 5.

------------

TO BE COMPLETED BY DAS GSE PROCUREMENT SERVICES

GSE Purchasing Agent Name: Laurie Hoing, CPPB, PA III Telephone: 515-281-0656

Email: [laurie.hoing@iowa.gov](mailto:laurie.hoing@iowa.gov)

Recommendation of Approval: Recommend Approval

Per State of Iowa Administrative Codes 11-105.4(5)(1) One vendor is the only one qualified or eligible or is quite obviously the most qualified or eligible to provide the good or service; and 11-105.4(5)(5) The procurement is an information technology device or service that is systems software or an upgrade, or compatibility is the overriding consideration, or the procurement would prevent voidance or termination of a warranty, or the procurement would prevent default under a contract or other obligation.

State reason:

I have researched this product and I found that at the current time, this product is the only one that will meet all of the business requirements for HSEM. Not all States are currently using this software because not all States have had the magnitude of disasters that others have had. Of the States that are using this software, all but one of them processed the procurement as a sole source. One State, South Carolina, conducted a competitive bid and their only response came from MB3.

In talking with FEMA, there are other products that are on-line type systems, however, they do not have the capability to Interface into the I-3 accounting system, the CGI product that Iowa and several other states are using, and are typically for other type of federal assistance, not specifically Public Assistance and Hazard Management.

While it is true that other vendors may be able to create this type of a system from the ground up, all my research suggests that this company is the only one that has an Internet based system available that meets Iowa's needs and is available for immediate use. The fact that the Sole Source Procurement notice was posted with 68 people accessing the bid and none responded also convinces me that no other vendor was interested in this opportunity. Since HSEM was also able to negotiate a savings of $220,000, I don't believe any other vendor could build this for the cost that

HSEM has negotiated.

Date: 03/29/12

Forward to DAS Chief Procurement Officer.

------------

TO BE COMPLETED BY DAS CHIEF PROCUREMENT OFFICER

Recommendation of Approval: Approved

State reason: As outlined above with detailed documentation.

Date: March 30, 2012

Forward to DAS Director and copy Purchasing Agent.

------------

TO BE COMPLETED BY DAS DIRECTOR

Recommendation of Approval: State reason:

Date:

Forward to: [purchasing.mailbox@iowa.gov](mailto:purchasing.mailbox@iowa.gov)

**From:** Hall, Pat [HSEMD]

**To:** Rieder, Bonnie [HSEMD]; Bartlett, Aimee [HSEMD]; Chen, Angela [HSEMD]

**Subject:** Fwd: HSEMD- enhancements to EMGrantsPro system

**Date:** Friday, July 22, 2016 4:40:43 PM

**Attachments:** 20160719092627857.pdf

ATT00001.htm

Sent from my iPhone Begin forwarded message:

**From:** "Hackbarth, Heather [IDOM]" <[Heather.Hackbarth@iowa.gov](mailto:Heather.Hackbarth@iowa.gov)>

**Date:** July 22, 2016 at 3:51:55 PM EDT

**To:** "Hall, Pat [HSEMD]" <[Patrick.Hall@iowa.gov](mailto:Patrick.Hall@iowa.gov)>

**Subject: HSEMD- enhancements to EMGrantsPro system**

JUSTIFICATION FOR EQUIPMENT/SERVICE CONTRACT PURCHASES

Effective December 12, 2008, Executive Branch agencies, *excluding* Iowa Department of Transportation (DOT) and Regents, are prohibited from purchasing equipment valued over $25,000 and entering into service (consulting) contracts over $25,000, unless prior approval is received from the Iowa Department of Management (IDOM). This applies to general, federal, and other funded purchases/service contracts.

Equipment includes purchases classified in object code 501 (equipment), 502 (office equipment), 503 (equipment, non-inventory), or 510 (IT equipment and new software, not a renewal of an existing software license). Examples of equipment include, but are not limited to, copiers, vehicles, computers, servers, and office furniture. Service (consulting) contracts may be included in 405 (prof & scientific services}, 406 (outside services), 409 (outside repairs/services}, or 418 (IT outside services)

If your purchase/service contract is absolutely necessary for life, health or safety reasons, or you must purchase equipment or consulting services to preserve a critical service or pro ram, complete the attached form and submit it to your agency's fiscal & policy analyst at the Department of Management (DOM).

You will be notified by DOM if your purchase/service contract has been approved.

TO BE COMPLETED BY REQUESTING AGENCY:

Agency: Iowa Homeland Security and Emergency Management

Submitted By: ,.\_P""at....,ri,,.ckJ.'-"H..,,a,,,l,\_I \_

Telephone: 515·725-9325 E-mail: Patrick J. Hall

Description of Equipment/Service: Additional enhancements are needed to our

EMGrantsPro system (Disaster and Emergency Management Portal Software) for improving our grant management activities related to disaster and emergency mangement grants including department, local and federal interfacing.



**Cost of Equipment/Service:** $492,540 estimated cost for the enhancements that are still needed.

**Source of Funds:** 100% Federal Grants

**Contract# or RFP** # (if **applicable):** 583-2012-HSEMO-034 current contract total is

.$837.960.



Which of the followin!ll describes this purchasing request? You may select more than one:

D There is a ne.ed to protect the health, welfare or safety

IX1 The department must act to preserve critical services

IX1 The State will lose federal funds or grant money if this equipment/service is not purchased

IX1 Other

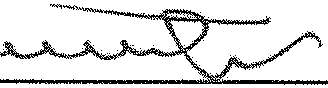
Explain how this purchase fits the situation selected above:

These enhancements will benefit our internal and. external users of the EMGrantsP.ro system. HSEMD is now inputting data into. only one grant management system

{EMGrantsPro) and one accounting system *(113* Accounting) for reporting. auditing. and transparency. These enhancements will improve our grant management responsibilities and oversight since the federal government has initiated new federal grant administration requirements (2 CFR. Part 200). and new.transparency guideline$ (federal draws. by subaccounttproject and not .just by grant). Staff, FEMA. auditors, state partners. Cities.

counties. and othergrant recipients all will benefit. The approved federal funding for these

enhancements will expire this year (a portion by 9/30/2016 and the. ba.lance by 12/31/2016}.

**M•** J. **S\_, Di'8CW<** • '

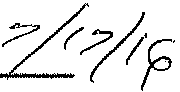
Requesting Department Director Sig



Chief Information Officer Signature: .,<!· ="41'------Z....*.,\_J.,.,r.vi.-.u.\_1.;.t \_*

(For I.T. purchases/services only)

*I*





Recommendation:

!Approved

0 Rejected (State reason below)



**IIOSTIN(; SERVICES ACREEMENT**

**SOFTWARE MAINTENANCE AND TECHNICAL SUPPORT AC REEMENT SOFTWARE LICENSE AC REEMENT**

**Section 2. Definitions**

**"Hosting Hardware"** ml'.:ms thl'. hard,\arT utili/ed to support thl'. production rnvironrnl.:nts of thl.: Systcrn.

**"Hosting Software"** nwans till'. solt\\:IIT utili/l'.d to suppor1 thl'. production l'.nvironml'.nts of tlw SollwarT or Svsll'.m.

"**Warranty Period"** means the Warrant) Pniod as ddincd umkr the Services Contract.

/\II other capitali/cd terms not otherwise dclined herein shall have the meaning ascribed to them in the Services Contract

**"Public Code"** means one or more or the following: (I) any soil ware that contains or is derived in any manner (in whole or in part) frot11 open source soll\\at-c or solhvarc subject to similar licensing or distribution requirements: and (2) any software that requires as a condition or its use. 111odificat ion or distribution that such soil\\ arc ( or other soil ware incorporated into. derived from or distributed \Yith such soll\\ arc) be either (a) disclosed or distributed in source code form: (b) licensed for the purpose or t11ak ing dcrivat ivc \

\orb: or (c) redistributable at no charge.

**Section 4. Scope of Work.**

* 1. **Agency Not Required to Accept or Install Enhancements.** Vendor shall not condition any of the i\gency·s rights or Vendor·s obligations under this Agreement. or any other contract related to the Solhvare or the System. on the Agency accepting or installing any 1-:nhancements. sofh,are or additional functionality prov idcd by Vendor .
  2. Content. \II Contl.'.111 (including Content collected by the Sotlwarc/S)- ste111 orVendor) shall remain the sole and ex.elusive proper!) orthe /\gene). l!pon the termination or expiration orthis /\gree111e11t or at /\gene:, ·s request. Vendor shall provide and deliver such Content in its possession to the Agency \\ithin five (5) business days of the Agency's request.

**Section 5. Compensation and Additional Rights and Remedies.**

5.2 Invoices.

Vendor shall. 011 a quarter!\_\ basis. sub111it an invoice to the ;\gene\_\

requesting pa\_\ 111cnt orthe fees or other cnmpcnsation specified in Schedule;\ ll1r hosting services provided b\_\ Vendor during the pre\ious quarter. All invoices

submitted by Vendor shall comp I: v,ith all ,q1plicable State of ltma rules and procedures concerning the payment of such fees. charges or other claims and shall contain appropriate documentation as ncccss,ir\_\ to support the fees or charges

included on the invoice and all information reasonably requested by the Agency.

The Agrncy wilL sub\_jcct to the terms and conditions of this Agreement. pay all approved invoices in arrears and in conformance with Iowa Code section 8/\.514

and ***11*** Iowa Admin. Code ***41.1*** (2). The Agency may pay in less than sixty ***(60)*** days. as provided in lo\\a Code section 8/\.514. 1 lmvcver. an election to pay in less than sixty ***(60)*** days shall not act as an i111plicd ,,aivcr of Iowa Code section

8/\.514. Not\vithstanding an) thing herein to the contrary. the Agency shall have the right to dispute any invoice suh111itted lt1r pa\_\ment and withhold payment of any disputed amount irthc Agcric\_\ hcliC\ cs the invoice is inaccurate or incorrect in an:

\\a\.

**IIOSTIN(; SERVICES ACREEMENT**

**SCHEDULE A TO HOSTIN(; SERVICES ACREEMENT**

l losting indmks 20 GK disk sp,Kt', I GB of monthly dc1ta transfer, daily backup of database and document repository. ,\nnuc1l hosting cost is $2,500 pn quartn. Additional disk spacL' is S20/month for each block of 10GB. Additional bandwidth is Sill/month for I GB t'xtra per month.

**Server Configuration**

MB:1 products are hosted with c1 dual server configuration, nwl'ling the following specifications:

Dedicated D,1tabast' server (running l\ticrosoft SQL 2005) lkdicdled Web Server (running i\dolw Coldh1sion 9.0)

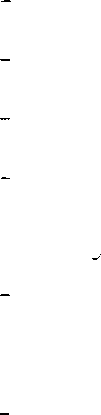
Both st'rvers are equipped with tlw follovving spt·cifications:

Systt'm Configuration: Singlt' Processor -Intl'! Quad Core Pl'ntium Operating System: Win200:1 Server (Standard Edition)

Processor: Intel Quad Core E6600 2.66GIG 8MEG SINGLE 10661\I l\kmory: 4GB DDR2-667-ECC (Pentium-D)

RAID Controller SoftwarL' Raid l

In the event of a loss of data, both servers have a service running cc1lled Advanct•d System Recovery (ASR) that takes a nightly snc1p shot of the se1-Vt'r to back up on an t•xternal USB drive that would be restored by MB3 in the event of a snver failure and need for restoring the bc1ckup.

Tlw servers are hosted in the datan•nter of Primus Tell'communic,1tions Group, Incorporated with tlw following features at the servt•r location: 24/7 monitoring and security by onsite security personnel

Bioml'lric access control systems and video camera surveill,mn' Gas fire suppression system ,md pre-action sprinkler systems Redundant, cornputn grade air conditioning and humidity control svslt'ms

l\fossive power distribution systt•m vvith full UPS backup and diesd generator protection

Redund,mt filwr-bast>d backbone co111wctions to multipit• Tit•r l lntenwt b,ickb01w provitkrs

Vt>ndor shall lw responsihll' for tlw following:

-Ensuring the host sill' substantially complies with Priority One of the World Wide Web (VV:.C's) Web ALYessibility Initiative in all material respects c1nd all

v,,uidelines in Section 508 of tlw Rehabilitation Act thc1t are not covt•red b.v \V:.C Prioritv.



-� I

-Ensuring the host site is ,\'holh' ,lffl'ssiblc through /\ge1K,,'s published universal n'SlHIIH' loc,1lor ("URL") through c1n SSL l'nnypted link lo tlw URL of Vendor's hosted Soflv.'cHl'.

-All Content, eil'ctronic or othl'rwise, and including any Content

collectl'd/ neatl'd bv or on bl'half of Vendor (or by the Software or Systl'm), and all donmwnts, notes, dc1ta, uploadl'd docunwnts, files, reports, studies, work papers, and all other materials collected, USl'd or prepared by, or on behalf of, Vendor in connection with this Agn'l'nwnt that arc Agency-specific, wlwtlwr compll'ted or in progress, shall lw and remain the sole and exdusivl' property of

tlw Stall' and /\v*\.)*encv,., . Thl' Stall' and A*t*"*,* encv.,

lwrd1v\_,,

rcscrvl's all ri1(,\_1) hts to all of

tlw forl'going. Upon the termination or expiration of this Agn-enwnt, or at ,my tinw upon tlw written n'quest of the Agl'ncy, Vendor shc1ll ensure that all Content, donmwnts, notes, data, uploaded docunwnts, fiiL-s, reports, studies, work papers c1nd materials in its possession (or in tlw possession of anv subcontractor or Third l\uty vendor used by Vendor) shall be provided, trnnsfr'rrl'd and dl'iivered to the Agency within five (5) business days of tlw Agency's requl'Sl. In Midition, upon termination or expiration of this Agn'l'nwnt, Vendor will, at Agl'ncy's request, providL' proof of destruction or

nt unr..\_i-,n,,r' of all of Al(,\_')L'nc.,v's Content and data from Vendor resources aftl'r Vendor has transferred all such Content ,md data to thl' Agency. Vendor is prohibited from use of the above dL'snilwd items, information and materials without the

written approval of Agency.

-Providing security for the host sitl' that is acceptabil' to Agency with Vendor responsibiL' for all necessary equipment and software rdatL'd to securih'.

-Providing AgL'ncy with at least days advann' notice bl'fore any scheduled maintcnancL' with the following exceptions; (i) routine windows updates and security patches that takL' pli1ee betwel'n 12 a.rn. and a.m. EST. and (ii) requin'd l'BWrgency server maintl'nance.

-Maintaining accessibility of the host site 2-l hours a day, 7 days a \\'l'l'k, at an uptiml' rate of 99.9'X, or gn•c1tl'r.

-Providing 2-lx7x 65 c1ccess to the host site to J\gl'ncv, Covernnwnt,il FntitiL'S and Users, ,md providing support l\londav through Frida,,, K:00 a.m. Lu 5:00 p.m. (Central Tinw).

-Providing contact inform,1tion in the form of a support L'mdil ,Hldress ,md

support login portal .:md 2-l hour aCCL'SS to any available online knowledge rq1t1silory or online solutions database to ensun• that tlw Agency l·,m obtain servin' outsidl' of tlw st,1ll'd support tinw window.

-Ensuring that tlw Softwarl', System and host sill' will lw accl'ssiblL' ill il'ast 99.9''.,, of lhl' tinw, 2-l hours a day, 7 days a weL'k, 65 days a yecH, except for scheduled mainten,mn·. In the event that the Vendor (or any subcontractor or Third Party vendor USl'd by VL'ndor) f,1ils lo nwd this 99.9% accl'ssibility n'quirl'nwnt during any given month, VL'ndor shc1ll rL'irnbttrSL' Agency 5'\, of tlw quarll'rlv hosting fr·l'

for L'ach 2--l-hour d,l\' during which thl'rl' Wl'l"l' an\' such incidL·nts of UnclVclilahilit\'.

-Providin\!. and m,1intc1ini1w all softw,lrl' ,rnd h,udw,1n', indudi1w, hut not limited to, the Softwc1rc, Hosting Sofh\',Hl', I 1osting Hardwarl', server soft,V<Hl',

(.I () \)

Sl'rvl'r telecommunications hardwc1n' <1nd softwan', server SL'curit\' hardwan· and server softwMl', and other softwan' thc1t is 1wn•ssary to operate and maintain the Softw,uc, SystL'm and host silL'.

-ExcL'pt for installing L'nwrge1Ky fixes and pc1tdws, notifying Agency al kast J days prior to any anticipated scrvin• interruption, with said notice containing a dl'taikd description of the service interruption.

-Exercising its best efforts and taking all steps 1wn•ssary lo ensure upon termination or expiration of this Agreenwnt that transition of the site (including, without limitc1tion, the ,Kn'ssihility, hosting, operation and maintenance of the site and all n'lall'd functionc1lit\', Software, Content and information) from the Vendor to Agency (or to a successor host) will be accomplislwd at no L'xpense to Agencv, and with minimc1l interruption of tlw site's accessibility and insignificant

changes in the site's appe,11\rnn' and functionality, as ddL'rmi1wd by thl' Agl'nc\_v

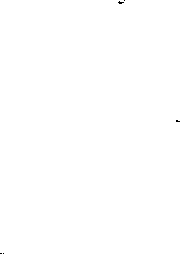
in its soil' discrl'lion. Vl'ndor will, at Agency's request, provide Agency with c1n\_v and all infonnc1tion, technical rl'quirenwnts, Specifications, Docunwntation and other information that will enabk tlw Agency, or any contractor to successfully continue the accessibility, hosting, operation, and maintL'n,mcc of tlw site (including, without limitation, the accessibility, hosting, operation ,rnd maintenance of the site and all relatL'd functionality, Software, Content and information).

-Identifying any commL'rcially availablL, software, including Hosting Sofh\'are, by vendor and Vl'rsion numtwr, integrated into the Software/SystL'm ,md describing tlw particular fundionality of any software that is proprictarv to the Vendor.

-Providing the Agency with c1ll initial sofh\'aJ"L' and hc1rdware configuration spL'cificalions required lo sl'lf-host the Soflwarl'.

-Providing n'dundant, load-bal,rnced, intnnd nmnections provisirnwd through SL'parale snvin' providers with L'quc1l bandvv idth of 1.5--l--ll\lB (T-1) or gn•c1tl'r

cap,1eit\_v.

-Hosting the Softw,ue, Svstl'm ,111d hosll'd sill' under full SSL encrvption. Tlw VL'ndor will procure, install c1nd m,rnagl' tlw initial I year SSL cntific,1te in accordance with the Agl'IK\·'s c1ccepted URL. The Vendor will continm' to maintain responsibility for tlw n'rn'w,11 and installation of the SSL n·rtificc1ll' until such time as this Agrcl'nwnl is krminated or expires, al which point the Agencv will assunw sc1id SSI, rcsponsibilitiL'S.



**SOFTWARE MAINTENANCE AND TECIINICAL SUPPORT ACREEMENT**

**SCIIEDllLE A**

Silver+ Support Package

Includes a custom support pacL1ge, foiling bl'lween l\llB's standMd Silver ,md Gold packages. lndudL'S all Fnhancenwnts, unlimitl'd fixes/corrL'dions of DL'ficiencies, and an annual budgl'l of 60 incidL'nts and 7,5 custom servin' hours. TOTAL: $8,750/quartL'r (�7,5,000/ y'L'ar)

Access to Support Portal Product Updates

Support IncidL'nts PL'r Yl',H Custom S<\_,rvin' Hours Per Ye,u

Online Incident Rl'porling (Tickl'l S\'slem) Phone lncidL'nt Reporting (Busi1wss I lours) N,uned Client Support Contacts

Test Site for Pn,viewing Upcoming Rl'IL'aSL'S Allows lntnnal StatL' Hosting (with VPN access) Secure Sockets Layer (SSL) SL'curity

Annual Domain Name RL'1wwal DESCRIPTION OF KEY SUPPORT FL!ATURES

PRODUCT RELEASES:

**Silver+**

Yes Yes 60

7,5 hours (only consultant-based) Yes

Prioritv 1&2 Onlv 2

Option Yes Yes Yes

Softwan' releases and other Enh,mn'nwnls are automaticallv installed wlwnever issued during the year. Vendor will providL' tlw Agency with notes detailing all changes prior lo any rekasl'. Rl'IL'aSL'S ,HL' either considL'n'd updalL'S (major and minor) or upgrades. In tlw L'VL'nt of ,1 product upgradL', major update or other significant Enhancement, VL'ndor will provide the Agency with a tL'St site ,md c1dequale time to reviL'\V the ch,mges.

SUPPORT INCIDENTS:

A support incident is dl'fined as tlw resolution of one tL'chnical question, problem, or issue, regardkss of tlw n'Sl'cHch time used or number of emails/tl'lephone calls required to n'solw' il. Rq1orts of DL'ficinICies ML' not considL'n'd support incidents l'Xcept in the CclSl' of a Priority -l DL,ficiency in which the Agency has requL'StL'd an inst,rnt n'solution or workaround solution. Enhancenwnl suggPslions are also not considered support incidents. 1\187, may also choosL' not to bill an incident thdl takes vnv littll' tinw to n'solve, as in the case of a simpk' enhancenwnl suggl'stion or "how-to" ljlll'Stion (in tlw soil'

.� I

judgml'nt of 1\1133). /\ddition,ll support incidents m,n· lw purchasl'd at tlw rc1tl' of

S1,500 for cl block of I 0.

CUSTOI\I SERVICES:

Custom SL'rviccs may bl' quotl'd a pl'l·-project fL,e (if cl sd of fixL'd dl'livl'rabks arl' known up-front), or thl' standard hourly ratl' of Sl90/hour. Enhancl'ment n'qul'sts that arl' classified as producl-L'nh,11King (at thl' sole discretion of I\IB'.1>) may be discounted bv unto 50'\,. Tlw followi1w ,1dditional servicl's are available:

../ *V* t <.)

Consultant-based:

* Training - onsite, remote for App/Stc1tL'
* Data Import/Export /\ssist,mce
* Product/Procl'ss Consulting (including Pron'ss or Best Practices Rl'comnwndations)
* Standard Opl'rating Prmnlun' (SOP) Writing Dl'veh)per-basl'd:
* Custom Devl'lopml'nt
* Data Import/Export
* Custom Interfaces (with other sysll'ms)

Notl' that tlwsc hours are for minor product dl'vl'lopnwnt only (at tlw sole discrl'tion of MB'.1>). Additional support hours may lw purchased dt thl' rn tl' of

$1,900 for a block of IO hours.

SUPPORT CONTACT METHODS:

The preferred contact method for support rl'qul'sls is MB?,'s support portal, availabk, at mb?tonli1w.com/support. I\IB?, standard business hours arc 9 AM - 5:?,0 PM EST, Monday - friday, excluding national holidays and Deccmlx'r 26-

*:,* I. Priority l and 2 rl'quests outsidL' of busi1wss hours may be submitted by email to support(u)mb7>onli1w.com, by pho1w ,1t l\lB'.1>'s office numlwr (?>21-206-

?,784), or thl' standard ml'thod of MIP>'s support portal.

SUPPORT RESPONSE TIMES:

Tlw follo\ving 4 prioritiL'S outlinl' how support reqtll'sts ,HL' catcgorizl'd and thl' rl'sponse time (in business hours/ d,ws) to L'>qwct for L',Kh:

Priority I - Critical

* + System compktL'h' down or core of Svstl'm not working whl'n' no workaround exists
  + Significant Impact on all Svstem usL'rs
  + MB:, Procl'ss: Rl'spond within I hour, GL't System b,1ek online or provide workc1round within 12 hours of bl'ing reportl'd bv the 1\gl'nn·, ,md add to pcltch list (if applicable)

Priority *2* - Urgl'nt

c, l'vlajor functionc1lity not working c1nd no work,uound exists (includes security ,md dat,1/ document corruption issul's)

* + Significant Impact on the majority of System usl'rs
  + MB:i Pron•ss: Rl'spond within 7, hours, Providl' workaround within *2-1-* hours of bl'ing rl'ported by the Agency, add to patch list

Priority 7, - Important

* + Major functionality not working and workaround exists
  + Impact on a relatively small amount of System users
  + MB:i Pron•ss: Rl'spond within 1 day and provide rl'solution within 7 days or a timdr,rnw agrl'L'd upon by the Agency, Add to patch list

Prioritv -1- - Minor

0 Minor function,ilit.v not worki1w,, and workaround exists (includes issul's with product donmwntation, l'nhancl'nwnt or custom n·quests, and general questions)

0 Minor imp,ict on Vl'r\' fl'w Svstl'm usl'rs (or no impact if enhancl'ment reqtwst or ge1wral question)

0 MB:i Process: Rt•spond within *2* days, Add to patch list and agrt'l' upon compll'tion timdine

**Other Terms & Conditions:**

During the term of this Agrl'l'ment, Vendor will maintain the Softwan• in an operable condition satisfactory to Agl'ncy and according to and in conformance with all applicable Specifications, including, without limitation all Specifications contai1wd in the St•rvict•s Contract (including the Statement of Work), the

1-:M(irantsPro Materials. and the Documentation. Vendor will providl' Agl'ncy with EnhancL'ments to Softwarl', and all supporting svstt•ms, of which are sdwdukd and communicated to tlw /\gency-dL·signatl'd contact within 5 days of implementation unll'ss said Enhancenwnts ,He dL'L'med enwrgencv or critical in nature.

In tlw l'VL'nt that tlw Vl'ndor (or any subnmtr,1etor or Third Party VL'ndor used by Vl'ndor) fails to correct, repair or rl'solve am· rq1orted Dd"iciency to Agency's satisfaction within the applicable time n•quin'nwnt or dl'adline sl'l forth abovL>, Vendor will rl'imburse Agency 5% of tlw qu,1rterlv maintl'nancl' and support fee for L'ach such failurl'. In addition, for l'\'L'ry additional dav that it takes Vl'ndor (or a1w subcontractor or Third f-'cirty vendor used bv Vt•ndor) to corrl'ct, repair or rl'solve tlw rl'portL'd DL•ficiency after the p,1ssing of such time requin•nwnt or deadline, Vendor will reimburse Agl'ncy an additional 5",, of the quartl'rl\' m<1inll'nance and support fl'e.

l!xcq1t for installing enwrgt'IKY fixt's and p,1tdws, Vendor will notify Agency c1t il',1st days prior to any anticip,1ted service inll'rruption, with said notice containing a detailed dl'sniption of poll'ntial effl'ds to Software or servin' functionality and availability, expectl'd duration of service outage, Vendor technical contc1cts associated with tlw outage ,111d resulting outcome of service.

All Content, electronic or otlwrwisL', c1nd including any Content

collech.'d/ creatl'd by or on behalf of Vendor (or by the Software or System), and all documents, notes, data, uploaded donmwnts, fiks, rq1orts, studies, work papers, and all other materials collectL'd, used or prepared by or on behalf of Vendor in connection with this Agn'l'InL'nt thc1t cHL' Agency-spL'cific, whctlwr compll'lL'd or in progress, shall lw and n'main Llw sok and exclusive property of tlw State and Agency. The State c1nd Agency hl'reby n'serves all rights to all of the fon'going. Upon the tennination or expirc1tion of this Agn'enwnt, or ill any time upon the written n'quest of the Agency, Vendor shall ensure that all Content, docunwnts, notes, data, uplo,1lh'd documents, files, reports, studies, vvork papL'rs and materials in its possession (or in the posSl'ssion of anv subcontractor or Third Party vendor ust'd bv Vl'ndor) shc1ll be provided, transfelTL'd and delivered to the Agency within five (5) busi1wss days of tlw Agency's reqm'st. In addition, upon termination or expiration of this AgrcemL'nt, Vendor will, at AgL'ncy's rL'ljlll'St, providL' proof of destruction or purging of all of AgL'ncy's Content and d,1tc1 from Vl'ndor n'sourn's after Vendor hc1s transfern'd all such Content and data to tlw Agency. Vl'ndor is prohibited from USL' of the abovL'- described items, information ,rnd materials without the written approval of Agency.

##### Schedule A.1

**Platinum Support Package**

The following support package is covered by this Agreement Amendment.

|  |  |
| --- | --- |
|  | , --\_-:'\_,,',' '', -:,,- :  **l>)alih 111** .•·. •·•·<• •.. |
| **Support Hours**  Help desk hours available per year for "how-to'' questions  or configuration/administration assistance. | 175 |
| **Test Site Access**  lf access to a test site (different from the live enviromnent)  is available for testing upcoming releases and !raining. | Yes |
| **State Hosting Option**  II Internal State Hosting is allowed (which means MB3 would have VPN access to make updates). | Yes |
| **Maximum Grant Programs**  The limitation on the number of grant programs allowed  (ie. PA, HMGP, HLS, EMPG). | 3+ |
| **Included Extra Functionality**  Additional modules included for free in EMGrantsPro. | DAG, PDAApp |
| **Services Discount**  The discount percentage offered for use of MB3's custom services (including training, data importing/exporting, process or EM consulting, and product enhancements). | 15% |
| **Annual Fee•** | $75,000/year |

**\*Annual fee is due at the beginning of each billing year.**

**Included Add-on Functionality**

The following add-ons are included:

* Preliminary Damage Assessment (PDA) App & EMGrantsPro Integration

MB3's PDA solution includes the PDA app for collection of damage sites and the EMGrantsPro modules (within EMGrantsPro) that would receive and report on the data, Included in this cost is both Public Assistance and Individual Assistance collection & reporting, See the attached brochure for more detailed information,

Software Maintenance and Technical Support Agreement, Amendment 1 Page 3 of 6

* Direct Administrative Cost (DAC) Module

EMGrantsPro has the option of tracking the Grantee's Direct Administrative Costs (DAC). First, costs can be logged on individual projects, both before and after obligation. All FEMA-required fields are included on the form to ensure full compliance, such as type (i.e. time, materials, contract, travel), activity (customizable list), date, vendor, and unit/cost information. Supporting documentation may also be attached. Then groupings of DAC submissions may be routed for management approval which includes the ability to print a Project Worksheet (PW) document that can be submitted to FEMA for reimbursement.

**Contact** Methods & Response Times

##### Support Contact Methods

The preferred contact method for support requests is MB3's support portal, available at mb3online.com/support. MB3 standard business hours are 9 AM - 5:30 PM EST, Monday - Friday, excluding national holidays and December 26-31. Priority I and 2 requests outside of business hours may be submitted by email to [support@mb3online.com,](mailto:support@mb3online.com) by phone at MB3's office number (321-206-3784), or the standard method ofMB3's support portal.

##### Support Response Times

The following 4 priorities outline how support requests are categorized and the response time (in business hours/days) to expect for each:

Priority 1 - Critical

* + System completely down or core of system not working where no workaround exists Significant Impact on all system users
  + MB3 Process: Respond within 1 hour, Get system back online or provide workaround, and add to patch list (if applicable)

Priority 2 - Urgent

* Major functionality not working and no workaround exists (includes security and data/document corruption issues)
* Significant Impact on the majority of system users
* MB3 Process: Respond within 3 hours, Provide workaround, add to patch list

Software Maintenance and Technical Support Agreement, funendment 1 Page 4 of 6

Priority 3 - Important

* Major functionality not working and workaround exists
* Impact on a relatively small amount of system users MB3 Process: Respond within 1 day, Add to patch list

Priority 4 - Minor

* Minor functionality not working and workaround exists (includes issues with product documentation, enhancement or custom requests, and general questions)
* Minor impact on very few system users (or no impact if enhancement request or general question) MB3 Process: Respond within 2 days, Add to patch list

**Key Support Features Product Releases**

MB3 releases product upgrades and updates periodically throughout the year as illustrated by the diagram below. Clients are provided with notes detailing all changes prior to the release, which is given a specific number (i.e. 4.0.013). These updates typically contain items falling under these main categories:

* Functionality Enhancements: When improvements are made to the system, either as requested by one or more States or proactively by MB3, this is considered functionality enhancements (i.e. improvements to core functionality such as document uploading or workflow).
* Reported Issues: Issues or bugs in the system are promptly resolved. Additionally, error logs are automatically sent to MB3 for quick processing, without needing to be reported by a client.
* Grant Program Modifications: If FEMA key program requirements change, MB3 makes these updates available to all clients (i.e. Quarterly Report export format, Data warehouse import updates, FFATAreporting, etc.).

**Support System Access**

MB3's support site, located at support.mb3online.com is available for the following:

* Manage Tickets: Support tickets can be submitted and tracked throughout the development process.
* Track Invoices: Invoices are logged in the system and available to recall at any point.
* View Product Releases: All product releases including the detailed release notes are

Software Maintenance and Technical Support Agreement, Amendment 1 Page 5 of 6

available in the system.

* Generate Reports: Real-time reports that display support usage, outstanding invoices, and more can be generated in an instant.

**Community Interaction**

As an MB3 client, all support packages provide access to the Emergency Management community of States for knowledge sharing, discussion, and training. Here are some examples:

* EMGrantsPro Sessions: MB3 offers interactive web-based training sessions which cover various EMGrantsPro topics, ranging from a general system overview to more comprehensive sessions for system administrators or finance.
* Grant Program Sessions: MB3 brings together state PA and HM staff from across the country to discuss current program issues and exchange ideas.
* Message Board: Included in the support site and in EMGrantsPro is an integrated message board to view articles released by MB3 and allow posting and commenting by the MB3 client commimity.

**Support Desk Hours & Bug Reporting**

Support hours may be used for how-to questions, configuration assistance, user training via web conferencing (for internal & external users as well as system administrator training). Note that system bugs may be reported as well, which are not recorded as support hours. Hours for additional services such as product enhancement development and emergency management program or process consulting may be purchased or custom development projects may be assessed upon request (at a rate of$225/hour, and subject to discounts specified in support package subscription). Additional on-site training sessions may also be purchased, of which the cost will be determined on a case-by-case basis.

Software Maintenance and Technical Support Agreement, Amendment 1 Page 6 of 6

**Softwan· License Agreement**

This Sothvan: License Agreement (this ..Agreement"·) is cfkctivc as of Jul\_\ 5.2012 (--1:rtccti \c

.. ..

Date ). and is made by and bct \\ccn l'v1B3 INC. (.. licensor··) and the State of' il)\\a (..State ).

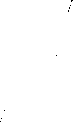
acting by and through the lmva lkpartmcnt of' Public Defense. Ilomcland Sccurit\_\ and 1:mcrgcncy Management Division c·Agcncy··) (the State and the Agency shall be referred to individually and collectively as ..Licensee ).

..

**SF:CTION I. DEFINITIONS**

In addition to any other terms that may be defined clsC\\hcrc in this Agreement. the following terms shall have the ftllkl \\ing meanings:

**"Authorized Contractors"** mean independent contractors. consultants or other Third

Parties \\ho arc retained or hired b.\ Licensee or a Gmcrnmcntal Lntit,. to host. maintain.

modify. support or enhance the Soll\\,11-Cor lo othcn,isc assist Licensee or Governmental

Lntitics \\ith their use or the Sofl\\arc consistent \\ith the rights granted herein.

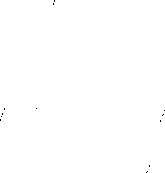
**"Confidential Information"** means. sub\_jcct lo any applicable Stale and federal lav,s and regulations. including but not limited to ilrna Code Chapter 22. any confidential or proprietary

inftirmalion or trade secrets disclosed by either part\_\ (a ··disclosing .. lo the other pa11y (a

party )

..receiving .. that. al the time of disclosure. is designated as confidential (or like

party )

designation). is disclosed in circumstances of' confidence. or \vould be understood b\_\ the parties. exercising reasonable busincss\_judgmcnt. to be confidential. Confidential l nftmnation docs not include any information that: (i) ,,as rightfully in the possession of the receiving party from a source other than the disclosing party prior to the time of disclosure of the information by the disclosing party to the receiving party: (ii) \\as kno \,n to the receiving party prior to the disclosure of the information by the disclosing part\_\ : (iii) was disclosed to the receiving party without restriction by an independent third party ha,ing a legal right to disclose the inf<.Jrmalion:

(iv) is in the public do111ain or shall have become publicly available other than as a result of' disclosure by the receiving party in violation of this Agreement or in breach of an\_\ other agreement with the disclosing party: (v) is independent! \_\ dncloped b\_\ the receiving part\_\

\\ithoul an\_\ reliance on Confidential Information disclosed by the disclosing part\_\ : (vi) is

disclosed or is required or authori/ed lo be disclosed pursuant to l,m. rule. regulatinn. subpllena. summons. or the order of a court. tm ful custodian. govcrn111ental agcnC\_\ or regulatory authorit\_\. or by applicable regulatory or professional standards: or (\ii) is disclosed b\_\ the receiving part\_\

,,ith the \Hillen consent of the disclosing parl\_\.

**"Content"** means any content. data or inli.lrmation provided or sub111ittcd hy or through iccnscc. ( iovcrn111ental Lntitics and/or l lsers for use ,,ith the Soll\\ar-c.

**"l)eficienc:v"** means a defect. Ihm. error. bug. ano111al\_\ . failure. 0111ission. interruption of service. or other problem ot'any nature ,vhatsoc ,er \\ith respect to the Soll\\are. including.

\\ithout limitation. any failure of the Soli\\are to cnnfor111 to or meet an applicable Specilication.



[kficicnc\_' also includes the lack ol'sot11cthi11g essential or necessary li\_ir cot11plctcncss or proper functioning of the Soli\\!JrC.

**"Documentation"** t11cans an) and all technical information. cot11mcntar). c:-..:planations. design and systct11 architecture documents. database layouts. test materials. training t11atcrials. guides. 111anuals. \\orbhccts. notes. \\lffk papers. and all other i11for111ation. docut11c11tatio11 and 111atcrials related to or used in conjunction\\ ith the Soll ware. in any 111cdiut11. including hard copy. electronic. digital. and t11ag11ctically or optical!) encoded 111cdia.

**"Enhancements"** mean all updates. upgrades. bug lixcs. patches. additions. i111provcmcnts. modifications or other cnha11cc111cnts to the Sollwarc (including. without li111itation. any nc,, releases or versions ol'thc Soll,,arc) provided or made available by Licensor or an) Third Party under this i\grccmcnt or an) other agrcc111cnt (including. \\ithout lit11itation. the Services Contract. this J\grcct11cnt. and an) agrcc111c11t for or relating to t11ai11tc11ancc or support) and all changes to the Docu111c11tatio11 and Source Code as a result of such l·:11ha11cc111c11ts.

**"Governmental Entity"** 111ca11s an) (imcrnt11cntal Lntity. as dclincd in Iowa Code Section 8/\.101(-l). or any successor provision to that section. The tcr111 (iovcrn111cntal Lntity shall also include agencies. independent agencies. the Judicial Branch. cout1s. boards. authorities. institutions. cstablisht11cnts. divisions. bureaus. cot11missions. cot11111ittccs. councils. examining boards. public utilities. oniccs of elective constitutional or statutory oniccrs. and other units. branches. or entities of government (including any state government and the government or the United States). hff the sake of clarity. the term Govcrn111cntal **l'.ntit)** shall also include the Federal Lmcrgcncy Management /\gene) ('"FLM/\ ..).

**"Public Code"** means one or more or the following: (I) any soilware that contains or is derived in any manner (in whole or in part) frot11 open source soll\\at-c or solhvarc subject to similar licensing or distribution requirements: and (2) any software that requires as a condition or its use. 111odificat ion or distribution that such soil\\ arc ( or other soil ware incorporated into. derived from or distributed \Yith such soll\\arc) be either (a) disclosed or distributed in source code form: (b) licensed for the purpose or t11ak ing dcrivat ivc \\orb: or (c) redistributable at no charge.

**"Services Contract"** means the Sen ices Contract made and effect ivc as or.I uh :'i. 2012. by and between the i\gcncy and I.iccnsor. including all schedules. exhibits. and other attach111cnts to that agreement. including. \\ ithout lim ital ion. the Statc111c11t(s) or Work.

**"Software"** means the I M(irantsPro Version -l-Prc111iu111 Ldition soll\,arc and all related t11odulcs. modifications and l·:11ha11cct11c11ts. including.\\ ithout lit11itatio11. those rcllccting custot11izatio11s requested by the Dcpartt11c11t and all soll\,at-c. prngra111s. modules. applications. object code. Source Code. Docut11c11tat ion. I·:nhanccmcnts and custo111izat ions prO\ idcd or licensed under this i\grcc111c11t. the Services Contract. and under an) other agrcct11cnt bct\\CCn the pat1ics hereto and their successors and permitted assigns (including.without limitation. an) agrcc111cnts relating to maintenance or support). and all other solt\\arc. programs. applications.

modules and components \\hich comprise the S)stc111. in all for111s. including Source Code and object code. all related Documentation and Lnhanccmcnts. and all copies of the lixcgoing.

**"Source Code"** 111cans the human-readable source code. source program. scripts and/or progra1111ning language. including I ITMI .. JavaScript. Cold Fusion. and S()L. for or related to the Software. Source Code includes all source code listings. instructions (including compile

instruct ions). programmer·s notes. commcnliir) and a11 re lated tcchn ica I in format ion and Documentation. including all such information and Documentation that is necessary or useful for purposes of maintaining. repairing. or making modilications or enhancements to the Soft\\ilrC and the Source Code.

**"Specifications"** mean all spccilications. requirements. technical standards. performance standards. representations and other criteria related to the Software stated or expressed in this

/\grccmcnt. the Services Contract. the LM(irantsPro Materials. and the Documentation. Spccilications shall include the Acceptance Criteria and any spccilications. standards or criteria stated or set forth in any applicable state. kdcral. foreign and local l:ms. rules and regulations. The Spccilications arc incorporated into this /\grccmcnt hy rclcrcncc as if fully set forth in this

/\grccmcnt.

**"Statement of Work"** shall have the meaning ascribed to it in the Services Contract.

**"Third Party"** means a person or entity (including.but not limited to any form of business organization. such as a corporation. partncrshir. limited liability corporation. association. etc.) that is not a party to th is /\grccmcnt.

**"User"** means any Third Part) that is authorized or pcnnittcd by the I .iccnscc or a (iovcrnmcntal Lntity to access or use the Soft\,:irc and its functions. including. but not limited to members of the public. grantees. subgrantccs. applicants and other persons associated with projects or programs administered by Licensee or any (iovcrnmcntal Fntity.

**"Warranty Period"** shall have the meaning ascribed to it in the Services Contract.

/\II other capitalized terms not othcn, isc de lined herein shall ha\c the meaning ascribed to them in the Services Contract.

**SECTION 2. SOFTWARE LICENSE**

* 1. **License.** Licensor hereby grants to Licensee and to (iovcrnmcntal 1-:ntitics a nonexclusive. irrC\ocable. perpetual. Ii.illy paid up. nontranskrahlc (except as provided in Section 9.7) and workhv idc right and license to:
     1. Lise. install. host. access. cxcculL'. mp). modil\ edit. format. translate. maintain. suppor1. repair. enhance. test. demonstrate. and displa) the Soft\\ar-c. and prepare derivative works based on the Soft\,:irc. in all media now kno,,n or hereafter created:
     2. Combine and use the SPll\,arc \\ ith other sPll\\atT. lirnn\arc. Public Code and hard,, arc:
     3. (irant an:, or all ol"thc rights set forth/granted in Subsections 2.1.1 and *2.1.2* alxnc lo Authorized Contractors: and
     4. (irant rights to access and use the Sollwarc and its runctions to lJscrs.

All Sollwarc subject to this Agreement may be used on any one or more orthe computers. data center locations. networks. Internet or intranct sites. servers or other systems or Licensee. any (iovcrnmcntal Lntity. or any Authorized Contractor ("'Licensee Systems..). In addition. all Sollv,arc subject to this Agrcc111cnt ma:, he used on any server. computer. nct,,ork. Internet or intranct sites. or other system maintained by. or on bchalr ot: Licensor if Licensor is providing hosting services to or for the bcnclit or I .iccnscc (the **··1** lost Server..). The license and all or the rights and privileges granted hereunder shall he valid and apply regardless of \\hcthcr the Solh,a1-c is being used or accessed on the I lost Scner or on a l.iccnscc System. I-or purposes of this Agreement. the parties agree that i!'thc Licensor. the Licensee or an:, Governmental Lntity makes any Lnhanccmcnt to the Solh,arc (,,hethcr directly or indirect!:, through an Authorized Contractor) during the Vvarranty Period. such Lnhanccment shall be owned by the Licensor. with the Licensee having all orthc rights set l<)rth in this Agreement (including. without limitation. those rights set forth under Section 2.1) ,,ith respect to all such

I-:nhanccmcnts.

The foregoing license grants and rights include a license under any current or future patents owned or licensable by Licensor to the c:,.;tcnt necessary: (i) to e:,.;crcisc any license right granted herein: and ( ii) to co111bine the Soll ware with any other Deliverables provided under the Services Contract. including with any hard,,a,-c and solhvarc.

* 1. **Dcli,cry of Source Code.** Licensor shall rurnish and deliver to Licensee a complete copy or all Source Code (on a media and in an electronic format acceptable to Licensee) and updated Documentation (including any \\rittcn inl(irtnation necessary or desirable for the maintenance. 111odirication. compilation. and/or enhancement or the Sollwarc): ( i) upon I .iccnscc providing either Vendor or Licensor ,,ith l.icensee·s \\rittcn notice or Acceptance with respect to the Soll,,:11-c. (ii),, hen I .iccnsor or any Third Part:, deli, ers. pnn ides or makes :l\ailablc any Lnhanccmcnts to Licensee. and (iii) ,,ithin rive (:'i) business da:,s or receiving any written notice from Licensee requesting the Source Code and Docu111cnt:1tion. The Licensee shall be entitled to access and use all Source Code and Documentation alter providing ten ( I 0) days\\ ritten notice to the Licensor. upon the occurrence of any one or more of the llllkl\\ ing events: (i) Licensor (or any affiliate of Licensor. or any corporation. shareholder or entity having or O\\ning a controlling interest in I .iccnsor) violates or commits a breach or any term or condition of this Agrce111cnt or

any agreement relating to maintenance and support of the Soll\,are. and the Licensor fails tu cure such breach ,,ithin the time period established 1;,ir curing such breach. i!'any: (ii) the Licensor (or any affiliate or I ,iccnsor. or any corporation. shareholder or entity having or o\vning a controlling interest in I .iccnsor) assigns. transfers. delegates. or subcontracts any of its maintenance or support obligations or duties under. or any interest in. any agreement it may have\\ ith the Licensee relating to maintenance or support oft he Soll\\ arc.\\ ithout the prior,, rillcn consent of

thl' Lil'ensl'l'. llthn than a sulxontract to MID ll'chnologil's Inc.: (iii) thl' l.icl'nsor (or an) aniliatl' of l .icl'nsor. or any corporation. shar-choldn or l'ntil) ha, ing or O\\ ning a controlling inll'tTsl in I.icl'nsor) Cl'asl's to providl' mainll'n:rncl' and support to till' **l** .icl'llSL'l'. ,, IKthl'r dul' to its Cl'asing to conduct husinl'ss gl'nl'rally or othl'r\visl'. including. but not limitl'd to thl' l.icl'nsor's Lkcision to no longl'r maintain or support thl' Soti,\.trl': ( iv) l.icl'ns(ir (or an) artiliatl' of l.il'l'nsor. or any corporation. shar-choldn or l'ntity having or owning a controlling intl'rl'st in Licl'nsor) tnminatl's or suspl'nds its businl'ss or cl'asl's to do businl'ss: (v} 1.icl'nsor (or an) aniliatl' of Licl'nsor. or any corporation. sharl'l10kkr or entity having or owning a controlling inll'rl'sl in Licl'nsor) bl'coml's subjl'cl to any bankruptcy or insolvl'ncy procl'l'ding umkr fi.xkral or stall' law: (vi) l.icl'nsor (or any alTiliall' of 1.icl'nsor. or any corporation. shard1oldn or l'ntit) having or owning a controlling intl'tTst in Licensor) has bl'coml' insolvent or unabk to pay its ohligations as thl'y accrul' or bl'coml' dul': (vii) Licensor (or any affiliatl' of Licl'nsor. or an) corporation. sharl.'110 kkr or l'llt ity having or O\\ ning a contro II ing intl'tTsl in **l.** icl'nsor) makl's an assignnwnt for thl' bl'nl'fit of its ct-editors: (viii) a rl'cl'iver. trustl'l'. liquidator. custodian or similar official has bl'l'll appoinll'd to act on bl'lialf of the Licensor (or any artiliate of Licensor. or any corporation. shareholdn or entity having or o,,ning a controlling interl'st in Licensor) with 1-cspect to any of its operations or assl'ts: ( i:-;) **l** .icl'nsor (or any alTiliatl' of **l** .icensor. or an) corporation. shareholder or l'ntity having or O\\ ning a controlling intnest in l .icl'nsor) nKrgl's. is sold or l'nll'rs into an agr-ceml'nt to sl'll all or substantial I) all of its assl'ls resulting in Licl'nsor's failur-c to 1-cmain a party to. or otherwisl' rl'lain all of its rights and ohligations under. this J\grel'ment or any agr-cl'ment 1-clating to mainll'nancl' and support ofthl' Sotlware. and the survivor or acqu irn dol's not assurnl' all or I.icensor's rights and ohligations under such agreernl'nts. whl'ther by operation of law. written agr-ceml'nt or othnwisc or(:\) Licensor or any subsidiary. affiliate or subcontractor of **l** .icl'nsor violall's or commits a hrl'ach or any term or condition ofthl' I losting Servicl's Agreement. ,,hich breach has not been cured by Licensor within any applicable time pL'riod stated ther-cin for curing such breach. In the evl'nt the

Licensl'e accesses the Source Code and Documentation in accordance with the terms ur this SL'ction 8.17. all or the rights and privileges grantl'd under this Agreement and the Services Contract with respect to the Software shall appl) to till' Source Code and Documentation. and the Licensee. (,overnmental Lntitil's. and their J\uthori/ed Contractors shall be entitled to e:-;ercise

all of such rights and privileges\\ ith respect to the Source ( 'ode and Documentation. including all rights to maintain. support. modify. enhancl'. and prepare derivative ,vorks based upon. the So tiware and/or the Source Code.

* 1. **Licensee Not Required to Accept 01· Install Enhancements.** Licensor shall not condition any of till' I .icensee·s rights and rl'nll'dies. or till' I.icensur·s obligations. u11Lkr this J\grl'l't11ent or an) other agr-cement 1-clatl'd to the Solh,are (including. but not limited to. any agrl'ement relatl'd to maintenance or support of the Sotl,,:irl'). on thl' l.icl'nsel' accepting or installing an) Lnhancernents or additional functionality proviLkd b) Licensor.
  2. **Ownership.** Licensor shall O\\ll all right. title. and interest in the Solh,are. Documentation and all intellectual propet1) rights inherl'nt thnein. including. ,vithout limitation. all changl's. improvements and customi/ations tTl]Ul'Stl'd or suggl'stl'd by Licensee in the support and maintenance ol'the Soti,,are.

**SECTION 3. TERM**

I he term of this !\grccmcnt and the license granted hereunder shall be perpetual unless terminated b) either party only in accordance\\ ith the c:,,;prcss terms of this !\grccmcnt.

**SECTION 4. RISK OF LOSS.**

Licensor shall bear all freight. shipping. handling and insurance costs for delivery of the Soll ware and shall bear all risk of loss with respect to the Sotl\\a1-c. including any losses resulting from any damage to or destruction of the Sotl,\a1-c. in whole or in part. \\hich may

occur prior to Licensee·s delivery of written notice of Acceptance to Licensor with respect to the Soll,\ arc.

**SECTION 5. LICENSE FEE.**

**5.1 License Fee.** lipon payment by Licensee of the l'cc set forth in Section V.!\. of the Initial Statement of Work (Schedule;\ to the Services ( 'ontract) in the amount of $175.000. I .iccnscc will have a fully paid up license for the Sollwarc and Vcndor-(hvncd lklivcrables. and I ,censor is not entitled to an) other fees. compensation or considnation for the license.

**SECTION 6. REPRESENTATIONS, WARRANTIES AND COVF.NANTS.**

* 1. Lin:nsor represents and warrants that during the Warranty Period. the So flware ( in who le and in part) shall: ( i) be free from material Delicicncics: ( ii) conform to and operate in accordance with all Specifications: and ( iii) be compatible with and interoperate fully and correctly with the Licensee Systems and with any I lost Server. Licensor warrants that all media containing or relating to the Software ti.irnishcd hereunder shall be free from defects in material and workmanship. During the Warranty Period. Licensor shall. at Licenscc·s request and at Liccnsor·s expense. repair. correct or replace any Solhvarc that fails to co111ply with the warranties and requirements of this Section 6.1 promptly upon receiving notice of such failure from Licensee. but in no event more than ten ( I 0) days a Iler the date or receipt of such notice. In addition. the Licensor \\ill. during the Warrant) Period. fully support and maintain the Software. at no additional charge. Such support and maintenance\\ ill include. without limitation. all of the services. Lnhanccmcnts and l'caturcs that Licensor\\ ill prov idc under the Software Maintenance and Suppo11 Agreement. In the event Licensor is unable to repair. correct or replace such Solt\\arc to l.iccnscc·s reasonable satisfaction. I .iccnsor shall refund the fl'cs or other amounts paid for such Sofh\arc \\ithin ten ( 10) business da)S alicr Liccnscc·s request for such refund. The l()ITgoing shall not constitute an c:,,;clusivc remedy under this !\grccmcnt. and Licensee shall he entitled to pursue any other available contractual. legal t1r equitable remedies.
  2. Licensor represents and warrants that Licensor is l'ull) ,mare or Liccnscc·s business requirements and intended uses for the Sotl,,arc. and the Sotl\\arc shall sat isl such requirements in all 111atcrial respects and is fit for such intended uses.
  3. Licensor represents and warrants that: (i) it is the O\\ncr of the Solhvarc and an) and all intellectual property rights in and to such Soli\\,irc. including. hut not limited to. copyrights.

6

tradcmarb. trade secrets. trade dress. and/or patent rights: ( ii) it ll\\ ns.possesses. holds. and has received all rights. per111its. pcr111issions. licenses and authority necessary to provide all Sollwarc to Licensee hereunder and to grant and convey the hcnclits. licenses and other rights granted or conveyed to Licensee and (iovcrn111cntal Lntitics hereunder \\ithout violating any rights of any Third Party: ( iii) the Soll ware shall he wholly original\\ ith and prepared solely hy Licensor:

( iv) I,iccnsor has not previously and\\ ill not grant any rights in the Soll ware to any Third Party that arc inconsistent with the rights granted herein: and ( v) Licensee and (iO\crnmcntal Lntitics shall peacefully and quietly have. hold. possess. use and enjoy all Solt\\arc \\ ithout suit. disruption or interruption.

* 1. Licensor represents and warrants that: ( i) the Sollv\arc (and all intellectual property rights and proprietary rights arising out ol: cmhodicd in. or related to. the Solhvarc): (ii) Liccnscc·s (and any (iovcrn111cntal Lnt ity"s) use of the Soll ware in accordance with the tcr111s of this

/\grccmcnt: and (iii) Liccnscc·s (and any (iovcrnmcntal I:ntity ·s) exercise ofthc rights. licenses and bcnclits granted or conveyed hereunder. do not and\\ ill not 111isappropriatc a trade secret or infringe upon any copyright. patent. trademark. trade dress or other intellectual property right. proprietary right or personal right of any Third Party. Licensor further represents and \varrants that. to the best or I ,iccnsor·s knowledge. there is no pending or threatened clai111. litigation or action that is based on a claim of infringc111cnt or violation ofan intellectual property right. proprietary right or personal right or misappropriation of a trade secret related to the Solt\\ arc. Licensor shall i,rnnediatcly inform Licensee in \Hiting upon becoming aware of any actual. potential or threatened claim of infringement or violation of any intellectual property right. proprietary right or personal right or misappropriation of a trade secret related to the Solhvarc.

Ir such a claim arises. then I ,iccnsor shall. with the agreement of the Licensee: ( i) procure for the Licensee and (iovcrnmcntal Fntitics the right or license to continue to use the Software at issue:

(ii) replace such Sotlwarc with functionally equivalent or superior Sotlvvarc free of any such infringement. violation or misappropriation: or (iii) modify or replace the affected p011ion of the Soll ware with functionally equivalent or superior Solhvarc free of any such infringement. violation or misappropriation. In the event Licensor is unahle to fullill its ohligation under (i).

(ii) or (iii) ahovc. Licensor shall accept the return of the Sollwarc and refund to the Licensee all Ices. charges and any other amounts paid hy the Licensee with respect to such Sotlware. In addition. Licensor agrees to fully indemnify and hold harmless the Licensee. (iovcrnmcntal Lntitics and their oniccrs. directors. employees. onicials and agents as provided in the lndcmnilication section of this /\grccmcnt. The foregoing remedies shall he in addition to and not exclusive of other remedies available to the Licensee and shall survive termination of this

/\grecmcnt.

* 1. l'hc Licensor represents and warrants that all Soll\\ arc prov idcd under this /\grcc111cnt which uses date data shall accurately process data. including but not limited to. calculating. co111paring and sequencing from. into. hct\\ccn and a111ong the nineteenth. t\\Cntieth and t\\Cnty­ lirst centuries. including leap year calculations. integral calculations. day-in-year calculations. day-or-\,cck calculations and vvcck-of-ycar calculations: and not experience ahnor111al ending and/or produce invalid or incorrect results in the operation of the Solh,arc or Liccnscc·s Systc111. If the Solhvarc is to perform as a system\\ ith other hard\\arc and/or software. then this warranty shall apply to the Solh,arc as it processes. translcrs. sequences data. or otherwise interacts\\ ith other solhvarc. h:ml\varc. co111poncnts or other parts of the systc111. pnn idcd that such other

7

soll\\alT. hard\\arc. components or parts do not fail to meet an) applicable requirements of this Section (1.5. The remedies a,ailablc to the Licensee li\_ir breach of this ,,a1-ranty include. but arc not limited to. repair or replacement of non-compliant Sollwarc. Nothing in this \\arrant) shall be construed to limit an) rights or remedies of the Licensee umkr this !\grccmcnt with respect to [)clicicncics in the Sollwarc other than data processing compliance.

* 1. The Licensor represents and warrants that all Solt\\arc and l-:nhance111cnts do not and shall not as delivered or provided by Licensor contain an anti-use device. a disabling device. lockup progra111. a so-called ··time bomb.. or ..drop dead.. device... back door:· instructions. conta111inants. viruses. Trojan I lorses. worms. cancclbots. or any other 111cchanis111. code or co111putcr progra111111ing routine that \\ill disable. da111age. impair or i111pede. lock-up. alter. halt. abnormally end. surrcpt it ious ly intercept. expropriate or interlcre vv it h the Soll\\ arc. L iccnscc Systems or any data or information of Licensee. I.iccnsor further represents and ,varrants that all Solhvare and Lnhancements do not contain any other programming or device of any kind that would allow unauthorized access to the Soll ware b) I .icensor or any other person or any Third Party. Licensor covenants that it will not under all) circumstance. including enforcement of a valid contract right. (i) install or trigger a lockup program or disabling device. or (ii) take any step that would in any manner interlcrc with Licensee's use of the Soll\\,ire. Licensee Systems. or I lost Server. or restrict I .icensce from accessing its data liles or in any way intcrlcrc with the transaction of Licensee·s business. l·or any breach of this prm ision. Licensor shall. immediately a tier receipt of notilication of the breach. cure the breach to Licensee·s satisfaction. including. without limitation. repairing. at l.icensor·s expense. any damage done to the Software or Licensee Syste111s or any other property.
  2. Licensor represents. warrants and covenants that it has complied with. and shall comply with. all applicable lcdcral. state. local and international laws. rules. regulations. codes. orders and ordinances in connection with its performance of this !\greement.
  3. Licensor represents and warrants that it has no interest and shall not acquire any direct or indirect interest that would conflict in any manner or degree,, ith the performance of its obligations under this !\gn:cment.
  4. Licensor represents and vvarrants that the Soti,,arc and the license. use and other rights granted hereunder comply,, ith. and shall comply\\ ith. all applicable lcdcral. state. local and international laws. rules. regulations. codes. orders and ordinances in effect as of the date of this

!\grccmcnt. including applicable provisions of Section 508 ofthe Rehabilitation *!\ct* of 1973. as

amended. and all standards and requirements established by the !\rchitectural and Transprn1ation Barriers !\ccess Board and the lovva Department of !\dministrative Sen ices. In format ion Technology 1:nterprisc.

* 1. Licensor represents and warrants that it has not incorporated and ,, ill not incorporate. ,,ithout the prior written consent of Licensee. an) Public Code. in ,,hole or in part, into any part of the Soll ware or an) Lnhancement. or use Public Code. in whole or in part. in the development of any part of the Soti,,a1T or any I-:nhanccment in a manner

that may subject the Soll ware or any I-:nhancement. in,, hole or in part. to all or part of

the license obligations of an) Public Code. Licensor represents and ,,arrants that nothing

8

in I .iccnsor·s agreements\\ ith Third Parties 1;\_1r use and incorporation or Public (·ode into the Soll,,are conflicts or\\ ill conflict,, ith the terms of this Agreement. or interferes or

,,ill interfere in any manner with l.iccnsee·s (and a11., successor entity ·s or (iovcrnrncntal

Lntit\_v·s) full exercise of the rights. licenses and bcnelits granted or conveyed herein.

* 1. Licensor represents and ,varrants that all Documentation will accurately reflect the operation of the Soll ware or other Deliverables to ,,hich the Documentation pertains and,, ill enable the Licensee to use. modi!) and maintain the Software full) and completely.
  2. Liccnsor·s warranties provided in this Section 6 arc in addition to and not in lieu of any other warranties provided in this Agreement. All ,,arrantics provided for in this Agreement shall be cumulative. shall be deemed consistent and not in conflict. arc intended to be given full force and clkct andto be interpreted expansively to give the broadest warranty protection to the Licensee.
  3. If any unauthori/cd modifications arc made to the Soll,,arc by the Licensee during the Warranty Period. the Licensor's ,,arranty under Section 6.1 shall immediately be terminated. Correction for dinicult ics or defects caused solely by unauthorized modifications made to the Solhvare by the I .iccnscc during the Warranty Period that arc requested by the Licensee shall be billed at Licensor's standard time and material charges provided that Licensor advises the Licensee of the cause of the diflicultics or dcli:cts prior to performing corrections: and provided further that the cause of the difficulties or dcli:cts results solely from the unauthorized modifications made by the I .iccnscc. For purposes of this Section 6.1J. a modification to the Solhvare will not be considered unauthorized if I .iccnsor consents to such modification. or if the modification is authori/\_cd. permitted or othcrvvisc contemplated by this Agreement or any Documentation or materials associated with the Software or other Deliverables.

**SECTION** 7. **TERMINATION.**

* 1. **Termination hy Licensee fi-)r Cause.** The Licensee may terminate this Agreement. without penalty or legal liability. upon written notice for the breach by Licensor of any material

term. condition or provision of this Agreement. if such breach is not cured ,,ithin any cure period specilicd in the notice of breach or any subsequent notice deli, ercd by Licensee to Licensor.

,,hich cure period shall not be less than ten ( 10) days. provided cure is feasible. The l.iccnscc·s right to tcr111inatc this /\gn:crncnt shall be in addition to and not exclusive of other rc111cdics available to the Licensee.

* 1. **Termination hy Licensee for Reasons Other Than Cause.** Licensee rnay terminate this Agreement for any of the reasons for ,,hich the Agency may terminate the Services Contract (including Sections 10.2 and 10.J. but excluding Section 10.1) upon pnniding any applicable written notice expressly required tn be prov idcd pursuant to the Services Contract. For purposes or th is Sect ion 7*.2.* all re fercnccs in the Scrv ices Contract to the terms --state:· ..Agreement.··

--Dcli,crablcs:· and ··vendor:· shall be deemed to include and additionally refer to the terms

--1,iccnscc:· ..Agreement.·· --soll w arc:· and --1.iccnsor:· respect ivc ly. as used here in. L iccnscc· s

right to terminate this Agreement for any of the reasons provided herein shall survive termination of the Services Contract.

()

* 1. **Tcnnination hy Licensor for Cause.** I ,iccnsor may only terminate this i\grcc1nc11t and revoke the license and other rights granted under this i\grccmcnt if l ,iccnscc co111111its a material breach of Section 9,:2 of this i\grcc111cnt. provided that Licensor lirst gi,cs Licensee ,uittcn notice of the alleged breach and a 60-day period in ,,hich to cure the hrcach. l lpon tcrrnination of this i\grccmcnt b) Licensor in accordance\\ ith this Section *7.3.* Licensee will return the Sothvarc to Licensor or will certify in \\riting to Licensor that it has destroyed all copies of the Sotlwarc. 1-:xccpt as express!) provided in this Section 7.3. Licensor shall not be entitled to terminate this i\grccrncnt or revoke the license and other rights granted herein.
  2. **Limitation of the Licensee's Payment Obligations.** The Licensee (and (iovcrnmcntal 1-:ntitics) shall not be liable. under any circumstances and regardless of termination of this i\grccrncnt. for any of the fol km ing:

**7.-LI** The payment ofunc111ploy111cnt compensation to [,iccnsor·s employees:

* + 1. The pa:,rncnt of,,orkc1-s" compensation claims. ,,hich occur during the Agreement or extend beyond the date on,, hich the i\grccmcnt terminates:
    2. All) costs incurred hy I ,iccnsor in its pcrli.\_1rmancc of the i\grccmcnt. including. but not limited to. startup costs. overhead or other costs associated\\ ith the performance of the i\grccmcnt and/or the Services Contract:
    3. i\ny damages or other amounts for or relating to the loss of prnspcctivc prolits. anticipated sales. good\\ ill. or for expenditures. investments or commitments made in connection with this i\grccmcnt. the Services Contract or any agreement ,,ith Third Parties:
    4. ;\ny taxes Licensor may owe in connection,, ith the performance of this Agreement or the Services Contract. including. but not limited to. sales taxes. excise taxes. use taxes. income taxes or property taxes.

**SECTION 8. INDElVINIFIC/\TION.**

**8.1** I ,iccnsor and its successors and permitted assigns shall indc11111il': and lwld harmless the

I ,iccnscc and ( iovcrn111cnta I I ,nt it ics and their employ ccs. orticcrs. d ircctors. agents. and oflic ials (individually and collectively ··1ndc111nitccs--) li-0111 and against any and all claims. actions. suits. liabilities. damages. losses. scttlc111cnts. demands. dcliciencics. \_judgments. costs and expenses (including. ,,ithout limitation. the reasonable ,alue of time of the Attorney (icncral"s Onicc and the costs. expenses and attorney Ices of other counsel retained by an) lndenmitcc) related to. resulting ti-0111 or arising out of this i\grcc111cnt. including. but not limited to. ,Ill) claims related to. resulting from. or arising out of:

* + 1. /\n) violation or breach of any material term or condition of this Agreement by I, iccnsor: or

10

* + 1. An: negligent acts m omissi(1ns. intentional or\\ illl"ul misconduct. or unl,m l"ul acts of l,iccnsor. its ulTiccrs. cmplo:ccs. agents. directors. contractors or subcontractors: or
    2. Failure b::, Licensor or its cmplo:ccs. agents. officers. or directors to comp!) with any applicable local. state. and federal !,ms. rules. ordinances or regulations: or
    3. i\n) claim of misappropriation ol"a trade secret or infringement or violation ol"any intellectual property rights. proprietary rights or personal rights of an) Third Party. including any claim that the Sofl,.,\at-c or any use thereof (or the exercise or any rights with respect thereto) infringes. violates or misappropriates any patent. copyright. trade secret. trademark. trade dress. mask work. utility design. or other proprietary right of any Third Partv.
  1. Licensor shall ha\C no obligation under subsection 8.1 *A* ahmc to the extent am claim of infringement or misappropriation results sole!) from the Licensee's use of the Sotl\\at-c in combination \\ith any other software product not provided or recommended by the Licensor for use \\ith the Sothvarc or the System il"thc infringement ,,ould not have occurred hut for such comhinat ion
  2. Liccnsor·s obligations under this Section 8 arc not limited to third-party claims. but shall also apply to any claims that either party may assert against the other.
  3. Licensor shall he liable for any personal injury or damage to property caused by the fault or negligence of Licensor. its orticers. directors. employees. agents. contractors and subcontractors.
  4. Liccnsor·s duties as set forth in this Section 8 shall survive the termination ofthis Agreement and shall apply to all acts or omissions taken or made in connection\\ ith the performance of this i\grccrncnt regardless of the date an::, potential claim is made or discovered by the Licensee or any other lndcmnitcc.

**SECTION 9. CONTRACT ADMINISTRATION.**

* 1. **Independent Contractor.** I he status ol"thc Licensor shall he that ofan independent contractor. Licensee shall not provide the Licensor\\ ith of"ticc space. support staff equipment or tools. or supervision bc::,ond the terms of this i\grccmcnt. Neither the Liccnsur nor its

employees shall be considered cmplo;-ccs ol"thc State of lov,a. Neither the I .iccnsor nor its employees arc eligible for any State employee benefits. including but not limited to. retirement benclits. insurance coverage or the like. Neither the I .iccnsor nor its employees shall be considered cmplo;-ccs of the Licensee or the State of l(l\\a ftlt" federal or state tax purposes.

I,iccnsce sha11 not ,, it hho Id taxes on bcha If or the I, icensor (unless rcqu ired by la\\). I he

I ,iccnsor shall be responsible for pa) mcnt of all taxes in connection,, ith an::, income earned in connection,, ith this i\grccmcnt.

* 1. **Confidentiality.** Lxccpt as provided or contemplated herein. and subject to applicable la\vs. rules or regulations (including." ithout limitation. Iowa Code Chapter *22* and 605 l(l\\a i\dmin. Code 5) the Licensee shall not disclose to Third Parties (excluding (iovcrnmcntal

11

l·ntitit:s. and t:xcluding /\uthori/t:d Contractors \\ho ha\l'. cntnt:d into conlidt:ntialit) or nondisclosurt: agrt:l'.llll'.nts obligating tht:111 to sakguard Yt:ndor·s Conlidential lnfor111ation and restricting their ust: ol'l.it:ensor·s Conlidt:ntial lnl(mnation to the rrovision ol'servit:es to tht: l.ict:nst:t:) any infor111ation of Licensor that is 111arked or othernist: clearly idt:ntilied h: Licensor as Confidt:ntial lnfor111ation \\ithout tht: prior \\rittcn consent or l.icensor. l.iccnsor shall li111it such identification to infor111ation it rt:asonably belit:vt:s is entitled to confidential rrott:ction rursuant to Iowa Code Section *22.*7. Nol\\ ithstanding the fort:going. tht: I .icenst:l'. may disclose l.icensor·s Confidential Information: (i) pursuant to any legal. \_judicial. or ad111inistrati,t: prot:t:t:dings. subroena. summons. ordn. ruling or other legal or administrativt: processes:

(ii) rursuant to any applicable laws. rules. or regulations: (iii) if Licensee determines. in its sole discretion. that such information is not a conlidcntial rernrd pursuant to llma Code Section *22.7*

or otht:r applicable laws. ru ks and rt:gu lat ions: and/or (iv) ir I. ict:nsel'. ddermint:s. in its so le

discretion. that it dot:s not have surticient facts or inl(mnation or is othernise unable to make a ddermination whdher such infor111at ion cons! itull'.s a conlidential record under Iowa Code Section *22.7* or other applicable la\\s. rules and regulations. In such e,ent. the Licensee shall provide pro111pt notice to Licensor of the cirn1111stances giving rist: to the 1.ict:nsee·s disclosure. Lict:nsor acknowledgt:s that the Licensee is subject to and required Ill co111pl\_\ ,v ith llma Code Chapter *22* and other l,ms. rules and regulations govt:rning public reu1rds. lfa request is 111adt: to vit:w or othl'.r\\ ise access l.icensor·s Confickntial lnfor111ation pursuant to such 1,1\\s. rules or regulations. the Licensee \V ill pro111ptly notify Licensor of the reqm:st. The provisions in this St:ction 9.2 shall survive the lt:nnination of this /\grt:emt:nt.

* 1. **Compliance with Laws.** Licensor and its employees. agents. onicers. directors. contractors and subcontractors shall co111rly with all applicable federal. state. international and local 1,ms. rules. ordinances. regulations and orders when performing within the scope of this /\greement. including. without limitation. all lmvs applicable to the prevention of discrimination in employment. the ad111inistrative rules of the llma Department or Management or the Iowa Civil Rights Commission which pertain to equal employment opportunity and artir111ative action. laws relating to prevailing wages. occupational safety and health standards. prevention or discrimination in emrloyment. payment of taxes. gill Im, s. lobbying la\\s and l,m s relating to the ust: of targeted small businesses as subcontractors or suppliers. Licensor shall colllply \\ ith any applicable reporting and colllpl iance standards of the lo\\a Depart111ent of Manage111ent regarding equal elllployment. Licensor 111ay he required to submit its aflir111at ive action plan to the Iowa Deparllllt:nt ofManagt:111t:nt to co111ply with the requirt:111ents of5--ll l(rna /\dmin. Codt:

-+. I .ict:nsor represt:nts and ,,arrants that it has complied ,, ith all federal. stall'.. foreign and local

la\\s. codt:s. rules. ordinanct:s. orders and rt:gulations applicable to tht: perltmnance of its obligations undn this /\gret:mt:nt.

**9A Amendments.** This /\gr-ce111t:nt Illa) be a111t:mkd **in** ,vriting li-0111 time to ti111e b) mutual const:nt of tht: partit:s. /\II a111end111ents to this /\greemt:nt 111ust ht: full:- l'.:\l'.cuted b) the parties.

* 1. **Third-Party Rights.** No pt:rson otlwr than tht: parties hert:to. tht:ir rt:specti,t: successors and pt:rmittt:d assigns. (iovern111ental Lntitit:s. l lsers and /\uthorizt:d Contractors ma\_\ rt:ly on or dt:rive any rights pursuant to or unckr this /\greemt:nt. This /\greemt:nt is intt:nded to bt:ndit

nn Iv the I. icenset:. ( iovnnmt:nta I t-:nt it ies. ll sers. /\uthori/ed Contractors. and the Licensor.

1.1

* 1. **Choice of Law and Forum.** I his Agreement shall he g(lverned in all respects h). and construed in accordance \\ith. the l,I\\S of'the state of' lo\\a. \\ithout gi,ing eflcct to the choice of' la\\ principles thereof Any and all litigation or actions C(lmmenced in connection\\ ith this Agreement. including afier e:,.;piration or termination of'this Agreement. shall be brought in

Iks Moines. Iowa. in Polk County District Court for the State of Iowa. if'\_jurisdiction is proper. I hmever. if'\_jurisdiction is not proper in the l(ma District Court for Polk Count::,. but is proper only in al lnited States District Court. the matter shall be commenced in the l lnited States District Court for the Southern District of Iowa. Central Division. 1-icensor herd,::, irrevocably: ( i) consents and agrees that any legal or equitable action or proceeding arising under. in connection *v,* ith or arising out of this Agreement shall be brought and maintained e:,.;c lusively in the aforesaid courts: (ii) suhmits to and accepts. with respect to any such action or proceeding. for it and in respect of its properties and assets regardless of the physical or legal situs thereof: generally and unconditionally. the \_jurisdiet ion of the aforesaid courts: and ( iii) \\aives an::,

objection to such \_jurisdiction based on forum non conveniens or othen, ise. This pnl\ ision shall not he construed as waiving any immunity to suit or liability. in state or federal court.,, hich may be available to the Licensee. including sovereign immunity. governmental immunity. immunit) based on the Lleventh Amendment to the Constitution of'the l lnited States. or othern ise.

1-icensor irrevocably consents to service of process by cert ilied or registered mai I addressed to the Licensor·s designated agrnt. The I icensor appoints lnCorp Services. Inc. at 60-t Locust St.. Suite *222.* Des Moines. I A 50309-3*723* as its agcnt to receive service of process. Ir llir an::, reason the Licensor·s agent for service is unable to act as such or the address of the agent changes. Licensor shall immediately appoint a new agent and provide the Agency with v,ritten notice of the change in agent or address. Any change in the appointment of the agent or address will be clfrctive only upon actual receipt hy the Licensee. Nothing in this provision,, ill alter the right of the Licensee to serve process in any other manner permitted hy lav,. 1"11is

Section 9.6 shall survive termination of'this Agreement.

* 1. **Assignment and Delegation.** This Agreement may not be assigned. transferred or conveyed in whole or in part without the prior written conscnt of the other party. e:,.;cept that the Licensee may assign. transfer. or convey this Agreement. in whole or in part. to any State agency. (iovernmental 1-:ntity or unit of State government that succeeds the Agency"s rights hereunder or otherwise assumes responsibility for functions or duties currently assumed hy the Agency to \\hich the Soli\\aIT relates. hir purposes of construing this clause. a transfer of a controlling interest in the 1-icensor. a merger. sale or consolidation of 1-icensor. or a sale of substantially all of l.icensor·s assets shall be considered an assignment. Licensor agrees that it shall provide I .icensee ,, ith the earliest possible advance notice of any proposed sale or translcr or any controlling interest in or substantial assets of I .icensor and of any proposed merger. sale or consolidation of 1-icensor. I .icensor agrees that it shall not use this Agreement. or any portion thereof: for collateral or to othen, ise secure any linancial obligation of Licensor or any aniliate thereor \\ ithout the prior \vritten consent or 1-icensee.
  2. **Integration.** This Agreement represents the entire agreement bet\\een the parties concerning the grant of the perpetual license. distribution rights and other rights granted to Licensee and (iovernmental 1-:ntities under this Agreement. and neither party is relying on any representation that ma::, have heen made\\ ith respect thereto which is not included in this Agreement. This Agreement shall not supersede the Services Contract. Licensee shall not he

I'

hound hy any ..shrink-\Hap·· agreement. ··click-\Hap·· agreement. ··sncakv,rap·· agrccn1cnt. or any other similar agreement that may accomJXllly or relate to the Soft\,arc. l.iccnsor acknowledges that it has thoroughly read this ;\grccmcnt and all related schedules. exhibits and other documents and has had the opportunity to receive compl'tcnt advice and counsel necessary for it to form a complete understanding of all rights and obligations herein and to accept same freely and without coercion ol'any kind. Accordingly. this Agreement shall not he construed or interpreted against the Licensee on the hasis of draftsmanship or preparation hereof:

* 1. **Headings or Captions and Terms.** The paragraph headings or captions arc for identification purposes only and do not limit or construe the contents of the paragraphs. Unless the context of this Agreement othcn-visc clearly requires. relcrcnces to the plural include the singular. relcrenccs to the singular include the plural. and the \vord ..or·· has the inclusive meaning represented by the phrase "'and/or\_·· The ,,ords '"include·· and ··including"· shall be deemed to be followed by the phrase--\, ithout limitation.·· The \Vords ··thcreoc· ··hert:in."· '"hereunder."· and similar terms in this Agreement rt:lcr tu this Agreement as a\\ hole and not to any particular provision of this Agreement.
  2. **Not a .Joint Venture.** Nothing in this Agreement shall be construed as creating or constituting the relationship of a partnership. \_joint venture. (or other association of any kind or agent and principal relationship) hct\\Ccn the pa11ics hereto. No pa11y. unless otherwise specifically provided for herein. has the authority to enter into any agreement or create an obligation or liability on bchalfoL in the name oL or binding upon another part\_\ to this Agreement.
  3. **Obligations Beyond Agreement Tenn.** l'his Agreement shall remain in full force and clkct perpetually unless terminated pursuant to Section 7 of this Agreement. The obligations of Licensor under this Agreement ,,hich by their nature would continue beyond the termination of this Agreement. including. by way of illustration and not by limitation. those obligations set forth in Sections *2.1-2.J.* 6-8. 9.J- 9.8. 9.1 1-9.19. *9.22.* 9.24. 9.26. 9.27 and 9.29-9.34 shall sun ive termination of this Agreement.
  4. **Use ofThinl Parties.** None of the sen ices to be provided by Licensor pursuant to this Agreement shall be subcontracted or delegated to any Third Party other than **MB]** Technologies Inc. ,vithout the prior \Hillen consent ol'Liccnscc. Liccnscc·s consent shall not he deemed in

an) ,,ay to provide for the incurrcncc of any additional obligation of I .iccnscc. \\ hcthcr financial or otherwise. Any subcontract to \,hich the Licensee has consented shall be in \\riling and shall in no way alter the terms and conditions of this Agreement. ;\II subcontracts shall he sub\_jcct to the terms and conditions of this Agreement and to any conditions of approval that Licensee ma) deem necessary. Licensor is sole I) liable l(1r any and all payments that ma) be due to the subcontractor pursuant to its subcontract agreement \\ith Licensor. Licensor shall indcmnil). and hold harmless the Licensee from and against any and all claims. demands. liabilities. suits. actions. damages. losses. costs and expenses of every kind and nature ,,hat soever arising as a result of I .iccnsor·s breach of any subcontract into\\ hich it enters. including I .iccnsor·s foilurc to pay any and all amounts due by Licensor to an) subcontractor. No subcontract or delegation of work shall relieve or discharge Licensor from any obligation. pro,ision. or liability under this Agreement. Licensor shall remain responsible for such performance and shall be full)

1--1

responsible and liable li\_ir all acts or omissions of any such contractor or subcontractor. ;\m

action or a subcontractor.\\ hich. if done b) I.iccnsor. \\Otild constitute a breach of this

;\grccrncnt. shall be (kerned a breach by l.iccnsor and have the same legal effect.

* 1. **Waiver.** Lxccpt as spccilically provided for in a ,,aiver signed b) duly authoriicd representatives or Licensee and the Licensor. failure b) either party at any time to require performance by the other par1y or to claim a breach of any provision of the Agreement shall not be construed as afkcting any subsequent breach or the right to require performance\\ ith respect thereto or to claim a breach with respect thereto.
  2. **Notices.** Notices under this Agreement shall be in writing and delivered to the representative ol'the party to receive notice (identified below) at the address ol'the party to receive notice as it appears below or as other,, ise provided for by proper notice hereunder. The dlcctive date for any notice under this Agreement shall be the date of delivery or such notice (not the date or mailing) which may be elkcted by certified l 1.S. Mail return receipt requested with postage prepaid thereon or by recogni/cd overnight deli,ery service. such as Federal Lxprcss or lJPS:

Irto Licensee:

Department or Iowa I lomcland Security and Lrncrgency Management

7105 NW 701

1,

Ave.

Camp Dodge Bid. W-4

.Johnston. I;\ 50313

lfto Licensor:

MB3 Inc.

7512 Dr. Phillips Blvd .. Suite 50-112 Orlando. FL 32819

Any notice or comrmmication sent by certilicd l !.S. l'vlail under this Agreement shall he deemed given upon receipt as e,idenced by the ll.S. Postal Service return receipt card. or irsent b) overnight delivery service. upon receipt as e, idenced by the signature attained b) the carrier.

From time to time. either party may change the name and address ora party designated to recci\c notice. Such change of the designated person shall he in \Hiling to the other party and as provided herein.

* 1. **Cumulative Rights.** The \arious rights. po\\ers. options. elections and remedies or Licensee provided in this Agreement shall be construed as cumulative and not one ofthcrn is exclusive of the others or exclusive or any rights. remedies or priorities alltmcd Licensee b) l,m. and shall in no way alkcl or impair the right or I .icensec lo pursue any other contractual. equitable or legal remedy to which Licensee may he entitled. Liccnscc·s election of any one or more remedies shall not constitute a \\aiver or the right to pursue any other available remedies.

I:,

* 1. **Severahility.** Ir any pnl\ision orthis Agrcc111cnt is dctcnnincd by a court orco111pctcnt

\_jurisdiction t,1 he invalid or uncnltirccable. such dctcr111ination shall not affect the validity or enforceability of any other part or pnl\ is ion or this Agreement.

* 1. **Authorization.** Licensor represents and \\a1-rants to Licensee that:

**9.17. 1** It has the right. power and authority to enter into and pcrfor111 its ohligat ions under this Agreement:

**9.17.2** It has taken all requisite action (corporate. statutory. or othcrn isc) to approve execution. delivery and performance of this Agreement. and this Agreement constitutes a legal, valid and binding obligation upon itself cnlt.irccable in accordance \\ith its terms.

* 1. **Successors in Interest.** All the tcr111s. provisions. and conditions orthc Agreement shall be binding upon and inure to the hcnclit or the parties hereto and their respect ivc successors. permitted assigns. and legal representatives
  2. **Record Retention And Access.** 1"11c I .iccnsor shall maintain books. records. and documents which sunicicntly and properly document all services and deliverables pn1\ idcd under this Agreement and calculate all charges hilled to the Licensee throughout the term of this Agreement for a period or at least live ( 5) years ltl Ilowing the later or the date of tinal pay mcnt. termination or expiration of this Agreement. or completion or any required audit. The Licensor shall permit the Licensee. the Auditor of the State of lo'Ml or any authorized rcprcscntat ivc of the State and where federal funds arc involved. the Comptroller (icncral or the llnitcd States or any other authorized representative of the llnitcd States government. to access and examine. audit. excerpt and transcribe any directly pertinent books. documents. papers. electronic or optically stored and created records or other records of the Licensor relating to orders. invoices. or payments or any other documentation or materials pertaining to this Agreement. The Licensor shall not impose or seek payment for any charge. Ice or expense associated\\ ith any audit or examination of the Liccnsor·s hooks and records conducted in accordance\\ ith this provisi,1n.
  3. **Counterparts.** This Agreement may be executed in several counterparts. all of\\hich when taken together shall constitute one contract binding on all parties. not\\ ithstanding that all parties arc not signatories to the same counterpart. l·:ach copy of this Agreement so executed shall constitute an original.
  4. **Additional Provisions.** The parties agree that ifan Addendum. Schedule. Rider or Lxhibit is attached and rclcrred to in this Agreement then the same shall be deemed incorporated herein by reference.
  5. **Further Assurances and C'on-ective Instruments.** Licensor agrees that it \\ill. from time to time. execute. ackmrn ledge and deliver. or cause to be executed. ackrnrn ledged and delivered. such supplements hereto and such further instruments as may reasonably he required for c.11Ty ing out the expressed intention of this Agreement.

*I(,*

* 1. **Award of Related Agr·eements.** lhc Licensee may undertake or ;l\\ard supplemental or successor agreements for work related to this Agreement. the Services Contract or\\ ith respect to the Software. I .iccnsor shall cooperate fully \\ ith other contractors. consultants and other persons ,,ho may be engaged by Licensee in connection\\ ith this Agreement. the Sen ices Contract or with respect to any ol'thc Soft,,arc. Licensor will ensure that its subcontractors. ii' any. will abide by this provision.

**9.2..i Sovereign hnmunit)·.** The Agency. (iovcrnmcntal t-:ntitics and the State do not ,vai,c sovereign immunity by entering into this Agreement and specifically retain and rcscnc the dcknsc or sovereign immunity and all defenses available to them under State and federal laws. rules and regulations, including. without limitation. Iowa Code Chapter ()69 and the Constitution of the State of Iowa.

* 1. **Reserved for any unique provisions required hy Agency or FEMA**
  2. **Care of Property.** I .iccnsor shall be responsible for the proper custody and care of any Licensee property furnished for l.iccnsor·s use in connection\\ ith the performance of the Agreement. and Licensor will reimburse the Licensee for any loss or damage to such property caused by Licensor. or any person. agent or subcontractor employed or utilized by Licensor. normal,, car and tear excepted.
  3. Licensor shall notify Licensee in writing if any ol'thc following has been engaged in by or occurred with respect to Licensor or any corporation. shareholder or entity having or owning a controlling interest in Licensor:
     1. Licensor files or permits the filing against it or a case or other proceeding seeking liquidation. reorganization. or other relief with respect to itself or its debts under any bankruptcy. insolvency. or other similar law now or hereafter in effect: or filing an answer admitting the material allegations or a petition filed against it in any involuntary case or other proceeding commenced against it seeking liquidation. reorganization. or

other relief under any bankruptcy. insolvency. or other similar law now or hereafter in effect with respect to it or its debts: or consenting to any such relief or to the appointment ofor taking possession by any such onicial in any voluntary case or other proceeding commenced against **it** seeking liquidation. rcorganiz.ation or other relief under any bankruptcy. insolvency, or other similar Im, ntl\\ or hereafter in clTcct v, ith respect to it

or its debts:

* + 1. Seeking or suffering the appointment of a trustee. receiver. liquidator. custodian or other similar onicial or it or any substantial part or its assets: or
    2. Making an assignment ftll" the benefit of creditors: or
  1. **A** Failing. being unable. or admitting in vHiting the inability generally to pay its debts or obligations as they become due or failing to maintain a positive net \\Orth and such additional capital and liquidity as is reasonably adequate or necessary in connection

,, ith Liccnsor·s performance of its obligations under this Agreement:

17

**9.27.S** i\n order is entered approving an imoluntar: petition to reorgani/e the business of I ,icensor frir all or pa11 or its property: or

* + 1. Ira writ or ,,arrant orattachmenL execution. distrainL levy. possession or an) similar process that may materially arfcct the operation or Licensor is issued by an) court or administrative agency against all or any material portion or I,iccnsor's property: or
    2. Taking any action to authori/.c any of the rorcgoing.
  1. **Material Breaches.** The references in this i\grccmcnt to specific material breaches or this Agreement shall not be construed as implying that other breaches of this i\grccmcnt arc not material.
  2. **Taxes.** Licensor shall be responsible for paying any taxes incurred by Licensor in the performance orthis Agreement. The State and the Agency arc exempt from the payment ofhrna sales and other taxes.
  3. **Obligations of.Joint F,ntities.** lf'Licensor is a joint entity. consisting of more than one individual. partnership. corporation or other business organization. all such entities shall he jointly and severally liable for carrying out the activities and obligations orthis agrccmcnL and for any default of such activities and obligations.
  4. **Intentionally Omitted.**
  5. **Time is of the F,ssence.** Time is of the essence with respect to Licensor's performance of its obligations under this i\grccmcnt. Licensor shall ensure that all personnel providing services to Licensee arc responsive to Liccnscc·s requirements and requests in all respects.
  6. **Use of Name or Intellectual Property.** The Licensor agrees it will not use the Liccnsce·s name or any of their intellectual property. including but not limited to. any State. state department. agency. board or commission trademarks or logos in any manner. including commercial advc11ising or as a business reference. without the express prior ,vrittcn consent of the Licensor.

**9.3..i Delays or Impossibility of Perfornrnnce.** Neither party shall be in default under this Agreement if performance is prC\ cntcd. delayed or made impossible to the extent that such prevention. delay. or impossibility is caused by a ..fLircc majcurc:· The term ..force majcurc.. as used in this Agreement includes an event that no human foresight could anticipate or\\ hich ir anticipated. is incapable of being avoided. Circumstances must be abnormal and unforeseeable. so that the consequences could not ha\c been an1idcd through the exercise of all due care. such as acts of (iod. war. civil disturbance and other similar catastrophic events or causes. terrorist acts. and communication or utility 1:1ilurcs. I he delay or impossibility ofpcrfonnancc must be beyond the control and without the fault or negligence of the parties. --1-orce majcurc" docs not include: financial difficulties of the I .iccnsor or any parcnL subsidiary. affiliated or associated company of the Licensor or any subcontractor used by the I .iccnsor. or claims or court orders that restrict Licensor's ability to perform under this Agreement: strikes: labor unrest. or supply

18

chain disruptions. If delay results from a suhcontractur·s or supplier's cunduct. negligence or failure to perform. the I .iccnsor shall not be excused from compliance\\ ith the terms and obligations of the Licensor unless the subcontractor or supplier is prevented from time!) pcrl(nmancc by a --force majcurc·· as dclincd in this Agreement. lfa ..force ma\_jcurc.. dcla)s or prevents a party·s performance. the party shall immediately use its best efforts to directly provide alternate. and to the extent possible. comparable performance. Comparabilit) of performance and the possibility of comparable performance shall be reasonably determined solely by the nondcfaulting party. The party seeking to exercise this provision and not perform or delay performance pursuant to a "force ma\_jcurc·· shall i111111cdiatcly notify the other party of the occurrence and reason for the delay. I'hc parties shall make every effort to minimize the time of nonperformance and the scope of work not being performed due to the unforeseen events. Dates by which a party's performance obligations arc scheduled to be met will be extended only for a period of time equal to the time lost due to any delay so caused.

IN WITNI :ss WI ILRLOF. in consideration of the mutual covenants set forth above and for other good and valuable consideration. the receipt. adequacy and legal sufficiency of \\hich arc hereby acknm\ !edged. the parties have entered into the above Agreement and h,nc caused their duly authorized representatives to execute this Agreement.

MB3 IN/} *I*

By: *'}', \_----+,,--l* \_ Date: July 6, 2012

*L,*

- -- -- ---------

Tit le: President & CEO

I.iccnscc:

State of Iowa. acting by and through the hrna Department of Public Defcnse--lmrn I lomeland Security and Manageme vision '-. , \

**}ricy**

I)>y:

*i(*···*, /\) J* .....-- 1,atc:- \,,.,

'--"' : ..·,i 1-:/-...-....

Title: Administrator

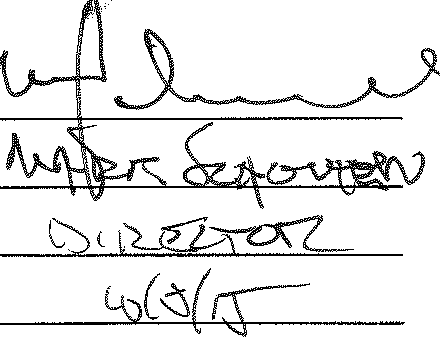
# >)MB3

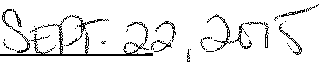
#### my.iowahomelandsecurity.org Final Acceptance Sign-off

This final acceptance of the EMGrantsPro Software (System) confirms that the System performs without material defects and in accordance with the requirements outlined in Schedule A of the Services Contract. MB3 will continue to provide ongoing product updates and bug fixes, however any further product changes requested by the Iowa Homeland Security Emergency Management Division will be considered as System enhancements and subject to the terms of a mutually agreed upon enhancement contract.

**State Approval MB3 Approval**



BY:

Name:

BY:

Name: Matt Blakely

Title: Date:

Title: Date:

President & CEO

MBl INC. 7512 Dr. Phillips Blvd., S.uiteS0-112., Orlando, FL 32819 I 321.206.3784 MBlONLINE. COM

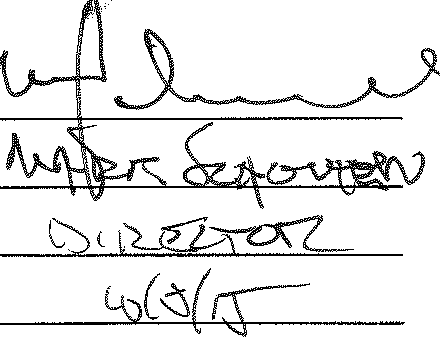
# >)MB3

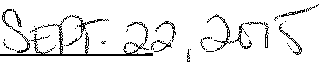
#### my.iowahomelandsecurity.org Final Acceptance Sign-off

This final acceptance of the EMGrantsPro Software (System) confirms that the System performs without material defects and in accordance with the requirements outlined in Schedule A of the Services Contract. MB3 will continue to provide ongoing product updates and bug fixes, however any further product changes requested by the Iowa Homeland Security Emergency Management Division will be considered as System enhancements and subject to the terms of a mutually agreed upon enhancement contract.

**State Approval MB3 Approval**



BY:

Name:

BY:

Name: Matt Blakely

Title: Date:

Title: Date:

President & CEO

MBl INC. 7512 Dr. Phillips Blvd., S.uiteS0-112., Orlando, FL 32819 I 321.206.3784 MBlONLINE. COM

**From:** Hoing, Laurie [DAS]

**To:** Rieder, Bonnie [HSEMD]

**Cc:** Clark, Pat [DAS]

**Subject:** FW: Sole Source Procurement Justification

**Date:** Wednesday, April 04, 2012 8:00:41 AM

Bonnie,

Here is your sole source approval for the MB3 system.

Laurie Hoing, CPPB Purchasing Agent III

Iowa Department of Administrative Services General Services Enterprise

1305 E Walnut

Des Moines, IA 50319 515-281-0656

515-725-0137 (Fax) BE GREEN

Please consider the environment before printing this email.

-----Original Message----- From: Fischer, Kirk [DAS]

Sent: Friday, March 30, 2012 9:47 AM

To: Schmitz, Lois [DAS]; Hoing, Laurie [DAS] Subject: FW: Sole Source Procurement Justification

See below.

Kirk Fischer

Deputy Chief Operating Officer Chief Procurement Officer Hoover Building, 1305 E. Walnut Des Moines, Iowa 50319

Phone: 515-725-2272

[kirk.fischer@iowa.gov](mailto:kirk.fischer@iowa.gov)

-----Original Message----- From: Carroll, Mike [DAS]

Sent: Friday, March 30, 2012 9:38 AM To: Fischer, Kirk [DAS]

Subject: Re: Sole Source Procurement Justification Approved.

----- Original Message ----- From: Fischer, Kirk [DAS]

Sent: Friday, March 30, 2012 08:09 AM To: Carroll, Mike [DAS]

Subject: FW: Sole Source Procurement Justification Director Carroll,

Please find below the justification for a sole source request. Numerous hours have gone into this, as the $360,000 price tag would seem on the surface something that could be competitively bid. You will see in the write-ups by both Bonnie and Laurie that it truly is a sole source procurement item.

Thanks ,

Kirk Fischer

Deputy Chief Operating Officer Chief Procurement Officer Hoover Building, 1305 E. Walnut Des Moines, Iowa 50319

Phone: 515-725-2272

[kirk.fischer@iowa.gov](mailto:kirk.fischer@iowa.gov)

-----Original Message-----

From: [bonnie.rieder@iowa.gov](mailto:bonnie.rieder@iowa.gov) [<mailto:bonnie.rieder@iowa.gov>] Sent: Monday, March 26, 2012 11:02 AM

To: DAS GSE Purchasing Mailbox

Subject: Sole Source Procurement Justification Submitted: 03/26/12

Dates the sole source request appeared on the bid opportunities website. 3/19/12 - 3/24/12

Agency Name: Emergency Management Contact Name: Bonnie Rieder Telephone: 515-729-4815

Email: [bonnie.rieder@iowa.gov](mailto:bonnie.rieder@iowa.gov) Vendor: MB3, Inc.

Amount: $360,000

1. Has this item(s) already been purchased? no
2. Has the vendor ever been an employee of the State of Iowa? No 3- Description of item:

MB3 Disaster and Emergency Management Portal is an online management tool for state departments in managing the Public Assistance (PA) and the Hazard Mitigation (HM) disaster grant programs. The entire PA and HM Programs become automated from damage tracking [Preliminary Damage Assessments (PDA)] to the Presidential Declaration process to the application for assistance to the closing out of the disaster. The portal allows applicants to do business with the state exclusively online while the state and FEMA are able to easily process and manage each account.

1. Explain why the recommended vendor is the only one qualified to provide the requested item(s) at the exclusion of all others.

MB3 INC. delivers web-based software to help clients achieve accelerated disaster recovery. Based in Orlando, Florida, MB3 specializes exclusively in web portals designed to aid state government and applicants to effectively manage emergency management and disaster grants.

1. Describe the research that has been completed to insure that no other competition exists. Provide names of vendors contacted who are unable to provide the item(s) or perform the service.

Dulles Technology was contacted but could not provide this off-the-shelf disaster software without major customization. The Sole Source Procurement was posted with 68 people accessing the bid; however, none responded. This disaster software is used in Louisiana, Florida, Mississippi, Alabama, California, Virginia, and South Carolina.

1. Have you requested a contract with the vendor at any time during the past twelve months? No 7- How did you determine that the vendor's price was reasonable?

Vendor's standard price paid by 7 other states. Iowa negotiated the price down from $580,000 to $350,000 as a

package price for one system to perform all modules -- PA, Mitigation (HMGP, PDM, FMA, RFC, SRL), time reporting to meet federal standards, travel vouchers, and purchase requisitions.

8- Which of the following best describes this sole source procurement? You may select more than one.

One vendor is the only one qualified or eligible or is quite obviously the most qualified or eligible to provide the good.

The procurement is of such a specialized nature or related to a specific geographic location that only a single source, by virtue of experience, expertise, proximity, or ownership of intellectual property rights, could most satisfactorily provide the good.

Explain how this procurement fits the sole source situation(s) selected above. Please see answers to questions 3, 4, and 5.

------------

TO BE COMPLETED BY DAS GSE PROCUREMENT SERVICES

GSE Purchasing Agent Name: Laurie Hoing, CPPB, PA III Telephone: 515-281-0656

Email: [laurie.hoing@iowa.gov](mailto:laurie.hoing@iowa.gov)

Recommendation of Approval: Recommend Approval

Per State of Iowa Administrative Codes 11-105.4(5)(1) One vendor is the only one qualified or eligible or is quite obviously the most qualified or eligible to provide the good or service; and 11-105.4(5)(5) The procurement is an information technology device or service that is systems software or an upgrade, or compatibility is the overriding consideration, or the procurement would prevent voidance or termination of a warranty, or the procurement would prevent default under a contract or other obligation.

State reason:

I have researched this product and I found that at the current time, this product is the only one that will meet all of the business requirements for HSEM. Not all States are currently using this software because not all States have had the magnitude of disasters that others have had. Of the States that are using this software, all but one of them processed the procurement as a sole source. One State, South Carolina, conducted a competitive bid and their only response came from MB3.

In talking with FEMA, there are other products that are on-line type systems, however, they do not have the capability to Interface into the I-3 accounting system, the CGI product that Iowa and several other states are using, and are typically for other type of federal assistance, not specifically Public Assistance and Hazard Management.

While it is true that other vendors may be able to create this type of a system from the ground up, all my research suggests that this company is the only one that has an Internet based system available that meets Iowa's needs and is available for immediate use. The fact that the Sole Source Procurement notice was posted with 68 people accessing the bid and none responded also convinces me that no other vendor was interested in this opportunity. Since HSEM was also able to negotiate a savings of $220,000, I don't believe any other vendor could build this for the cost that

HSEM has negotiated.

Date: 03/29/12

Forward to DAS Chief Procurement Officer.

------------

TO BE COMPLETED BY DAS CHIEF PROCUREMENT OFFICER

Recommendation of Approval: Approved

State reason: As outlined above with detailed documentation.

Date: March 30, 2012

Forward to DAS Director and copy Purchasing Agent.

------------

TO BE COMPLETED BY DAS DIRECTOR

Recommendation of Approval: State reason:

Date:

Forward to: [purchasing.mailbox@iowa.gov](mailto:purchasing.mailbox@iowa.gov)

**From:** Hall, Pat [HSEMD]

**To:** Rieder, Bonnie [HSEMD]; Bartlett, Aimee [HSEMD]; Chen, Angela [HSEMD]

**Subject:** Fwd: HSEMD- enhancements to EMGrantsPro system

**Date:** Friday, July 22, 2016 4:40:43 PM

**Attachments:** 20160719092627857.pdf

ATT00001.htm

Sent from my iPhone Begin forwarded message:

**From:** "Hackbarth, Heather [IDOM]" <[Heather.Hackbarth@iowa.gov](mailto:Heather.Hackbarth@iowa.gov)>

**Date:** July 22, 2016 at 3:51:55 PM EDT

**To:** "Hall, Pat [HSEMD]" <[Patrick.Hall@iowa.gov](mailto:Patrick.Hall@iowa.gov)>

**Subject: HSEMD- enhancements to EMGrantsPro system**

JUSTIFICATION FOR EQUIPMENT/SERVICE CONTRACT PURCHASES

Effective December 12, 2008, Executive Branch agencies, *excluding* Iowa Department of Transportation (DOT) and Regents, are prohibited from purchasing equipment valued over $25,000 and entering into service (consulting) contracts over $25,000, unless prior approval is received from the Iowa Department of Management (IDOM). This applies to general, federal, and other funded purchases/service contracts.

Equipment includes purchases classified in object code 501 (equipment), 502 (office equipment), 503 (equipment, non-inventory), or 510 (IT equipment and new software, not a renewal of an existing software license). Examples of equipment include, but are not limited to, copiers, vehicles, computers, servers, and office furniture. Service (consulting) contracts may be included in 405 (prof & scientific services}, 406 (outside services), 409 (outside repairs/services}, or 418 (IT outside services)

If your purchase/service contract is absolutely necessary for life, health or safety reasons, or you must purchase equipment or consulting services to preserve a critical service or pro ram, complete the attached form and submit it to your agency's fiscal & policy analyst at the Department of Management (DOM).

You will be notified by DOM if your purchase/service contract has been approved.

TO BE COMPLETED BY REQUESTING AGENCY:

Agency: Iowa Homeland Security and Emergency Management

Submitted By: ,.\_P""at....,ri,,.ckJ.'-"H..,,a,,,l,\_I \_

Telephone: 515·725-9325 E-mail: Patrick J. Hall

Description of Equipment/Service: Additional enhancements are needed to our

EMGrantsPro system (Disaster and Emergency Management Portal Software) for improving our grant management activities related to disaster and emergency mangement grants including department, local and federal interfacing.



**Cost of Equipment/Service:** $492,540 estimated cost for the enhancements that are still needed.

**Source of Funds:** 100% Federal Grants

**Contract# or RFP** # (if **applicable):** 583-2012-HSEMO-034 current contract total is

.$837.960.



Which of the followin!ll describes this purchasing request? You may select more than one:

D There is a ne.ed to protect the health, welfare or safety

IX1 The department must act to preserve critical services

IX1 The State will lose federal funds or grant money if this equipment/service is not purchased

IX1 Other

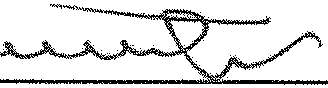
Explain how this purchase fits the situation selected above:

These enhancements will benefit our internal and. external users of the EMGrantsP.ro system. HSEMD is now inputting data into. only one grant management system

{EMGrantsPro) and one accounting system *(113* Accounting) for reporting. auditing. and transparency. These enhancements will improve our grant management responsibilities and oversight since the federal government has initiated new federal grant administration requirements (2 CFR. Part 200). and new.transparency guideline$ (federal draws. by subaccounttproject and not .just by grant). Staff, FEMA. auditors, state partners. Cities.

counties. and othergrant recipients all will benefit. The approved federal funding for these

enhancements will expire this year (a portion by 9/30/2016 and the. ba.lance by 12/31/2016}.

**M•** J. **S\_, Di'8CW<** • '

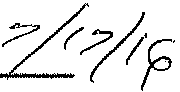
Requesting Department Director Sig



Chief Information Officer Signature: .,<!· ="41'------Z....*.,\_J.,.,r.vi.-.u.\_1.;.t \_*

(For I.T. purchases/services only)

*I*





Recommendation:

!Approved

0 Rejected (State reason below)

