

**eFlex & Alpine Support Agreement**

**for eFilers and DWC Staff**

**between**

**Tybera Development Group, Inc.**

**and**

**Iowa Division of Workers' Compensation**

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This Agreement is made by and between Tybera Development Group, Inc. located at 563 East 770 North, Orem, Utah 84097 (hereafter "TYBERA"), and Iowa Division of Workers' Compensation located at 150 Des Moines St, Des Moines, IA 50309 (Hereinafter "DWC"), referred to individually as PARTY and collectively as PARTIES.

WHEREAS, TYBERA and DWC enter into this Agreement for TYBERA to provide phone, email or electronic support services to filers, and internal DWC staff to call TYBERA regarding questions regarding how to use the eFlex efiling system and the Alpine Case Management System.

WHEREAS TYBERA will be assisting filers and internal DWC staff, DWC gives approval for TYBERA to access the production systems to provide this assistance. All data and documents associated to the DWC installation are the property of DWC. Tybera will not sell or use the data or documents for any purposes other than to assist in using the system without written consent by DWC.

NOW, THEREFORE, TYBERA and DWC agree as follows:

# 1.0 APPLICABLE DOCUMENTS

1.1 INTERPRETATION

Exhibit A is attached hereto and incorporated by reference and form a part of this Agreement. In the event of any conflict or inconsistency in the definition or interpretation of any word, responsibility, schedule, or the contents or description of any task, deliverable, goods, service, or other work, or otherwise, between this Agreement and the Exhibit thereto, or between such documents, such conflict or inconsistency shall be resolved by giving precedence to such other documents according to the following priority:

1. This Agreement
2. Exhibit A – Statement of Work
3. Exhibit B – Change Control

1.2 ENTIRE AGREEMENT

The terms of this Agreement, and the Exhibit thereto, shall constitute the complete and exclusive statement of understanding between the parties.

# 2.0 PERSONNEL

2.1 TYBERA understands and agrees that all persons performing work under this Agreement are, for all purposes, solely the employees of TYBERA and not employees of DWC.

2.2 TYBERA shall be solely liable and responsible for providing to, or on behalf of, all persons performing work pursuant to this Agreement, all employee compensation and benefits. DWC shall have no liability or responsibility for the payment of any salaries, wages, unemployment benefits, health, welfare and disability benefits, federal, state, and local taxes, or other compensation, benefits, or taxes, for any personnel provided by or on behalf of TYBERA.

2.3 TYBERA shall obtain an executed TYBERA Employee Acknowledgement and Confidentiality Agreement (aka Nondisclosure Agreement) from each of its employees performing work under this Agreement. The Employee Confidentiality portion will include the following paragraphs.

*Confidential Information. I acknowledge that I will receive confidential information of/from DWC, DWC suppliers, and training from Tybera, because of our relationship of mutual confidence and trust. This information will include case, business, financial, and technical information; including information I develop, relating to the business activities, products or services of DWC, its current and future prospects and DWCs suppliers, whether or not such information is identified as confidential. Confidential information does not include any information that DWC approves for unrestricted public disclosure.  
  
I will not disclose or use, and will take reasonable precautions to prevent the disclosure or use of, any of this DWC confidential information, except in the good faith performance of my duties, and I will return all confidential information to DWC at its request. At DWC’s reasonable request, I will execute and comply with a third party’s agreement not to disclose or use its confidential information. In addition, I will not solicit or induce the unauthorized disclosure or use of any third party’s confidential information.*

Such agreements shall be available to DWC upon request.

# 3.0 COMPENSATION

3.1 Invoices and payments of DWC shall include:

A. A valid invoice for payment with a description of the period of time.

B. Invoices will include:

* DWC address
* Invoice remittance address as designated in the Agreement
* TYBERA's Federal Tax Identification Number
* the amount due

C. All Invoices and notices will be sent to the following designated contact:

By mail:

Joseph S. Cortese II

c/o Sandy Breckenridge

Iowa Workers’ Compensation Commissioner

Division of Workers’ Compensation

1000 East Grand Avenue

Des Moines, Iowa 50319

(515) 725-3820

Fax: (515) 281-4698

And by email:

To: [joseph.cortese@iwd.iowa.gov](mailto:joseph.cortese@iwd.iowa.gov) and [sandra.breckenridge@iwd.iowa.gov](mailto:sandra.breckenridge@iwd.iowa.gov)

Subject: Tybera – Phone, electronic & email Support

3.2 TAXES

Work performed under this agreement specific to DWC, are exempt from federal, state, and local taxes where DWC is a government entity.

# 4.0 TERM

The term of this Agreement shall commence on July 23, 2019 and end on July 22, 2020. The renewal of this contract requires an evaluation by Tybera to assess whether the number of support phone calls fall within a range of calls sustained by the annual cost of this agreement. Tybera will evaluate the number of support calls, emails & electronic communications and calculate the renewal cost, then provide a quote for the renewal 45 days prior to the end of the term to allow DWC the opportunity to evaluate whether they want to renew or not.

# 5.0 TERMINATION

5.1 DWC shall have the right to terminate this Agreement for cause.

A. Termination for Cause: Events constituting cause shall include, but not be limited to: (i) commencement of bankruptcy or insolvency proceedings by or against either PARTY; (ii) continued, unsatisfactory performance by either PARTY personnel; (iii) failure to meet the performance standards described in this Agreement; and/or (iv) breach of any other material condition of this Agreement. Upon the happening of any of the aforementioned events, the PARTY shall issue a written cure notice to the other PARTY. The other PARTY shall have ten (10) days from the issuance of said notice to cure the identified defect. If the identified defect is not corrected to the satisfaction, the PARTY may terminate the agreement.

5.2 Under any termination of this agreement, TYBERA will save DWC support logs information for 90 days and eliminate all data and documents after 90 days.

5.3 Termination of this agreement will not terminate any other agreement related to DWC software implementation such as the existing license and maintenance agreement.

# 6.0 AMENDMENTS

No changes to this Agreement shall be valid and effective unless made in the form of a written amendment which is formally executed by authorized officials of DWC and TYBERA.

# 7.0 PROHIBITION AGAINST ASSIGNMENT AND DELEGATION

This Agreement, or any interest therein, including, but not limited to, any claim for monies due or to become due with respect thereto, shall not be assigned or delegated, or both, by either PARTY, without a 90-day written notification to the other PARTY.

# 8.0 SUBCONTRACTING

Except as may be approved in writing no performance of any of the work in agreement, shall be subcontracted by TYBERA to a third-party without previous written notification and approval.

# 9.0 INDEMNIFICATION, INSURANCE

9.1 INDEMNIFICATION

TYBERA shall indemnify, hold harmless and, not excluding the DWC’S right to participate, defend the DWC, its officers, officials, agents, and employees (hereinafter referred to as “Indemnitee”) from and against all liabilities, claims, actions, damages, losses, and expenses including without limitation reasonable attorneys’ fees and costs, (hereinafter referred to collectively as “claims”) for bodily injury or personal injury including death, or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful misconduct or omissions to reasonably perform the obligations of TYBERA or any of its officers, directors, agents, employees, or subcontractors. This indemnity includes any claim or amount arising out of or recovered under the Workers’ Compensation Law or arising out of the failure of such contractor to conform to any federal, state, or local law, statute, ordinance, rule, regulation, or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by TYBERA from and against any and all claims. It is agreed that TYBERA will be responsible for primary loss investigation, defense, and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the TYBERA agrees to waive all rights of subrogation against the DWC, its officers, officials, agents, and employees for losses arising from the work performed by the TYBERA for the DWC except as outlined in this Section 9.1.

9.2 INSURANCE

TYBERA and subcontractors shall procure and maintain, until all of their obligations have been discharged under this Contract, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by TYBERA, their representatives, employees, or subcontractors.

A. **MINIMUM SCOPE AND LIMITS OF INSURANCE:** TYBERA shall provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the minimum liability requirements provided that the coverage is written on a “following form” basis.

**1.** **Commercial General Liability – Occurrence Form**

Policy shall include bodily injury, property damage, and contractual liability as defined in the insured contract section of the policy.

* General Aggregate $5,000,000
* Products – Completed Operations Aggregate $2,000,000
* Personal and Advertising Injury $2,000,000
* Each Occurrence $2,000,000
  1. The policy shall be endorsed to include DWC and a named insured.
  2. TYBERA's subcontractor shall be subject to the same minimum requirements identified above.

**2**. **Workers' Compensation and Employers' Liability**

Workers' Compensation Statutory

Employers' Liability

Each Accident $1,000,000

Disease – Each Employee $1,000,000

Disease – Policy Limit $1,000,000

1. TYBERA’s subcontractor shall be subject to the same minimum requirements identified in this section.

B. **NOTICE OF CANCELLATION:** Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided, or canceled except after sixty (60) days prior written notice has been given to the DWC, except when cancellation is for non-payment of premium, then ten (10) days prior notice may be given.

C. **ACCEPTABILITY OF INSURERS:** Insurance is to be placed with insurers duly licensed with an “A.M. Best” rating of not less than A.

E. **VERIFICATION OF COVERAGE:** TYBERA shall furnish DWC with certificates of insurance (ACORD form or equivalent approved by the DWC) upon request.

# 10.0 RECORDS AND AUDITS

10.1 TYBERA shall maintain accurate and complete records of its activities and operations relating to this Agreement. TYBERA agrees that DWC, or their authorized representatives, shall have access to and the right to examine, audit, excerpt, copy or transcribe any pertinent transaction, activity, or records relating to this Agreement.

# 11.0 PROPRIETARY CONSIDERATIONS AND DATA SECURITY

11.1 PROPRIETARY RIGHTS

All materials, data and other information of any kind obtained from either PARTY are confidential and are the property of the PARTY that delivered the information. All information, data, and documents transmitted or retrieved to or from DWC by efiling users of the eFlex efiling software are the property of DWC. All data, reports, and documents, related to maintaining the eFlex efiling system or the Alpine CMS of any kind are the property of DWC. All materials, data, programs developed by TYBERA for the performance of this Agreement are confidential and are the property of TYBERA. All PARTIES shall take all necessary measures to protect the security and confidentiality of all such materials, data, reports, programs and information. The provisions of this Paragraph shall survive the expiration or other termination of this Agreement.

11.2 DATA SECURITY

TYBERA shall protect the security of and keep confidential all materials, data, documents, reports, and information sent or retrieved by users or DWC of the eFlex efiling system or Alpine CMS.

11.3 DISCLOSURE OF INFORMATION

TYBERA agrees it shall not disclose any details in connection with this Agreement to any third-party, except as may be otherwise provided herein or required by law. However, in recognizing TYBERA's need to identify its services to sustain itself, DWC shall not prohibit TYBERA from publicizing its role under this Agreement.

# 12.0 COMPLIANCE WITH APPLICABLE LAW

12.1 Both PARTIES shall comply with all applicable Federal, State, and local laws, rules, regulations, ordinances, and directives, and all provisions required thereby to be included in this Agreement are hereby incorporated herein by reference.

12.2 TYBERA shall indemnify and hold harmless DWC from and against any and all liability, damages, costs, and expenses, including, but not limited to, defense costs and attorney's fees, arising from or related to any violation on the part of TYBERA, its employees, agents, related to this agreement.

# 13.0 FAIR LABOR STANDARDS

TYBERA shall comply with all applicable provisions of the Federal Fair Labor Standards Act, and shall indemnify, defend, and hold harmless DWC, their officers, employees and agents from any and all liability, including, but not limited to, wages, overtime pay, liquidated damages, penalties, court costs, and attorney's fees arising under any wage and hour law, including but not limited to, the Federal Fair Labor Standards Act, for work performed by TYBERA's employees under this Agreement.

# 14.0 NONDISCRIMINATION AND AFFIRMATIVE ACTION

14.1 TYBERA certifies and agrees that all persons employed by it, its affiliates, subsidiaries, or holding companies are and will be treated equally without regard to or because of race, creed, color, religion, ancestry, national origin, sexual orientation, sex, age, condition of physical or mental handicap, marital status, or political affiliation, in compliance with all applicable Federal and State anti-discrimination laws and regulations.

14.2 TYBERA shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to race, creed, color, religion, ancestry, national origin, sexual orientation, sex, age, condition of physical or mental handicap, marital status, or political affiliation, in compliance with all applicable Federal and State anti-discrimination laws and regulations. Such action shall include, but is not limited to: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

14.3 TYBERA certifies and agrees that it will deal with DWC without regard to or because of race, creed, color, religion, ancestry, national origin, sexual orientation, sex, age, condition of physical or mental handicap, marital status, or political affiliation.

14.4 TYBERA certifies and agrees that it, its affiliates, subsidiaries or holding companies, will comply with Subchapter VI of the Civil Rights Act of 1964 to the end that no person shall, on the grounds of race, creed, color, religion, ancestry, national origin, sex, age, physical or mental handicap, marital status, or political affiliation, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Agreement or under any project, program or activity supported by this Agreement.

14.5 If DWC finds that any of the provisions of this section have been violated, such violation shall constitute a material breach of this Agreement upon which DWC may terminate or suspend this Agreement. In addition, a determination by the Federal Equal Employment Opportunity Commission that TYBERA has violated State or Federal anti-discrimination laws or regulations shall constitute a finding that TYBERA has violated the anti-discrimination provisions of this Agreement.

# 15.0 EMPLOYMENT VERIFICATION

TYBERA shall conduct all necessary employment eligibility verifications for the TYBERA personnel performing work under this Agreement.

# 16.0 CAPTIONS AND PARAGRAPH HEADINGS

Captions and paragraph headings used in this Agreement are for convenience only and are not part of this Agreement and shall not be used in construing this Agreement.

# 17.0 WAIVER

No waiver of any breach of any provision of this Agreement shall constitute a waiver of any other breach of such provision. Failure of any PARTY to enforce at any time, or from time to time, any provision of this Agreement shall not be construed as a waiver thereof. The specific rights and remedies set forth in this Agreement shall not be exclusive and are in addition to any other rights and remedies provided by law.

# 18.0 GOVERNING LAW

This Agreement shall be governed by, and construed in accordance with, the laws of the State of Iowa.

# 19.0 SEVERABILITY

If any provision of this Agreement or the application thereof to any person or circumstance is held invalid, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby.

# 20.0 AUTHORIZATION

20.1 TYBERA represents and warrants that the person executing this Agreement for TYBERA is an authorized agent who has actual authority to bind TYBERA to each and every term, condition, and obligation of this Agreement and that all requirements of TYBERA have been fulfilled to provide such actual authority.

20.2 DWC represents and warrants that the person executing this Agreement for DWC is an authorized agent who has actual authority to bind DWC to each and every term, condition, and obligation of this Agreement and that DWC has authorization to use TYBERA for these services.

# 21.0 NOTICES

All notices or demands required or permitted to be given or made under this Agreement shall be in writing, or email and shall be to the contract’s designated contact. Contact information may be changed by either PARTY giving ten days prior written notice thereof to the other PARTY.

# 22.0 DISPUTE RESOLUTION

Any dispute between DWC and TYBERA arising under or relating to this Agreement will be resolved expeditiously, amicably, and at the level within each PARTY’s organization that is most knowledgeable about the relevant issues. Before either PARTY seeks any remedies available at law, the PARTIES shall sequentially follow the procedures set forth below:

1. The complaining PARTY will notify the other Party in writing of the reasons for the dispute, and the PARTIES will work together to resolve the matter as expeditiously as possible. A formal written response will not be required, but the responding PARTY may put its position in writing in order to clarify the issues or suggest possible solutions.
2. If the dispute remains unresolved fifteen (15) business days after the delivery of the complaining PARTY’s written notice, a senior representative of DWC and TYBERA shall meet or participate in a telephone conference call within ten (10) business days of a request for the meeting or conference call by either PARTY to resolve the dispute.
3. If the Parties are unable to reach a resolution of the dispute after following these procedures, or if either PARTY fails to participate when requested, then the Parties may pursue any remedies available under this Agreement or at law.

# 23.0 SUSPENDED OR DEBARRED ENTITIES

By signing this Agreement, TYBERA certifies that they are not presently listed by any federal or state agency, debarred, suspended, or proposed for debarment from any federal or state contract activity. If, during the term of this Agreement, this information changes, TYBERA shall notify the other within ten (10) same business day. Such notice shall contain all relevant particulars of any debarment, suspension, or proposed debarment.

# 24.0 EXTENDED OBLIGATIONS

Except as outlined in Section 11.3, TYBERA, its employees and agents shall not disclose any details in connection with this Agreement to any third-party, except as may be otherwise provided herein or required by law, for a period of no less than five (5) years from the termination of this Agreement and any subsequent amendments. In addition, the provisions contained in Section for Indemnification, Records and Audits, Proprietary Consideration and Data Security, and Dispute Resolution shall survive the expiration of this Agreement.

# 25.0 FORCE MAJEURE

If the performance of this Agreement, or any obligation hereunder is prevented or delayed by reason of fire, flood, earthquake, hurricane, explosion, strikes or labor disputes, war or other violence, any law, order, regulation or the like of any governmental agency, or any other act or conditions beyond the reasonable control of the affected PARTY, the PARTY so affected will give immediate verbal and written notice to the other PARTY. The impacted performance will be reviewed and an interim performance standard will be agreed upon until the affected PARTY can resume the performance standard as originally intended by this Agreement.

IN WITNESS WHEREOF, CUSTOMER and TYBERA have caused this Agreement to be signed by their duly authorized officers on the day and year first set forth hereinabove.

|  |  |  |
| --- | --- | --- |
| Tybera Development Group, Inc. |  | Iowa Department of Workers Compensation |
|  |  |  |
| Name: Dallas Powell  President |  | Name: Joseph S. Cortese II  Iowa Workers’ Compensation Commissioner |
| Date: August 15, 2019 |  | Date: |

# Exhibit A

**Statement of Work and Invoicing**

This statement of work includes a list of support tasks and a change control form in Exhibit B. The change request form will be used by DWC and Tybera add other tasks such as report writing. A Change Control requires a process that includes a written version of the requirements, a description of the work to satisfy the requirements and minimize ambiguity, cost for the changes, implementation schedule, and payment breakdown. All changes must be mutually agreed upon and signed.

* Tybera will provide phone, email and electronic support to eFilers and DWC Staff using the Division of Workers' Compensation eFlex efiling system/Alpine Case Management System to answer questions on how to use the system but not provide legal advice.
* Tybera will assist users to register in the eFlex efiling system. This includes configuring the attorneys to make sure they are in both the eFlex and the Alpine system configured properly.
* Tybera will assist DWC in approving user accounts.
* Tybera will provide phone support during the hours of 8:00 a.m. Central Time to 5:00 p.m. Central time.
* DWC receives same support as eFilers.
* Tybera will provide monthly Support reports.

The cost for phone support from July 23,2019 to July 22, 2020 is $30,000. Payments will be made on a quarterly basis as follows:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Quarter | Begin Period & invoice date | Period End | Amount Due | Due Date |
| Q1 | 07/23/2019 | 10/22/2019 | $ 7,500 | 8/23/2019 |
| Q2 | 10/23/2019 | 01/22/2020 | $7,500 | 11/23/2019 |
| Q3 | 01/23/2020 | 04/22/2020 | $7,500 | 02/23/2020 |
| Q4 | 04/23/2020 | 07/22/2020 | $7,500 | 4/23/2020 |
|  |  | Total | $30,000 |  |

# Exhibit B

**Change Control**

|  |  |  |  |
| --- | --- | --- | --- |
| **CHANGE CONTROL IWD ELECTRONIC FILING, CASE MANAGEMENT, DOCUMENT STORE** | | | |
| Customer Name | State of Iowa, acting by and through Iowa Workforce Development (IWD) and the Iowa Division of Workers’ Compensation (DWC) | | |
| Project Name | Workers Compensation E-Filing System | | |
| Change Request Title |  | | |
| Change Request # |  | | |
| Effective Date |  | Delivery Date |  |
| DWC Coordinator |  | Tybera Coordinator |  |
| CHANGE REQUEST Requirements | | | |
| Description of the work | | | |
| Dependencies / Risks | | | |
| Cost and Payment Schedule | | | |
| IWD Approver | | Tybera Approver | |