

ALBUQUERQUE PUBLIC SCHOOLS

COMPUTER AIDED DISPATCH SYSTEM (CAD) and RECORDS MANAGEMENT SOFTWARE (RMS) AGREEMENT

Agreement No. _____

THIS COMPUTER AIDED DISPATCH SYSTEM (CAD) and RECORDS MANAGEMENT SOFTWARE (RMS) AGREEMENT (this “Agreement”) is made by and between the Albuquerque Public Schools (the “District”), **[Insert The District Name]**, and **[Insert Contractor Name]**, hereinafter referred to as “Contractor.”

WHEREAS, pursuant to the Procurement Code, NMSA 1978 13-1-28 *et. seq.*; and Procurement Code, NMAC 1.4.1 *et. seq.*; Contractor has held itself out as an expert in implementing the Scope of Work attached hereto and the District has selected Contractor as the offeror most advantageous to the District; and

WHEREAS, all terms and conditions of the RFP 20-046RMS and Contractor’s response to such document(s) are incorporated herein by reference; and

THEREFORE, IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

ARTICLE 1 – DEFINITIONS

- A. **“Acceptance,” “Accept” or “Accepted”** means the approval, following Quality Assurance, of all the Deliverables by The District’s ELR (“ELR”).
- B. **“Application Deployment Package” or “ADP”** means Contractor’s centralized and systematic delivery of business critical applications, including the source code (for custom software), documentation, executable code and the deployment tools necessary to successfully install application software fixes, including Contractor’s Software related additions, modifications, or deletions.
- C. **“Business Days”** means Monday through Friday, 7:30 a.m. (MST or MDT) to 5:30 p.m. except for Federal and State holidays.
- D. **“Change Request”** means a written document utilized by either Party to request changes or revisions in the Scope of Work – Exhibit A, attached hereto.
- E. **“Confidential Information”** means any communication or record (whether oral, written, electronically stored or transmitted, or in any other form) that consists of: (1) confidential District or client information as the term is defined in State and/or Federal statutes or regulations; (2) all non-public District budget, expense, payment and other financial information; (3) all attorney-client privileged work product; (4) all information designated by the District as confidential, including all information designated as confidential under Federal and State statutes or regulations; (5) unless publicly disclosed by the District, the pricing, payments, and terms and conditions of this Agreement, and (6) District information that has not been publicly disclosed and that is utilized, received, or maintained by the District for the purpose of fulfilling a duty or obligation hereunder.

- F. “Contract Manager” means a Qualified Person designated by the District who is responsible for all aspects of the administration of this Agreement. Under the terms of this Agreement, the Contract Manager will be Rebecca Simenson or his/her Representative.
- G. “Data” means a compilation, body, set or sets, of discrete information gathered by the District and/or Contractor which the District owns and/or controls and which concerns, and may be utilized or manipulated by the District and/or Contractor, to further the District’s interests, role and mission (“Mission”). Data includes, but is not limited to, the District’s information, whether or not stored in one or more databases, Confidential Information and other internal information which affects or may affect the District’s ability to further its Mission.
- H. “Default” means a violation or breach of this Agreement by a Party’s either: (1) failing to perform one’s own contractual obligations hereunder, or (2) by interfering with the other Party’s performance of its obligations hereunder.
- I. “Deliverable” means the verifiable outcomes, results, the Services or products that Contractor will develop, perform, and/or produce and deliver to The District according to the Scope of Work.
- J. “District” means the Albuquerque Public Schools.
- K. “Enhancement” means any modification including addition(s), modification(s), or deletion(s) that, when Contractor makes or adds to a Deliverable, materially improves the Deliverable’s utility, efficiency, functional capability, or application (“Utility”). An error correction is not an Enhancement unless the Deliverable’s Utility is improved in Contractor’s process of making the error correction.
- L. “Executive Level Representative” or “ELR” means the individual designated and empowered with the authority to represent and make decisions on behalf of the District or the Representative of the Executive Level Representative.
- M. “GRT” means New Mexico gross receipts tax.
- N. “Intellectual Property (IP)” means any and all proprietary information or material, whether tangible or intangible, whether derived, embodied, composed or comprised of any hard copy, soft copy, electronic format, hardware, firmware, software or manifested in any other form, whether solid, liquid or vapor, that consists of, or is directly or indirectly related to, Know How, trade secrets, copyrightable material, patent protected or protectable inventions and/or information, U.S. and foreign patent applications and patents, service marks, trademarks, and trade names, any of which is conceptualized, created or developed by either one or both of the Parties. For the purposes of this Agreement each Party shall have exclusive ownership rights and control over Intellectual Property that the Party owns or controls prior to the commencement of this Agreement (“Pre-Owned IP”). Intellectual Property that Contractor creates during the course of Contractor’s performance of work hereunder will be deemed work made for hire (“Work Made for Hire”). The District will be considered to be the creator and sole and exclusive owner of all Work Made for Hire. Together, any and all combinations of the District’s Pre-Owned IP and Work Made for Hire shall comprise “Agency IP.”
- O. “Independent Verification and Validation (“IV&V”)” means the process whereby The District retains an independent expert to evaluate, verify and issue a written validation opinion concerning Contractor’s performance of the Project and to determine Contractor’s compliance with the requirements stated in the Scope of Work, whether

with respect to evaluating certain stages of the Deliverables, or to evaluating the body of the Deliverables as a whole, or both.

- P. “Know How” means the idea(s), technical information and knowledge including, but not limited to, documents, computer storage devices, drawings, flow charts, plans, proposals, records, notes, memoranda, manuals and other tangible items containing, relating to, or causing the enablement of the Work Made for Hire and the Intellectual Property developed hereunder.
- Q. “Payment Invoice” means each of Contractor’s detailed, certified and written requests for payment concerning the Deliverables that Contractor renders to The District. Each Payment Invoice must identify each Deliverable for which the Payment Invoice is submitted and must include the price stated in the Scope of Work (Deliverables section), and in Article 3, below, as well as Contractor’s actual charge, for each Deliverable.
- R. “Performance Bond” means a surety bond which guarantees against Contractor’s Default as well as Contractor’s full performance of its obligations hereunder.
- S. “Project” means the sum of Contractor’s efforts necessary to produce and deliver the Deliverables to The District according to the Scope of Work.
- T. “Project Manager” means a Qualified Person appointed by The District who oversees and manages Contractor’s efforts to produce and deliver the Deliverables to The District. The Project Manager for this Project is XXXX or his/her Representative.
- U. “Qualified Person” means a person who has demonstrated experience performing and completing activities and tasks similar to the Project.
- V. “Quality Assurance” or “Quality Assurance Review” means the planned and systematic pattern of rules, measures, procedures and process established by The District to ensure that each Deliverable conforms to the requirements stated in the Scope of Work.
- W. “Representative” means one or more substitute person(s) for a title or role, e.g. Project Manager or Contract Manager, when the Party’s primary contact person is unavailable.
- X. “Scope of Work” or “SOW” means the statements of Purpose and the Deliverables attached to this Agreement as Exhibit “A.”
- Y. “Service” or “the Services” means the task(s), function(s), and responsibility(ies) assigned to, and performed by Contractor according to the SOW.
- Z. “Software” means the operating system and/or application software used by Contractor to provide the Deliverables hereunder. Software may include, but is not limited to, Third Party Software. “Third Party Software” means software owned by third parties which is utilized by Contractor and/or The District hereunder. Third Party Software is listed in Section 3 of Exhibit B, attached hereto.
- AA. “Software Maintenance” means the set of activities that result in changes to the Accepted (baseline) product set of Software. These activities consist of corrections, insertions, deletions, extensions, and Enhancements to the baseline Software and operating system.
- BB. “Source Code” means the human-readable programming instructions organized into sets of files that represent the business logic for the Project application. Source Code may be read as text and subsequently edited, requiring compilation or interpretation by a Qualified Person into binary or machine-readable form before being directly useable by a computer.
- CC. “Turnover Plan” means the written plan developed by Contractor and approved by The District to continue the Project in the event the Deliverables stated in the SOW are transferred, either directly to The District or to a third party.

ARTICLE 2 – SCOPE OF WORK

- A. The Scope of Work. The Scope of Work, or “SOW” attached hereto as “Exhibit A,” is incorporated into this Agreement as if fully set forth herein. The SOW governs Contractor’s production and delivery of the Deliverables to The District. The Parties may amend the SOW by executing one or more mutually agreed upon written amendments. In the event a conflict of terms exists between this Agreement and the SOW, the terms of this Agreement will govern.
- B. Contractor Default. Contractor will deliver the Deliverables as stated in the SOW. In the event Contractor fails to deliver the Deliverables according to the SOW, The District may declare Contractor to be in Default hereunder. In the event The District declares Contractor to be in Default, The District will give written notice to Contractor describing the Default and will specify a reasonable period of time during which Contractor will remediate the Default. Contractor will then give The District a written response that advises The District concerning the measures Contractor will take to cure the Default as well as Contractor’s proposed timetable for implementing those measures. Nothing in this Section will be construed to prevent The District from exercising The District’s rights pursuant to Article 6 or Article 16, below.
- C. Schedule. Contractor will deliver the final Deliverables to The District on or before the due dates stated in the SOW. The due dates will not be altered or waived by Contractor absent The District’s prior written consent, according to the Amendment process stated in Article 25, below.
- D. License. Contractor hereby grants The District a non-exclusive, irrevocable, perpetual license to use, modify, and copy the following Software: **XXXXXX**

The District’s right to copy the Software is limited to The District’s archival, backup and training purposes only. All of The District’s archival and backup copies of the Software are subject to the provisions of this Agreement, and The District will reproduce all Software related titles, patent numbers, trademarks, copyright and other restricted rights notices on The District’s Software copies.

1. Contractor will maintain, at Contractor’s sole expense, a copy of the Software Source Code to be kept by Escrow Agent and will identify The District as an authorized recipient of the Software Source Code from Escrow Agent. Contractor will store the Software Source Code in magnetic form on media specified by The District. Escrow Agent will be responsible for storing and safekeeping the Software Source Code magnetic media. Contractor will replace the escrowed Software Source Code magnetic media at least every six (6) months to ensure readability and to preserve the Software at the then current revision level. Contractor will include all associated Software documentation with the magnetic media, which will allow The District to “top load,” compile and maintain the Software in the event of Contractor’s Default(s).

2. In the event Contractor (a) ceases to do business or ceases to support the Project, or (b) fails to make adequate provision for continued support of the Software that Contractor develops or provides to The District, or (c) if Contractor Defaults hereunder, or (d) if this Agreement is terminated, Contractor will, within a twenty-four (24) hour period, make all of the following items available to The District: (i) the latest available Source Code and documentation related to the Software that Contractor develops or provides according to the SOW; (ii) the Source Code and compiler/utilities necessary to maintain The District's system; and, (iii) Contractor's related documentation for Software developed by third parties to the extent Contractor is authorized to disclose such Software to The District. In any of the above circumstances (a), (b), (c) or (d), Contractor will, by virtue of this Section, grant The District an automatic, uncontested and unlimited right to use, modify and copy the Software, the Source Code and all of their related documentation.
- E. Source Code. For each maintenance release, the Application Deployment Package shall be updated and shall be delivered to the District at the Contractor's expense.
- F. The District's Rights.
1. Rights to Software. The District will have rights to the software as stated in Article 2. D., above.
 2. Protection of Proprietary Rights. Contractor will reproduce and attach the District's copyright, product identifications and other proprietary notices on the copies Contractor makes and delivers of the Software, the Source Code and other Deliverables for The District, in whole or in part, or on any electronic, hard copy or other tangible form of the Deliverables.
 3. Protection of Data. Contractor will protect and safekeep all of The District's Data to the same or a higher degree of care that Contractor takes with respect to its own information and data. Contractor will implement all measures necessary to protect The District's Data from any and all harm, including but not limited to, breach, intrusion, contamination, corruption, loss, leak, theft, disintegration, viral attack, denial-of-service, malware, worms, trojans, ransomware, hacking, phishing, skimming and other damage of any kind (collectively "Data Damage"), whether caused by Contractor, Contractor's Employees or one or more third parties. In the event a Data Damage incident occurs while The District's Data is within Contractor's purview and/or control, within one (1) hour of Contractor's discovery of a Data Damage incident, Contractor will notify the Project Manager concerning the Data Damage incident, including sufficient information for the Project Manager to determine, in conjunction with Contractor, which measures, if any, Contractor must implement to mitigate the Data Damage.
 4. Rights to Data. Any and all of The District's Data that is stored upon Contractor's servers or lies within Contractor's custody hereunder, is The District's sole and separate property and inures to The District's exclusive benefit. None of Contractor or Contractor's Employees, subcontractor(s), affiliates and/or assigns will make use of, disclose, sell, copy, license or reproduce The District's Data in

any manner, or provide of The District's Data to any third party absent The District's prior written authorization.

ARTICLE 3 - COMPENSATION

- A. Compensation Schedule. The District will pay Contractor according to the fixed price set for each Deliverable, per the schedule stated in the SOW, less retainage, if any, as identified in Paragraph D.
- B. Payment. The total compensation hereunder will not exceed **[Insert Dollar Amount]** excluding New Mexico gross receipts tax. This amount is the maximum total amount; it is not a guarantee that the work to be performed by Contractor, and the total of the corresponding payments that The District pays to Contractor, will equal the maximum total amount. However, the Parties do not intend for Contractor to continue to deliver the Deliverables without compensation once the total compensation amount has been reached. Therefore, Contractor must notify The District before the price of a Deliverable reaches the compensation amount for that Deliverable stated in the SOW. In no event will The District pay Contractor for any Deliverables in an amount that exceeds the maximum total amount without this Agreement being amended in writing prior to Contractor's continued delivery of the Deliverables.

The District will pay Contractor upon The District's Acceptance of each Deliverable according to Article 4, below, and upon the receipt and Acceptance of Contractor's detailed and certified Payment Invoice(s). The District will forward its payments to Contractor's designated mailing address, stated in Article 28, below. In accordance with Section 13-1-158 NMSA 1978, The District will tender payment to Contractor within thirty (30) days of the date of The District's written certification of Acceptance. All Payment Invoices MUST BE received by The District no later than fifteen (15) days after the termination of this Agreement. Contractor's Payment Invoices received by The District later than fifteen (15) days after the termination of this Agreement WILL NOT BE PAID.

- C. Taxes. Contractor will be reimbursed by The District for applicable New Mexico gross receipts taxes ("GRT"), excluding interest or penalties assessed on Contractor by the New Mexico Taxation and Revenue Department. Contractor is solely responsible for the payment of GRT for any money Contractor receives hereunder. Contractor must report its GRT, income tax and other tax obligations under Contractor's Federal and State tax identification number(s).

Contractor, if any, will pay all Federal, State and local income and other taxes and government fees applicable to its operation(s) as well as the taxes and fees associated with Contractor's employment of its Employees. Contractor will require its subcontractors, if any, to hold The District harmless from any responsibility for taxes, damages, fees and interest, if applicable, as well as any and all contributions required under Federal and/or state and local laws and regulations, including any other costs,

transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.].]

- D. Retainage. Not Applicable. The Parties agree there is no retainage.
- E. Performance Bond. Not Applicable. The Parties agree there is no Performance Bond.

ARTICLE 4 – ACCEPTANCE

- A. Submission. Upon Contractor's completion and delivery of each Deliverable stated in the SOW, Contractor will submit a Payment Invoice, together with an accurate description of the Deliverable, to The District. Contractor will submit its Payment Invoices to The District according to, or lower than, the Deliverable price stated in the SOW, less the retainage, if any, stated in Article 3(D), above. Contractor will not submit Payment Invoices to The District for any amount(s) that exceed the amount(s) stated in the SOW absent The District's prior written permission.
- B. Acceptance. According to Section 13-1-158 NMSA 1978, the ELR will determine whether the Deliverable(s) meet(s) the specifications stated in the SOW. The District will not pay for any Deliverable until the ELR Accepts the Deliverable in writing. In order to Accept a Deliverable, the ELR, in conjunction with the Project Manager, will perform a Quality Assurance Review of the Deliverable to determine, at a minimum, whether the Deliverable:
 - 1. Meets or exceeds the Deliverable requirements stated in the SOW; and
 - 2. Complies with the terms and conditions of RFP 20-046RMS and
 - 3. Meets or exceeds the generally accepted industry standards and procedures applicable to the Deliverable(s); and
 - 4. Complies with all other of Contractor's requirements, duties and obligations hereunder.

In the event the ELR Accepts a Deliverable according to the ELR's Quality Assurance Review, the ELR will send Contractor the ELR's written Acceptance within **fifteen (15) Business Days** (the "Acceptance/Rejection Period") from the date the ELR receives each of Contractor's Payment Invoice(s).

- C. Rejection. If the ELR fails to give Contractor notice of The District's rejection of a Payment Invoice within the Acceptance/Rejection Period, the Deliverable, together with its corresponding Payment Invoice will be deemed to be Accepted by The District. In the event the ELR rejects the Deliverable following the ELR's Quality Assurance Review within the Acceptance/Rejection Period, the ELR will send Contractor a rejection notice together with a consolidated set of comments ("Comments") indicating the issues, unacceptable items, and/or requested revisions that Contractor should make or perform with respect to the rejected Deliverable. Upon Contractor's receipt of the ELR's rejection and Comments, Contractor will have ten (10) Business Days to resubmit the

rejected Deliverable to The District together with Contractor's revisions, corrections and/or modifications made according to the ELR's Comments. Upon receipt of Contractor's revised, corrected or modified ("Revised") Deliverable, the ELR will determine whether the Revised Deliverable is Acceptable by conducting a second Quality Assurance Review. The ELR will then issue a written determination of The District's acceptance or rejection of the Revised Deliverable within fifteen (15) Business Days of The District's receipt of the Revised Deliverable. In the event the ELR rejects the Revised Deliverable according to the second Quality Assurance Review, Contractor will be then required to provide a remediation plan that will include a list of Contractor's planned corrective measures and an associated timeline for Contractor to complete its remediation of the Deliverable. Contractor's remediation plan must be accepted by the ELR prior to Contractor's implementation of its Deliverable remediation plan. At the same time, Contractor will also be subject to pay The District all of The District's monetary damages associated with Contractor's failure to timely deliver an Acceptable Deliverable and must complete all remedies attributable to Contractor's late delivery of the Deliverable. In the event ELR rejects a Deliverable three times, The District may declare Contractor to be in Default and may immediately terminate this Agreement. The District may then seek to recover from Contractor any and all damages and remedies available hereunder and otherwise available in law or equity.

ARTICLE 5 – TERM

THIS AGREEMENT WILL BECOME EFFECTIVE AND BINDING ONLY UPON THE APPROVAL SIGNATURES OF THE DISTRICT.

This Agreement will terminate on XXXX, unless terminated pursuant to Article 6, below. The term of this Agreement, including extensions and renewals, will not exceed four years, except as may otherwise be allowed by Section 13-1-150 NMSA 1978.

ARTICLE 6 – TERMINATION

- A. Grounds. The District may terminate this Agreement at any time for convenience or cause. Contractor may only terminate this Agreement in the event The District materially Defaults hereunder and subsequently fails to cure its Default within ninety (90) days from the date Contractor first declares The District to be in Default.
- B. Appropriations. The District may terminate this Agreement if required by changes in State or federal law, or so ordered by a court of competent jurisdiction, or due to insufficient appropriations made available by the United States Congress and/or the State Legislature concerning the Parties' performance hereunder. The District's determination concerning whether sufficient appropriations are available will be deemed fully accepted by Contractor and will be final. In the event The District terminates this Agreement pursuant to this subparagraph B, The District will provide Contractor written notice of

such termination at least fifteen (15) Business Days prior to the effective date of the termination.

C. Notice; Opportunity to Cure.

1. Except as otherwise provided in Paragraph (B), immediately above, The District will give Contractor written notice of The District's intended termination at least thirty (30) days prior to the effective termination date.
2. Contractor will give The District written notice of Contractor's termination at least thirty (30) days prior to Contractor's effective termination date, which notice will (i) identify The District's material Default(s) upon which Contractor bases its termination, and (ii) state the measures The District should implement to cure such material Default(s). Contractor's termination notice to The District will only take effect: (i) if The District fails to commence curing The District's material Default(s) within Contractor's thirty (30) day notice period, or (ii) in the event The District cannot commence to cure its material Default(s) within Contractor's thirty (30) day notice period, The District will issue a written notice to Contractor concerning: (a) The District's intent to cure, and (b) The District's commencement of the due diligence necessary to cure its material Default.
3. Notwithstanding the foregoing, The District may terminate this Agreement immediately upon its written notice sent to Contractor: (i) in the event Contractor becomes patently unable to deliver the Deliverables, as The District may, in its sole and exclusive discretion, determine; (ii) if, during the term of this Agreement, Contractor is suspended or debarred by the State Purchasing Agent; or (iii) this Agreement is terminated pursuant to Article 5, above.

D. Liability. Except as otherwise expressly allowed or provided hereunder, The District's sole liability upon termination by either Party will be to compensate Contractor for Contractor's Acceptable work performed prior to Contractor's receipt or issuance of a written termination notice; provided, however, that a notice of termination issued by either Party will not nullify or otherwise affect either Party's liability for pre-termination defaults hereunder. Contractor will submit a Payment Invoice to The District for Contractor's Acceptable work within thirty (30) days of receiving or issuing a notice of termination.

THE PROVISIONS CONTAINED WITHIN THIS ARTICLE 6 ARE NOT EXCLUSIVE AND DO NOT ACT TO WAIVE THE DISTRICT'S OTHER LEGAL RIGHTS AND EQUITABLE REMEDIES ENGENDERED BY CONTRACTOR'S DEFAULT HEREUNDER.

ARTICLE 7 – TERMINATION MANAGEMENT

A. Contractor's Duties. In the event this Agreement is terminated for any reason, or upon expiration, and in addition to all of The District's other rights to receive Deliverables and other property hereunder, Contractor will:

1. Transfer, deliver, and/or make readily available to The District every Deliverable, partially completed Deliverable, and any and all other property in which The District has a financial interest, including but not limited to, any and all The District Data and/or The District Intellectual Property;

2. Not incur any further financial obligations for materials, services, or facilities hereunder absent The District's prior written approval;
3. Terminate all of Contractor's purchase orders, procurements and subcontractors and will cease all work, except as The District may direct, for the orderly completion of the Deliverables and the transition, if any, to a third party;
4. Take and effect all actions as The District may direct, for the protection and preservation of the Deliverables, the Data, The District's Intellectual Property and all other all The District property as well as any and all records pertaining to, related to and/or required hereunder;
5. Agree in writing that The District is not liable for any costs arising out of the termination other than the costs related to the Deliverables Accepted by The District prior to the termination;
6. Cooperate fully in the closeout or transition of Contractor's activities to facilitate The District's administration continuity with respect to The District's ongoing projects and programs;
7. In the event this Agreement is terminated due to Contractor's Default, lack of performance and/or negligence or willful misconduct, which result(s) in funding reduction(s) to The District from any governmental or other source, Contractor will remit the full amount of the funding reduction(s) to The District within thirty (30) days of the date of The District's request to Contractor for remittance of the funding reduction(s);
8. Should this Agreement terminate due to Contractor's Default, Contractor will reimburse The District for all costs arising from retaining one or more third party(ies) at potentially higher rates as well as for all other direct and indirect costs incurred by The District following Contractor's Default up to the full amount of the total compensation stated in Article 3. B. above.
9. In the event this Agreement is terminated for any reason, or upon its expiration, Contractor will develop and submit for The District's Acceptance a turnover plan ("Turnover Plan") at least ten (10) Business Days prior to the effective date of termination or expiration of this Agreement. Contractor's Turnover Plan will state Contractor's policies, procedures, and measures necessary to ensure: (1) the least disruption in the delivery of the Deliverables during The District's transition of the Project to a third party; and (2) Contractor's cooperation with The District and the third party with respect to Contractor's orderly transfer of all partial or completed Deliverables to The District and the third party.

Contractor's Turnover Plan will consist of Contractor's orderly and timely transfer or return to The District of any and all documents, files, The District Data, the Software, the Source code, all other related software, documentation, the system turnover plan, IP The District IP and other materials. Upon receipt of The District's written request for such transfer or return, Contractor will, within five (5) Business Days, provide to The District a copy of Contractor's most recent versions of all pertinent documents, files, The District's Data, the Software, the Source Code, all other related software, documentation, the system turnover plan, IP The District IP and other materials, whether provided by The District or created by Contractor hereunder.

- B. The District. In the event this Agreement is terminated for any reason, or upon expiration, and in addition to all other rights to property set forth in this Agreement, The District will:
1. Retain ownership of all Deliverables, The District's Intellectual Property, Contractor's other work products hereunder, and all related documentation created by Contractor hereunder; and
 2. Pay Contractor all amounts due for the Deliverables Accepted by The District prior to the effective date of such termination or expiration.

ARTICLE 8 – INDEMNIFICATION

- A. General. Contractor will defend, indemnify and hold harmless The District, the State and their Employees free from all actions, proceedings, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of Contractor's performance of this Agreement, which is caused by Contractor's or Contractor's Employees' negligent act(s) or failure(s) to act, during the time when Contractor, and/or any of Contractor's Employees, has delivered or is delivering the Deliverables hereunder. In the event that any action, suit or proceeding related to the Deliverables is brought against Contractor and/or any of Contractor's Employees, Contractor will, as soon as practicable, but no later than two (2) Business Days after Contractor receives notice thereof, will notify, by certified mail, the legal counsel of The District.

ARTICLE 9 – INTELLECTUAL PROPERTY

In the event The District grants Contractor the right to own and/or use any The District IP, Contractor hereby acknowledges and grants to The District and the State, a perpetual, non-exclusive, royalty free license to reproduce, publish, sell, trade, transfer, transmit, use, copy and modify any and all The District IP.

ARTICLE 10 – INTELLECTUAL PROPERTY LICENSE AND INDEMNIFICATION

- A. Intellectual Property License. Contractor will list Contractor's Pre-Owned IP related to this Agreement ("Related Pre-Owned IP"), as well as Contractor's Pre-Owned IP that does not concern this Project ("Unrelated Pre-Owned IP"), on Exhibit "B" attached hereto. For the purpose of this Agreement, Contractor hereby grants The District a full, complete and non-transferable right and license to utilize any and all of Contractor's Related Pre-Owned IP for so long as The District utilizes the Software, Source Code and other Deliverables. Contractor does not grant The District any right or license to utilize Contractor's Unrelated Pre-Owned IP. However, in the event Contractor fails to list any portion of Contractor's Related Pre-Owned IP or misstates Contractor's Related Pre-Owned IP as Unrelated Pre-Owned IP in Exhibit B, Contractor hereby grants The District a permanent, full, complete, non-sublicensable, and non-transferable right and license to utilize any and all of the unstated or misstated portion(s) of Contractor's Pre-Owned IP.

- B. Intellectual Property Indemnification. At Contractor's sole expense, Contractor will defend The District, the State and/or any other State entity against any claim brought or made by a third party alleging that any product, Service or Deliverable that Contractor provides hereunder infringes the third party's Intellectual Property (an "Infringement Claim"). Contractor will pay all costs, damages and attorney's fees and monetary damages that may be awarded as a result of such Infringement Claim(s) in addition to the amount of the judgment award(s). To qualify to receive Contractor's defense cost(s) and/or other payment(s) related to any Infringement Claim(s), The District will:
1. Give Contractor written notice, within forty-eight (48) hours, of The District's receipt of an Infringement Claim;
 2. Work with Contractor to control the defense and settlement of the Infringement Claim(s); and
 3. Cooperate with Contractor, in a reasonable manner, to facilitate Contractor's defense or settlement of the Infringement Claim(s).
- C. The District's Rights. In the event any product, Service or Deliverable that Contractor provides to The District hereunder becomes, or in Contractor's opinion is likely to become, the subject of an Infringement Claim, Contractor will, at its sole cost and expense:
1. Provide The District the right to continue using the product, Service or Deliverable and fully indemnify The District against any and all third Infringement Claim(s) that may arise from The District's use of the product, Service or Deliverable;
 2. Replace or modify the product, Service or Deliverable so that such product, Service or Deliverable becomes non-infringing; or
 3. Accept the return of the product, Service or Deliverable and refund an amount equal to the value of the returned product, Service or Deliverable, less the unpaid portion of the purchase price and any other amounts, which The District owes to Contractor. Contractor's obligation will be void with respect to any product, Service or Deliverable modified by The District to the extent the modification is the direct cause of the Infringement Claim.

ARTICLE 11 - WARRANTIES

- A. General. Contractor hereby expressly warrants the Deliverable(s) will be correct in all aspects according to the specifications stated in the SOW and all generally accepted industry standards (the combination of which comprise the "Applicable Specifications"). Contractor's warranty includes, but is not limited to, Contractor's making correction(s) of defective Deliverable(s) and revision(s) of those defective Deliverables, as necessary, including Contractor's repair of deficiencies in the Deliverables that are discovered during testing, implementation, or post-implementation phases.
- B. Software. Contractor warrants that Software will be correct in all aspects according to the Applicable Specifications. Contractor further warrants that Software will meet the

Applicable Specifications for **XXX** years following Acceptance by the ELR and implementation by The District. In the event Software fails to meet the Applicable Specifications during the warranty period, Contractor will correct the deficiencies, at no additional cost to The District, so that the Software meets the Applicable Specifications.

ARTICLE 12 – CONTRACTOR PERSONNEL

- A. Key Personnel. Contractor’s key personnel (“Key Personnel”) will not be diverted from this Agreement absent The District’s prior written approval. Key Personnel are those individuals The District considers to be mandatory to the work to be performed hereunder. Contractor’s Key Personnel hereunder will be:

[Insert Contractor and/or Subcontractor Key Personnel Name(s)]

- B. Personnel Changes. In the event Contractor replaces any of its personnel, Contractor will make such replacement(s), with Contractor’s other personnel of equal or superior ability, experience, and qualifications. Contractor’s personnel replacements must be pre-approved in writing by The District’s Project Manager. For all of Contractor’s personnel, The District reserves the right to require submission of their resumes prior to receiving The District’s approval. In the event Contractor reduces the number of its personnel assigned to the Project for any reason, Contractor will, within ten (10) Business Days of its personnel reduction, replace those persons with the same or a greater number of persons with equal or superior ability, experience, and qualifications, subject to The District’s prior written approval. The District, in its sole and exclusive determination, may extend the time Contractor is allowed beyond the required ten (10) Business Day period concerning Contractor’s replacement of its personnel. Contractor will include status reports to The District concerning Contractor’s personnel replacement efforts as well as the impact upon the progress of the Project due to the absence of Contractor’s personnel. In addition, Contractor will make interim arrangements to assure that the progress of the Project remains unimpeded by the loss of any of Contractor’s personnel. The District reserves the right to require a change in Contractor’s personnel in the event Contractor’s personnel are not, in The District’s sole and exclusive determination, meeting The District’s standards and/or expectations.

ARTICLE 13 – INDEPENDENT CONTRACTOR STATUS

- A. Independent Contractor. For the purposes of this Agreement, Contractor and Contractor’s Employees are independent Contractors who produce and deliver the Deliverables to The District. Contractor’s Employees are neither employees nor agents of the District. None of Contractor and Contractor’s Employees will accrue District benefits, including but not limited to, leave, retirement, insurance, bonding, use of state vehicles, or any other benefits that may be afforded to District Employees as a result of Contractor’s entering this Agreement. Contractor acknowledges and agrees that all sums received hereunder are either reportable as a separate business entity or are, in the event

Contractor operates as a sole proprietorship, personally reportable by Contractor for income and GRT tax purposes as self-employment or business income and are reportable for self-employment tax.

- B. Subject of Proceedings. Contractor warrants that neither Contractor nor any of Contractor's Employees are presently subject to any litigation or administrative proceeding before any court or administrative body which could adversely affect Contractor's ability to perform hereunder; nor, to the best of Contractor's knowledge, information or belief, is any such litigation or proceeding presently threatened against Contractor or any of Contractor's Employees. In the event any such proceeding is initiated or threatened during the term of this Agreement, Contractor will immediately disclose such initiation or threat to The District.

ARTICLE 14 - CHANGE MANAGEMENT

Change Request Process. In the event circumstances warrant Contractor making a Change to accomplish the SOW, Contractor will submit a Change Request to The District. Each Change Request must meet the following criteria:

1. The Project Manager will draft a written Change Request for the ELR's review and approval, including:
 - (a) the name of the person requesting the Change;
 - (b) a summary of the requested Change;
 - (c) the start date for the requested Change;
 - (d) the reason and necessity for the requested Change;
 - (e) the elements in the Deliverable(s) and/or the SOW that must be altered in order for Contractor to produce and deliver the Change; and
 - (f) the impact of the Change upon the Project.
2. The ELR will provide a written decision concerning each Change Request to Contractor within ten (10) Business Days of the ELR's receipt of each Change Request. All decisions made by the ELR concerning a Change Request will be deemed final. Each Change Request, once approved by the ELR, will be integrated into the SOW through an Amendment executed by the Parties if required by Article 25, Section 2.

ARTICLE 15 – INDEPENDENT VERIFICATION AND VALIDATION

- A. Not Applicable

ARTICLE 16 – DEFAULT

In case of Contactor's Default, for any reason whatsoever, The District may procure the Deliverables from another source and hold Contractor responsible for any resulting excess costs and/or damages, including but not limited to, direct damages, indirect damages, consequential damages and special damages. The District may also seek all other available remedies against Contractor hereunder or which may be otherwise available under law or equity.

ARTICLE 17 – EQUITABLE REMEDIES

Contractor acknowledges that its failure to comply with any provision hereunder may cause The District irrevocable harm and that a remedy at law for such a failure would constitute an inadequate remedy for The District. Contractor consents to The District's obtaining from a court of competent jurisdiction, specific performance, or injunction, or any other equitable relief in order to enforce such compliance. The District's right to obtain equitable relief pursuant to this Agreement will be in addition to, and not in lieu of, any other remedy that The District may have under applicable law, including, but not limited to, monetary damages.

ARTICLE 18 - LIABILITY

Contractor will be liable for damages arising out of injury to persons and/or damage to real, tangible or intangible property at any time, in any way, if and to the extent that the injury or damage was caused by or due to Contractor's fault or negligence or to a defect in Contractor's production or delivery of any Deliverable hereunder, whether Contractor produces or delivers the Deliverable in whole or part. Contractor will not be liable for damages arising out of, or caused by, alterations made by The District to any equipment or its installation or for losses caused by The District's fault or negligence. In the event Contractor's negligent or omitted production or delivery of any Deliverable results in a defect which is the direct or indirect cause of injury to any third party and/or employee of The District or the State, nothing hereunder will act to limit Contractor's, or Contractor's Employees' liability to such third party and/or employee, or will act to limit any remedy that may exist under law or equity with respect to Contractor's and/or Contractor's Employees' negligent act or omission.

ARTICLE 19 – ASSIGNMENT

Contractor will not assign or transfer any of Contractor's interests, rights, responsibilities, duties, obligations and/or liabilities hereunder or assign any of Contractor's claims for money due or that might become due hereunder absent The District's prior written approval.

ARTICLE 20 – SUBCONTRACTING

- A. General Provision. Contractor will not subcontract or assign any portion of this Agreement or the SOW to any subcontractor absent The District's prior written approval. No such subcontracting or assignment will relieve Contractor of its direct and indirect

responsibilities, duties, obligations and/or liabilities hereunder, nor will any such subcontracting trigger or obligate The District to make a payment, either directly or indirectly, to any subcontractor.

- B. Responsibility for Subcontractors to Maintain Confidentiality. Contractor will not disclose any of The District's or State's Confidential Information to a subcontractor absent The District's prior written consent. Each subcontractor will agree in a written form pre-approved by The District to protect and keep confidential any and all Confidential Information in the same manner required of Contractor stated in Article 22, below.

ARTICLE 21 – RELEASE

Contractor's Acceptance of The District's final payment made hereunder will operate as Contractor's full release of The District and their employees from any and all liabilities, claims and obligations whatsoever arising hereunder.

ARTICLE 22 – CONFIDENTIALITY

Contractor will protect and keep confidential any and all Confidential Information that The District provides to Contractor as well as any and all Confidential Information that Contractor develops based upon information provided by The District during Contractor's performance hereunder. Contractor will not make available or provide Confidential Information to any third party absent The District's prior written approval. Upon termination of this Agreement, Contractor will: (a) deliver all Confidential Information in its possession to The District within thirty (30) Business Days of the termination, and (b) Contractor will protect and will not make available or provide Confidential Information to any third party absent The District's prior written approval for a period of five (5) years commencing on the termination or expiration date. Contractor acknowledges that Contractor's failure: (a) to deliver such Confidential Information to The District, or (b) to protect and keep Confidential Information secret may result in The District's seeking to obtain direct, special and/or incidental damages from Contractor.

ARTICLE 23 –CONFLICT OF INTEREST

Contractor warrants that it presently has no interest and will not acquire any interest, direct or indirect, which would conflict in any manner or degree with Contractor's delivery of the Deliverables required hereunder. Contractor certifies that it has followed the requirements of the Governmental Conduct Act, Sections 10-16-1 through 10-16-18, NMSA 1978, regarding contracting with a public officer, state employee or former state employee.

ARTICLE 24 - RECORDS AND AUDIT

Contractor will maintain detailed time and expenditure records, which indicate the date, time, nature and cost of the Deliverables rendered during this Agreement's term and will retain those records for a period of **Insert # of years, minimum is three (3) years** from the date of The District's final payment to Contractor hereunder. Contractor's records will be subject to inspection by The District, Department of Finance Authority and the New Mexico State Auditor's Office. The District will have the right to audit Contractor's billings prior and subsequent to each of The District's payments made to Contractor. The District's payment for the Deliverables hereunder will not foreclose The District's right to recover The District's payments made to Contractor or its affiliates against Contractor's excessive or illegal Payment Invoices, if any.

ARTICLE 25 - AMENDMENT

This Agreement will not be altered, changed, or amended except by an instrument in writing executed by the Parties. No amendment will be effective or binding unless approved by all of the District's and Contractor's approval authorities. Amendments are required for the following:

1. Deliverable requirements stated in the SOW;
2. Due Date of any Deliverable stated in the SOW only if due date change requires extension of Article 5 termination date;
3. Compensation for any Deliverable stated in the SOW;
4. Agreement Compensation, pursuant to Article 3; or
5. Agreement termination, pursuant to Article 5.

ARTICLE 26 – NEW MEXICO EMPLOYEES HEALTH COVERAGE

- A. In the event Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period on the Project during the term of this Agreement, Contractor certifies, by signing this Agreement, to have in place, and agree to maintain for the term of this Agreement, health insurance for those employees and offer that health insurance to those employees in the event the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.
- B. Contractor will maintain a record of the number of employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) declined health insurance for other reasons. Contractor's records are subject to review and audit by a representative of the State.
- C. Contractor will advise Contractor's Employees concerning the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information:
<https://www.bewellnm.com>.

- D. For Indefinite Quantity, Indefinite Delivery contracts (statewide or agency price agreements without specific limitations on quantity and providing for an indeterminate number of orders to be placed against them); Contractor agrees those requirements will become applicable on the first day of the second month after Contractor reports its combined sales (to the State and, if applicable, to local public bodies in the event those sales are made pursuant to a statewide or agency price agreement) in the aggregated amount of \$250,000 or more.

ARTICLE 27 – SEVERABILITY, MERGER, SCOPE, ORDER OF PRECEDENCE

- A. Severability. The provisions of this Agreement are severable, and in the event for any reason, a clause, sentence or paragraph of this Agreement is determined to be invalid by a court, agency or commission having jurisdiction over the subject matter hereof, such invalidity will not affect the other provisions of this Agreement, which will be given effect absent the invalid provision.
- B. Merger/Scope/Order. This Agreement incorporates any and all agreements, covenants and understandings between the Parties concerning the subject matter hereof, and all such agreements, covenants and understanding have been merged into this Agreement. No prior agreement or understanding, verbal or otherwise, of the Parties or their agents or assignees will be valid or enforceable unless stated in this Agreement.

ARTICLE 28 – NOTICES

All deliveries, notices, requests, demands or other communications provided for or required by this Agreement will be in writing and will be deemed to have been given when sent by registered or certified mail (return receipt requested), when sent by overnight carrier, or by email addressed to the other Party's Representative.

Notices will be addressed as follows:

For THE DISTRICT

[Insert: Name of Individual, Position

The District Name

E-mail Address

Telephone Number

Mailing Address]

For CONTRACTOR

[Insert Name of Individual, Position

Company Name

E-mail Address

Telephone Number

Mailing Address]

Any change made concerning either a change of address or a replacement of a Party's Representative must be made in an email or a hard copy letter addressed to the other Party's Representative.

ARTICLE 29 – GENERAL PROVISIONS

- A. Contractor will abide by all federal and state laws and rules and regulations, including but not limited to:
1. Civil and Criminal Penalties. The Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.
 2. Equal Opportunity Compliance. Contractor will abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State, pertaining to equal employment opportunity. In accordance with all such laws of the State, Contractor will assure that no person in the United States will, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed hereunder. In the event Contractor is found to be out of compliance with these requirements during the life of this Agreement, Contractor will take appropriate measures to correct its deficiencies.
 3. Workers Compensation. Contractor will comply with state laws and rules applicable to workers compensation benefits for its employees. In the event Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by The District.
- B. Applicable Law. The laws of the State of New Mexico will govern this Agreement. Venue will be proper only in a New Mexico court of competent jurisdiction in accordance with Section 38-3-1 (G) NMSA 1978. By executing this Agreement, Contractor acknowledges and will submit to the jurisdiction of the courts of the State of New Mexico over any and all such lawsuits arising hereunder.
- C. Waiver. A Party's failure to require strict performance of any provision of this Agreement will not waive or diminish that Party's right thereafter to demand strict compliance with that or any other provision. No waiver by a Party of any of its rights hereunder will be effective unless made in writing, and no effective waiver by a Party of any of its rights will be effective to waive any of its other rights, duties or obligations hereunder.
- D. Headings. Any and all headings within this Agreement are inserted for convenience and ease of reference and will not be considered in the construction or interpretation of any article, section or provision of this Agreement or the SOW. Numbered or lettered

provisions, sections and subsections contained herein refer only to provisions, sections and subsections of this Agreement unless otherwise expressly stated.

- E. Dispute Resolution. In the event dispute arises between the Parties, either Party may send a letter to the other Party requesting the other Party to enter into a dispute resolution process, such as mediation or arbitration, in accordance with NMSA 1978 12-8A-1 through 12-8A-3.

ARTICLE 30 - SURVIVAL

The Articles titled Intellectual Property, Intellectual Property Ownership, Confidentiality, and Warranties will survive the expiration or termination of this Agreement. Software License and Software Escrow agreements entered into by the Parties in conjunction with this Agreement will survive the expiration or termination of this Agreement. Other unexpired agreements, promises, or warranties that will survive the termination of this Agreement are: (list here.)

ARTICLE 31 - TIME

Calculation of Time. Any time period herein calculated by reference to a “day” or “days” means a calendar day or calendar days, unless Business Days are used; provided, however, that in the event the last day for a given act falls on a Saturday, Sunday, or a holiday as observed by the State, the day for such given act will be the first day following that is not a Saturday, Sunday, or a State observed holiday.

ARTICLE 32 – FORCE MAJEURE

Neither Party will be liable for damages or have any right to terminate this Agreement for any delay or Default in performing hereunder in the event such delay or Default is caused by conditions beyond the Party’s control including, but not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), war, insurrection and/or any other cause beyond the reasonable control of the Party whose performance is affected thereby.

IN WITNESS WHEREOF, the Parties hereby execute this Agreement, which will take effect on the last signature date of the required approval authorities below. Each of the signatories, below, may execute this Agreement by hard copy original, facsimile, digital or electronic signature, any of which shall be deemed to be a true and original signature hereunder.

By: _____ Date: _____
Rebecca Simenson, APS Senior Buyer
Albuquerque Public Schools

By: _____ Date: _____
[Insert Contractor Name, Title]
[Company Name]

SAMPLE

EXHIBIT A – SCOPE OF WORK

I. Purpose:

The Purpose of this Agreement, including its goals and objectives are:

[If applicable, insert **Certified Project Name: Name**]

II. The Deliverables:

The following sections describe the required tasks and subtasks to be performed by Contractor concerning each service or product delivered by Contractor to The District (a “Deliverable”) pursuant to this Agreement. Contractor will deliver each Deliverable, but Contractor is not limited to delivering only the identified Deliverables in a given area of the Project. The Parties agree that the Deliverables are the controlling items and that Contractor’s primary obligation is to deliver the Deliverables to The District according to the following sections.

[Contractor may provide samples of the Deliverables to The District, but The District will treat the samples only as examples of Contractor’s work. The District may add new requirements to the Deliverables based upon Contractor’s samples concerning the Deliverables. The District may identify as many Deliverables, with as many associated tasks and subtasks, as may be needed for Contractor to accomplish the Scope of Work.]

A. Sample Deliverable Number 1 **[Insert Name of Deliverable]**

<u>Deliverable Name</u>	<u>Due Date</u>	<u>Compensation</u>
[Insert Name of Deliverable]	[Insert Date this Deliverable is due]	<ul style="list-style-type: none">• [Insert Total Compensation not to exceed \$ Amount, including GRT]• [Insert Total Compensation not to exceed \$Amount less GRT, if applicable]• [Insert Total Compensation not to exceed \$ Amount less retainage, if applicable]

Task Item	Sub Tasks	Description
[Insert Name of Task or tasks to be performed for each Deliverable.]	Sub 1 (through however many subtasks are needed to accomplish Task 1, which leads to the number of Tasks needed to accomplish Deliverable 1.)	<ul style="list-style-type: none"> • [Insert Description] Use active verbs to identify tasks and subtasks to be performed by Contractor. • The due dates for the Deliverables must be stated in order to facilitate The District and Contractor’s efforts to monitor the Project progress. • Compensation amounts for tasks and/or subtasks should be identified here. The total amount The District pays for each Deliverable must be consistent with the Compensation due for each Deliverable. • Contractor will bill The District per Deliverable; clear and well defined language will assist The District and Contractor to determine whether the Deliverable is met for payment purposes.

A. Deliverable Number 1– [Insert the name of the Deliverable.]

<u>Deliverable Name</u>	<u>Due Date</u>	<u>Compensation</u>
[Insert Name of Deliverable]	[Choice #1 – Payment due at the start of the maintenance period Choice #2 - Arrears payment due at the end of the month or quarter]	<ul style="list-style-type: none"> • [Insert Total Compensation not to exceed \$ Amount, including GRT] • [Insert Total Compensation not to exceed \$Amount less GRT, if applicable] • [Insert Total Compensation not to exceed \$ Amount less retainage, if applicable]

Task Item	Sub Tasks	Description
Problem Support	Sub 1	Contractor will make its technical support personnel available to The District by phone and email on the following schedule: [Such as - Monday through Friday, 8:00A.M. To 5:00P.M., excluding state holidays.]
	Sub 2	Contractor will log each of The District’s requests and provide technical support services to The District based upon the priority levels and problem resolution processes stated in this Scope of Work.
	Sub 3	Contractor will update its documentation (Systems Administration Guide, User Guide, and Product Manual) to reflect the changes Contractor makes to the system as Contractor resolves each particular problem.

	Sub 4	Contractor will timely respond to The District’s technical and functional questions concerning the [Insert Application Name]. Such requests will be assigned a default Priority of [Insert appropriate priority level] unless The District requests Contractor to assign a higher priority to a particular request.
Monthly Report	Sub 1	Contractor will provide or make available an online monthly report concerning Contractor’s activity and the status of all of The District’s logged requests.
Activities Tracking	Sub 1	Contractor will maintain a log of requests in The District’s approved tracking system and will assign a unique number to each request according to the chronological order in which Contractor receives The District’s requests. Contractor will provide the unique number to The District for ease of reference and communication between the Parties.
	Sub 2	<p>The District will assign one of four levels of priority to each request:</p> <ul style="list-style-type: none"> • Priority 1 is the most severe program error and represents a situation where mission critical features and functions of the [name of application] are unavailable and no practical alternate mode of operation is available. Contractor will immediately correct Priority 1 problems or Contractor will provide a solution concerning Contractor’s proposed corrective action(s) within [modify as appropriate - two (2) hours]. • Priority 2 indicates a problem in which certain features and functionality are unavailable and no practical alternate mode of operation is available. Contractor will correct Priority 2 problems within twelve (12) hours or Contractor will provide a plan concerning Contractor’s proposed corrective action(s) within [modify as appropriate - one (1) Business Day(s)]. • Priority 3 comprises a normal “next-in-line” problem priority assignment. At this level, Contractor will work on Priority 3 requests in the order in which Contractor receives the requests from The District. Contractor will correct Priority 3 problems or Contractor will provide a plan concerning Contractor’s proposed corrective action(s) within [modify as appropriate - ten (10) Business Days]. • Priority 4 is the release assignment. At this level, Contractor will work on The District’s requests as The District deems appropriate. After Contractor provides time and cost estimates, which are approved by The District, Contractor will incorporate Priority 4 issues into Contractor’s related releases and will document the Priority 4 issues in each Application Deployment Package (“ADP”). Contractor will schedule its delivery of each ADP at The District’s discretion. As such, Contractor’s documentation of Priority 4 issues will be due at the time each related release is delivered.

EXHIBIT B – CONTRACTOR’S PRE-OWNED IP AND THIRD PARTY SOFTWARE

(If none of the following apply, please respond with the word “None.”)

1. Contractor’s Related Pre-Owned IP, licensed patents, COTS or other IP:

2. Contractor’s Unrelated Pre-Owned IP (Use either Part A or Part B below):

A. List Contractor’s Unrelated Pre-Owned IP here:

-OR-

B. With respect to this Agreement, Contractor hereby states, confirms, guarantees, indemnifies and forever holds harmless The District from any and all claims that Contractor may have or ever bring against The District concerning any and all of Contractor’s Unrelated Pre-Owned IP.

By: _____

Date: _____

[Insert Contractor Name, Title]
[Company Name]

3. Third Party Software and Other Intellectual Property (Use either Part A or Part B below):

A. List Third Party Software and Other Intellectual Property here:

-OR-

B. With respect to this Agreement, Contractor hereby states, confirms, guarantees, indemnifies and forever holds harmless The District from any and all claims that Contractor and/or Contractor’s third party vendor(s) may have or bring against The District concerning Contractor’s use of Third Party Software and Other Intellectual Property.

By: _____

Date: _____

[Insert Contractor Name, Title]
[Company Name]