

TIPS VENDOR AGREEMENT

TIPS RFP 230102 Comprehensive Facilities Management and Services

The following Vendor Agreement (“Agreement”) creates a legal agreement between The Interlocal Purchasing System (“TIPS”), a government purchasing cooperative and Department of Texas Region 8 Education Service Center and (INSERT ENTITY NAME):

FacilityForce, Inc
(ENTER ENTITY NAME)

its owners, agents, subsidiaries, and affiliates (together, “Vendor”) (individually, “Party”, and collectively the “Parties”) and this agreement shall exclusively govern the contractual relationship (“Agreement”) between the Parties.

TIPS, a governmental entity and a national purchasing cooperative seeks to provide a valuable and necessary solution to public entities and qualifying non-profits by performing the public procurement solicitation process and awarding compliant contracts to qualified vendors. Then, where the law of a customer’s jurisdiction allows, instead of public entities and qualifying non-profits expending time, money, and resources on the extensive public procurement process, the use of TIPS allows public entities to quickly select and purchase their preferred products or services from qualified, competitively evaluated vendors through cooperative purchasing.

1. **Purpose.** The purpose of this Agreement is to identify the terms and conditions of the relationship between TIPS and Vendor. Public entities and qualifying non-profits that properly join or utilize TIPS (“TIPS Members”) may elect to “piggyback” off of TIPS’ procurements and agreements where the laws of their jurisdiction allow. TIPS Members are not contractual parties to this Agreement although terms and conditions of this Agreement may ensure benefits to TIPS Members.
2. **Authority.** The Parties agree that the signatories below are individual authorized to enter into this Agreement on behalf of their entity and that they are acting under due and proper authority under applicable law.
3. **Definitions.**
 - a. **TIPS Pricing:** The specific pricing, discounts, and other pricing terms and incentives which Vendor submitted and TIPS approved for each respective TIPS Contract awarded to Vendor and all permissible, subsequent pricing updates submitted by Vendor and accepted by TIPS, if any.
 - b. **Authorized Reseller:** A reseller or dealer authorized and added by a Vendor through their online TIPS Vendor Portal to make TIPS sales according to the terms and conditions herein.
4. **Entire Agreement.** This Agreement resulted from TIPS posting a “TIPS Solicitation” (RFP, RCSP, RFQ, or other) and Vendor submitting a proposal in response to that posted TIPS Solicitation for evaluation and award. The Parties agree that this Agreement consists of the provisions set forth herein and: (1) The TIPS solicitation document resulting in this Agreement; (2) Any addenda or clarifications issued in relation to the TIPS solicitation; (3) All solicitation information provided to Vendor by TIPS through the TIPS eBid System; (3) Vendor’s entire proposal response to the TIPS solicitation including all accepted required attachments, acknowledged notices and certifications, accepted negotiated terms, pricing, accepted responses to questions, and accepted written clarifications of Vendor’s proposal, and; any properly included attachments to this Agreement. All documentation and information listed is hereby incorporated by reference as if set forth herein verbatim. In the event of conflict between the terms herein and one of the incorporated documents the terms and conditions herein shall control.
5. **Vendor’s Specific Warranties, Terms, and License Agreements.** Because TIPS serves public entities and non-profits throughout the nation all of which are subject to specific laws and policies of their jurisdiction, as a matter of standard practice, TIPS does not typically accept a Vendor’s specific “Sale Terms” (warranties, license agreements, master agreements, terms and conditions, etc.) on behalf of all TIPS Members. TIPS may permit Vendor to attach those to this Agreement to display to interested customers what terms may apply to their Supplemental Agreement with Vendor (if submitted by Vendor for that purpose). However, unless this term of the Agreement is negotiated and modified to state otherwise, those specific Sale Terms are not accepted by TIPS on behalf of all TIPS Members and each Member may choose whether to accept, negotiate, or reject those specific Sale Terms, which must be reflected in a separate agreement between Vendor and the Member in order to be effective.

- 6. Vendor Identity and Contact Information.** It is Vendor's sole responsibility to ensure that all identifying vendor information (name, EIN, d/b/a's, etc.) and contact information is updated and current at all times within the TIPS eBid System and the TIPS Vendor Portal. It is Vendor's sole responsibility to confirm that all e-correspondence issued from tips-usa.com, ionwave.net, and tipsconstruction.com to Vendor's contacts are received and are not blocked by firewall or other technology security. Failure to permit receipt of correspondence from these domains and failure to keep vendor identity and contact information current at all times during the life of the contract may cause loss of TIPS Sales, accumulating TIPS fees, missed rebid opportunities, lapse of TIPS Contract(s), and unnecessary collection or legal actions against Vendor. It is no defense to any of the foregoing or any breach of this Agreement that Vendor was not receiving TIPS' electronic communications issued by TIPS to Vendor's listed contacts.
- 7. Initiation of TIPS Sales.** When a public entity initiates a purchase with Vendor, if the Member inquires verbally or in writing whether Vendor holds a TIPS Contract, it is the duty of the Vendor to verify whether the Member is seeking a TIPS purchase. Once verified, Vendor must include the TIPS Contract Number on all purchase communications and sales documents exchanged with the TIPS Member.
- 8. TIPS Sales and Supplemental Agreements.** The terms of the specific TIPS order, including but not limited to: shipping, freight, insurance, delivery, fees, bonding, cost, delivery expectations and location, returns, refunds, terms, conditions, cancellations, order assistance, etc., shall be controlled by the applicable purchase agreement *also referred to as Sale Terms and the Member Customer must execute the applicable Vendor either a Software License, Software Maintenance, Professional Services, Hosting Agreement or Software as a Service Agreement.* (hereinafter "Supplemental Agreement") which will be entered into between the TIPS Member Customer and Vendor only. TIPS is not a party to any Supplemental Agreement. All Supplemental Agreements shall include Vendor's Name, as known to TIPS, and TIPS Contract Name and Number. Vendor accepts and understands that TIPS is not a legal party to TIPS Sales and Vendor is solely responsible for identifying fraud, mistakes, unacceptable terms, or misrepresentations for the specific order prior to accepting. When Vendor accepts or fulfills an order, even when processed through TIPS, Vendor is representing that Vendor has carefully reviewed the order for legality, authenticity, and accuracy and TIPS shall not be liable or responsible for the same. In the event of a conflict between the terms of this TIPS Vendor Agreement and those contained in any Supplemental Agreement, the provisions set forth herein shall control unless otherwise agreed to and authorized by the Parties in writing within the Supplemental Agreement.
- 9. Right of Refusal.** Vendor has the right not to sell to a TIPS Member under the awarded agreement at Vendor's discretion unless otherwise required by law.
- 10. Reporting TIPS Sales.** Vendor must report all TIPS Sales to TIPS. If a TIPS sale is initiated by Vendor receiving a TIPS Member's purchase order from TIPS directly, Vendor may consider that specific TIPS Sale reported. Otherwise, with the exception of TIPS Automated Vendors, who have signed an exclusive agreement with TIPS regarding reporting, all TIPS Sales must be reported to TIPS by either: (1) Emailing the purchase order or similar purchase document (with Vendor's Name, as known to TIPS, and the TIPS Contract Name and Number included) to TIPS at tipspo@tips-usa.com with "Confirmation Only" in the subject line of the email within three business days of Vendor's acceptance of the order, or; (2) Within 3 business days of the order being accepted by Vendor, Vendor must login to the TIPS Vendor Portal and successfully self-report all necessary sale information within the Vendor Portal and confirm that it shows up accurately on your current Vendor Portal statement. No other method of reporting is acceptable unless agreed to by the Parties in writing. Failure to report all sales pursuant to this provision may result in immediate cancellation of Vendor's TIPS Contract(s) for cause at TIPS' sole discretion. Please refer to the TIPS [Accounting FAQ's](#) for more information about reporting sales and if you have further questions, contact the Accounting Team at accounting@tips-usa.com.
- 11. TIPS Administration Fees.** The collection of administrative fees by TIPS, a government entity, for performance of these procurement services is required pursuant to Texas Government Code Section 791.011 et. seq. The administration fee ("TIPS Administration Fee") is the amount legally owed by Vendor to TIPS for TIPS Sales made by Vendor. The TIPS Administration Fee amount is typically a set percentage of the amount paid by the TIPS Member for each TIPS Sale, less shipping cost, bond cost, and taxes if applicable and identifiable, which is legally due to TIPS, but the exact TIPS Administration Fee for this Contract is published in the corresponding solicitation and is incorporated herein by reference. TIPS Administration Fees are due to TIPS immediately upon Vendor's receipt of payment, including partial payment, for a TIPS Sale. The TIPS Administration Fee is assessed on the amount paid by the TIPS Member, not on the Vendor's cost or on the amount for which the Vendor sold the item to a dealer or Authorized Reseller. Upon receipt of payment for a TIPS Sale, including partial payment (which renders TIPS Administration Fees immediately due), Vendor shall issue to TIPS the corresponding TIPS Administration Fee payment as soon as possible but not later than thirty-one calendar days following Vendor's receipt of payment. Vendor shall pay TIPS via check unless otherwise agreed to by the Parties in writing. Vendor shall include clear documentation with the issued payment dictating to which sale(s) the amount should be applied. Vendor may create a payment report within their TIPS Vendor Portal which is the preferred documentation dictating to which TIPS Sale(s) the amount should be applied. Failure to pay all TIPS Administration Fees pursuant to this provision may result in immediate cancellation of Vendor's TIPS Contract(s) for cause at TIPS' sole discretion as well as the initiation of collection and legal actions by TIPS against

Vendor to the extent permitted by law. Any overpayment of participation fees to TIPS by Vendor will be refunded to the Vendor within ninety (90) days of receipt of notification if TIPS receives written notification of the overpayment not later than the expiration of six (6) months from the date of overpayment and TIPS determines that the amount was not legally due to TIPS pursuant to this agreement and applicable law. Any notification of overpayment received by TIPS after the expiration of six (6) months from the date that TIPS received the payment will render the overpayment non-refundable. Region 8 ESC and TIPS reserve the right to extend the six (6) month deadline if approved by the Region 8 ESC Board of Directors. TIPS reserves all rights under the law to collect TIPS Administration Fees due to TIPS pursuant to this Agreement.

- 12. Term of the Agreement.** This Agreement with TIPS is for approximately three years with a one-year, consecutive option for renewal as described herein. Renewal options are not automatic and shall only be effective if offered by TIPS at its sole discretion. If TIPS offers a renewal option, the Vendor will be notified via email issued to Vendor's then-listed Primary Contact. The renewal option shall be deemed accepted by Vendor unless Vendor notifies TIPS of its objection to the renewal option in writing and confirms receipt by TIPS.

Actual Effective Date: Agreement is effective upon signature by authorized representatives of both Parties. The Effective Date does not affect the "Term Calculation Start Date."

Term Calculation Start Date: To keep the contract term consistent for all vendors awarded under a single TIPS contract, Vendor shall calculate the foregoing term as starting on the last day of the month that "Award Notifications" are anticipated as published in the Solicitation, regardless of the actual Effective Date.

Example of Term Calculation Start Date: If the anticipated "Award Date" published in the Solicitation is May 22, 2023, but extended negotiations delay award until June 27, 2023 (Actual Effective Date), the Term Calculation Start Date shall be May 31, 2023 in this example.

Contract Expiration Date: To keep the contract term consistent for all vendors awarded under a single TIPS contract, the term expiration date shall be three-years from the Term Calculation Start Date.

Example of Contract Expiration Date: If the anticipated "Award Date" published in the Solicitation is May 22, 2023, but extended negotiations delay award until June 27, 2023 (Actual Effective Date), the Term Calculation Start Date shall be May 31, 2023 and the Contract Expiration Date of the resulting initial "three-year" term, (which is subject to an extension(s)) will be May 31, 2026 in this example.

Option(s) for Renewal: Any option(s) for renewal shall begin on the Contract Expiration Date, or the date of the expiration of the prior renewal term where applicable, and continue for the duration specified for the renewal option herein.

Example of Option(s) for Renewal: In this example, if TIPS offers a one-year renewal and the Contract Expiration Date is May 31, 2026, then the one-year renewal is effective from May 31, 2026 to May 31, 2027.

TIPS may offer to extend Vendor Agreements to the fullest extent the TIPS Solicitation resulting in this Agreement permits.

- 13. TIPS Pricing.** Vendor agrees and understands that for each TIPS Contract that it holds, Vendor submitted, agreed to, and received TIPS' approval for specific pricing, discounts, and other pricing terms and incentives which make up Vendor's TIPS Pricing for that TIPS Contract ("TIPS Pricing"). Vendor confirms that Vendor will not add the TIPS Administration Fee as a charge or line-item in a TIPS Sale. Vendor hereby certifies that Vendor shall only offer goods and services through this TIPS Contract if those goods and services are included in or added to Vendor's TIPS Pricing and approved by TIPS. TIPS reserves the right to review Vendor's pricing update requests as specifically as line-item by line-item to determine compliance. However, Vendor contractually agrees that all submitted pricing updates shall be within the original terms of the Vendor's TIPS Pricing (scope, proposed discounts, price increase limitations, and other pricing terms and incentives originally proposed by Vendor) such that TIPS may accept Vendors price increase requests as submitted without additional vetting at TIPS discretion. Any pricing quoted by Vendor to a TIPS Member or on a TIPS Quote shall never exceed Vendor's TIPS Pricing for any good or service offered through TIPS. Vendor certifies by signing this agreement that Vendor's TIPS Pricing for all goods and services included in Vendor's TIPS Pricing shall either be equal to or less than Vendor's current pricing for that good or services which are substantially similar, comparable, and like for like for any other customer. TIPS Pricing price increases and modifications, if permitted, will be honored according to the terms of the solicitation and Vendor's proposal, incorporated herein by reference.

- 14. Indemnification of TIPS.** VENDOR AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND TIPS, TIPS MEMBERS, TIPS OFFICERS, TIPS EMPLOYEES, TIPS DIRECTORS, AND TIPS TRUSTEES (THE "TIPS INDEMNITEES") FROM AND AGAINST ALL CLAIMS AND SUITS BY THIRD-PARTIES FOR DAMAGES, INJURIES TO PERSONS (INCLUDING DEATH), PROPERTY DAMAGES, LOSSES, EXPENSES, FEES, INCLUDING COURT COSTS, ATTORNEY'S FEES, AND EXPERT FEES, ARISING OUT OF OR RELATING TO VENDOR'S

PERFORMANCE UNDER THIS AGREEMENT (INCLUDING THE PERFORMANCE OF VENDOR'S OFFICERS, EMPLOYEES, AGENTS, AUTHORIZED RESELLERS, SUBCONTRACTORS, LICENSEES, OR INVITEES), REGARDLESS OF THE NATURE OF THE CAUSE OF ACTION, INCLUDING WITHOUT LIMITATION CAUSES OF ACTION BASED UPON COMMON, CONSTITUTIONAL, OR STATUTORY LAW OR BASED IN WHOLE OR IN PART UPON ALLEGATIONS OF NEGLIGENT OR INTENTIONAL ACTS OR OMISSIONS ON THE PART OF VENDOR, ITS OFFICERS, EMPLOYEES, AGENTS, AUTHORIZED RESELLERS, SUBCONTRACTORS, LICENSEES, OR INVITEES. NO LIMITATION OF LIABILITY FOR DAMAGES FOR PERSONAL INJURY OR PROPERTY DAMAGE ARE PERMITTED OR AGREED TO BY TIPS. APART FROM THIS INDEMNIFICATION PROVISION REQUIRING INDEMNIFICATION OF THE TIPS INDEMNITEES' ATTORNEY'S FEES AS SET FORTH ABOVE, RECOVERY OF ATTORNEYS' FEES BY THE PREVAILING PARTY IS AUTHORIZED ONLY IF AUTHORIZED BY TEX. EDUC. CODE § 44.032(F).

15. **Indemnification and Assumption of Risk – Vendor Data.** VENDOR AGREES THAT IT IS VOLUNTARILY PROVIDING DATA (INCLUDING BUT NOT LIMITED TO: VENDOR INFORMATION, VENDOR DOCUMENTATION, VENDOR'S PROPOSALS, VENDOR PRICING SUBMITTED OR PROVIDED TO TIPS, TIPS CONTRACT DOCUMENTS, TIPS CORRESPONDENCE, VENDOR LOGOS AND IMAGES, VENDOR'S CONTACT INFORMATION, VENDOR'S BROCHURES AND COMMERCIAL INFORMATION, VENDOR'S FINANCIAL INFORMATION, VENDOR'S CERTIFICATIONS, AND ANY OTHER VENDOR INFORMATION OR DOCUMENTATION SUBMITTED TO TIPS BY VENDOR AND ITS AGENTS) ("VENDOR DATA") TO TIPS. FOR THE SAKE OF CLARITY, AND WITHOUT LIMITING THE BREADTH OF THE INDEMNITY OBLIGATIONS IN SECTION 13 ABOVE, VENDOR AGREES TO TIPS WILL NOT BE LIABLE FOR ANY AND ALL LOSSES THAT VENDOR MAY SUFFER, OR FOR ANY AND ALL OTHER LIABILITY OF ANY NATURE WHATSOEVER, ARISING OUT OF OR RELATING TO: (I) ANY UNAUTHORIZED, NEGLIGENT OR WRONGFUL USE OF, OR CYBER DATA BREACH INCIDENT AND VIRUSES OR OTHER CORRUPTING AGENTS INVOLVING, VENDOR'S DATA, PRICING, AND INFORMATION, COMPUTERS, OR OTHER HARDWARE OR SOFTWARE SYSTEMS ! OR FOR THE ACTS OR OMISSIONS BY TIPS MEMBER, OR FOR ANY ALLEGATIONS OR CLAIMS THAT THE VENDOR DATA INFRINGES ON THE INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY, OR FOR CLAIMS BY THE VENDOR FOR INTELLECTUAL PROPERTY INFRINGEMENT.
16. **Procedures Related to Indemnification.** In the event that an indemnity obligation arises, Vendor shall pay all amounts set forth in Section 13 and 14 above (including any settlements) and – if it has accepted its indemnity obligation without qualification – control the legal defense to such claim or cause of action, including without limitation attorney selection, strategy, discovery, trial, appeal, and settlement, and TIPS shall, at Vendor's cost and expense (with respect to reasonable out of pocket costs and expenses incurred by TIPS which shall be reimbursed to TIPS by Vendor), provide all commercially reasonable assistance requested by Vendor. In controlling any defense, Vendor shall ensure that all assertions of governmental immunity and all applicable pleas and defenses shall be promptly asserted.
17. **Indemnity for Underlying Sales and Supplemental Agreements.** Vendor shall be solely responsible for any customer claims or any disputes arising out of TIPS Sales or any Supplemental Agreement as if sold in the open-market. The Parties agree that TIPS shall not be liable for any claims arising out of Vendor's TIPS Sales or Supplemental Agreements, including but not limited to: allegations of product defect or insufficiency, allegations of service defect or insufficiency, allegations regarding delivery defect or insufficiency, allegations of fraud or misrepresentation, allegations regarding pricing or amounts owed for TIPS sales, and/or allegations regarding payment, over-payment, under-payment, or non-payment for TIPS Sales. Payment/Drafting, overpayment/over-drafting, under-payment/under-drafting, or non-payment for TIPS Sales between customer and Vendor and inspections, rejections, or acceptance of such purchases shall be the exclusive respective obligations of Vendor/Customer, and disputes shall be handled in accordance with the terms of the underlying Supplemental Agreement(s) entered into between Vendor and Customer. Vendor acknowledges that TIPS is not a dealer, subcontractor, agent, or reseller of Vendor's goods and services and shall not be responsible for any claims arising out of alleged insufficiencies or defects in Vendor's goods and services, should any arise.
18. **Confidentiality of Vendor Data.** Vendor understands and agrees that by signing this Agreement, all Vendor Data is hereby released to TIPS, TIPS Members, and TIPS third-party administrators to effectuate Vendor's TIPS Contract except as provided for herein. The Parties agree that Vendor Data is accessible by all TIPS Members as if submitted directly to that TIPS Member Customer for purchase consideration. If Vendor otherwise considers any portion of Vendor's Data to be confidential and not subject to public disclosure pursuant to Chapter 552 Texas Gov't Code (the "Public Information Act") or other law(s) and orders, Vendor must have identified the claimed confidential materials through proper execution of the Confidentiality Claim Form which is required to be submitted as part of Vendor's proposal resulting in this Agreement and incorporated by reference. The Confidentiality Claim Form included in Vendor's proposal and incorporated herein by reference is the sole indicator of whether Vendor considers any Vendor Data confidential in the event TIPS receives a Public Information Request. If TIPS receives a request, any responsive documentation not deemed confidential by you in this manner will be automatically released. For Vendor Data deemed confidential by you in this manner, TIPS will follow procedures of controlling statute(s) regarding any claim of confidentiality and shall not be liable for any release of information required by law, including Attorney General determination and opinion. In the event that TIPS receives a written request for information pursuant to the Public Information Act that affects Vendor's interest in any information or data furnished to TIPS by Vendor, and TIPS requests an opinion from the Attorney General, Vendor may, at its own option and expense, prepare comments and submit information

directly to the Attorney General stating why the requested information is exempt from disclosure pursuant to the requirements of the Public Information Act. Vendor is solely responsible for submitting the memorandum brief and information to the Attorney General within the time period prescribed by the Public Information Act. Notwithstanding any other information provided in this solicitation or Vendor designation of certain Vendor Data as confidential or proprietary, Vendor's acceptance of this TIPS Vendor Agreement constitutes Vendor's consent to the disclosure of Vendor's Data, including any information deemed confidential or proprietary, to TIPS Members or as ordered by a Court or government agency, including without limitation the Texas Attorney General. Vendor agrees that TIPS shall not be responsible or liable for any use or distribution of information or documentation by TIPS Members or as required by law.

- 19. Vendor's Authorized Resellers.** TIPS recognizes that many vendors operate in the open market through the use of resellers or dealers. For that reason, TIPS permits Vendor to authorize Authorized Resellers within its Vendor Portal and make TIPS Sales through the Authorized Reseller(s). Once authorized by Vendor in the Vendor Portal, the Authorized Reseller(s) may make TIPS sales to TIPS Members. However, all purchase documents must include: (1) Authorized Reseller's Name; (2) Vendor's Name, as known to TIPS, and; (3) Vendor's TIPS Contract Name and Number under which it is making the TIPS Sale. Either Vendor or Reseller may report the sale pursuant to the terms herein. However, Vendor agrees that it is legally responsible for all reporting and fee payment as described herein for TIPS Sales made by Authorized Resellers. The TIPS Administration Fee is assessed on the amount paid by the TIPS Member, not on the Vendor's cost or on the amount for which the Vendor sold the item to a dealer or Authorized Reseller. The Parties intend that Vendor shall be responsible and liable for TIPS Sales made by Vendor's Authorized Resellers. Vendor agrees that it is voluntarily authorizing this Authorized Reseller and in doing so, Vendor agrees that it is doing so at its own risk and agrees to protect, indemnify, and hold TIPS harmless in accordance with Sections 14-17 above related to Authorized Reseller TIPS Sales made pursuant to this Agreement or purporting to be made pursuant to this Agreement that may be asserted against Vendor whether rightfully brought or otherwise. The Parties further agree that it is no defense to Vendor's breach of this Agreement that an Authorized Reseller caused Vendor of breach this Agreement.
- 20. Circumvention of TIPS Sales.** When a public entity initiates a purchase with Vendor, if the Member inquires verbally or in writing whether Vendor holds a TIPS Contract, it is the duty of the Vendor to verify whether the Member is seeking a TIPS purchase. Any request for quote, customer communication, or customer purchase initiated through or referencing a TIPS Contract shall be completed through TIPS pursuant to this Agreement. Any encouragement or participation by Vendor in circumventing a TIPS sale being completed may result in immediate termination of Vendor's TIPS Contract(s) for cause as well as preclusion from future TIPS opportunities at TIPS sole discretion.
- 21. State of Texas Franchise Tax.** By signature hereon, Vendor hereby certifies that Vendor is not currently delinquent in the payment of any franchise taxes owed to the State of Texas under Chapter 171 of the Texas Tax Code.
- 22. Termination.**
- A) Termination for Convenience. TIPS may, by written notice to Vendor, terminate this Agreement for convenience, in whole or in part, at any time by giving thirty (30) days' written notice to Vendor of such termination, and specifying the effective date thereof.
 - B) Termination for Cause. If Vendor fails to materially perform pursuant to the terms of this Agreement, TIPS shall provide written notice to Vendor specifying the default. If Vendor does not cure such default within thirty (30) days, TIPS may terminate this Agreement, in whole or in part, for cause. If TIPS terminates this Agreement for cause, and it is later determined that the termination for cause was wrongful, the termination shall automatically be converted to and treated as a termination for convenience.
 - C) Vendor's Termination. If TIPS fails to materially perform pursuant to the terms of this Agreement, Vendor shall provide written notice to TIPS specifying the default ("Notice of Default"). If TIPS does not cure such default within thirty (30) days, Vendor may terminate this Agreement, in whole or in part, for cause. If TIPS terminates this Agreement for cause, and it is later determined that the termination for cause was wrongful, the termination shall automatically be converted to and treated as a termination for convenience.
 - D) Upon termination, all TIPS Sale orders previously accepted by Vendor shall be fulfilled and Vendor shall be paid for all TIPS Sales executed pursuant to the applicable terms. All TIPS Sale orders presented to Vendor but not fulfilled by Vendor, prior to the actual termination of this agreement shall be honored at the option of the TIPS Member. TIPS shall submit to Vendor an invoice for any outstanding TIPS Administration Fees and approved expenses and Vendor shall pay such fees and expenses within 30 calendar days of receipt of such valid

TIPS invoice. Vendor acknowledges and agrees that continued participation in TIPS is subject to TIPS' sole discretion and that any Vendor may be removed from the TIPS program at any time with or without cause. This termination clause does not affect TIPS Sales Supplemental Agreements pursuant to this term regarding termination and the Survival Clause term.

- E) Vendor hereby waives any and all claims for damages, including, but not limited, to consequential damages or lost profits, that might arise from TIPS' act of terminating this Agreement.

- 23. Survival Clause.** It is the intent of the Parties that this Agreement and procurement method applies to any TIPS Sale made during the life of this Agreement even if made on or near the Contract Expiration Date as defined herein. Thus, all TIPS Sales, including but not limited to: leases, service agreements, license agreements, open purchase orders, warranties, and contracts, even if they extend months or years past the TIPS Contract Expiration Date, shall survive the expiration or termination of this Agreement subject to the terms and conditions of the Supplemental Agreement between Customer and Vendor or unless otherwise specified herein.
- 24. Audit Rights.** Due to transparency statutes and public accountability requirements of TIPS and TIPS Members, Vendor shall at their sole expense, maintain documentation of all TIPS Sales for a period of three years from the time of the TIPS Sale. In order to ensure and confirm compliance with this agreement, TIPS shall have authority to conduct audits of Vendor's TIPS Pricing or TIPS Sales with thirty-days' notice unless the audit is ordered by a Court Order or by a Government Agency with authority to do so without said notice. Notwithstanding the foregoing, in the event that TIPS is made aware of any pricing being offered to eligible entities that is materially inconsistent with Vendor's TIPS Pricing, TIPS shall have the ability to conduct the audit internally or may engage a third-party auditing firm to investigate any possible non-compliant conduct or may terminate the Agreement according to the terms of this Agreement. In the event of an audit, the requested materials shall be reasonably provided in the time, format, and at the location acceptable to TIPS. TIPS agrees not to perform a random audit the TIPS transaction documentation more than once per calendar year, but reserves the right to audit for just cause or as required by any governmental agency or court with regulatory authority over TIPS or the TIPS Member. These audit rights shall survive termination of this Agreement for a period of one (1) year from the effective date of termination.
- 25. Conflicts of Interest.** The Parties confirm that they have not offered, given, or accepted, nor intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, service to the other in connection with this Agreement. Vendor affirms that, to the best of Vendor's knowledge, this Agreement has been arrived at independently, and is awarded without collusion with anyone to obtain information or gain any favoritism that would in any way limit competition or give an unfair advantage over other vendors in the award of this Agreement. Vendor agrees that it has disclosed any necessary affiliations with Region 8 Education Service Center and the TIPS Department, if any, through the Conflict of Interest attachment provided in the solicitation resulting in this Agreement.
- 26. Volume of TIPS Sales.** Nothing in this Agreement or any TIPS communication may be construed as a guarantee that TIPS or TIPS Members will submit any TIPS orders to Vendor at any time.
- 27. Compliance with the Law.** The Parties agree to comply fully with all applicable federal, state, and local statutes, ordinances, rules, and regulations applicable to their entity in connection with the programs contemplated under this Agreement.
- 28. Severability.** If any term(s) or provision(s) of this Agreement are held by a court of competent jurisdiction to be invalid, void, or unenforceable, then such term(s) or provision(s) shall be deemed restated to reflect the original intention of the Parties as nearly as possible in accordance with applicable law and the remainder of this Agreement, and the remainder of the provisions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated, unless such holding causes the obligations of the Parties hereto to be impossible to perform or shall render the terms of this Agreement to be inconsistent with the intent of the Parties hereto.
- 29. Force Majeure.** If by reason of Force Majeure, either party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement through no fault of its own then such party shall give notice and full particulars of Force Majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied upon. Upon delivering such notice, the obligation of the affected party, so far as it is affected by such Force Majeure as described, shall be suspended during the continuance of the inability then claimed but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch. In the event that Vendor's obligations are suspended by reason of Force Majeure, all TIPS Sales accepted prior to the Force Majeure event shall be the legal responsibility of Vendor and the terms of the TIPS Sale Supplemental Agreement shall control Vendor's failure to fulfill for a Force Majeure event.

- 30. Immunity.** Vendor agrees that nothing in this Agreement shall be construed as a waiver of sovereign or government immunity; nor constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to Region 8 Education Service Center or its TIPS Department. The failure to enforce, or any delay in the enforcement of, any privileges, rights, defenses, remedies, or immunities available to Region 8 Education Service Center or its TIPS Department under this Agreement or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel.
- 31. Insurance Requirements.** Vendor agrees to maintain the following minimum insurance requirements for the duration of this Agreement. All policies held by Vendor to adhere to this term shall be written by a carrier with a financial size category of VII and at least a rating of "A-" by A.M. Best Key Rating Guide. The coverages and limits are to be considered minimum requirements and in no way limit the liability of the Vendor(s). Any immunity available to TIPS or TIPS Members shall not be used as a defense by the contractor's insurance policy. Only deductibles applicable to property damage are acceptable, unless proof of retention funds to cover said deductibles is provided. "Claims made" policies will not be accepted. Vendor's required minimum coverage shall not be suspended, voided, cancelled, non-renewed or reduced in coverage or in limits unless replaced by a policy that provides the minimum required coverage except after thirty (30) days prior written notice by certified mail, return receipt requested has been given to TIPS or the TIPS Member if a project or pending delivery of an order is ongoing. Upon request, certified copies of all insurance policies shall be furnished to the TIPS or the TIPS Member. Vendor agrees that when Vendor or its subcontractors are liable for any damages or claims, Vendor's policy, shall be primary over any other valid and collectible insurance carried by the Member or TIPS.
- General Liability: \$1,000,000 each Occurrence/Aggregate
Automobile Liability: \$300,000 Includes owned, hired & non-owned
Workers' Compensation: Statutory limits for the jurisdiction in which the Vendor performs under this Agreement. If Vendor performs in multiple jurisdictions, Vendor shall maintain the statutory limits for the jurisdiction with the greatest dollar policy limit requirement.
Umbrella Liability: \$1,000,000 each Occurrence/Aggregate
- 32. Waiver.** No waiver of any single breach or multiple breaches of any provision of this Agreement shall be construed to be a waiver of any breach of any other provision. No delay in acting regarding any breach of any provision shall be construed to be a waiver of such breach.
- 33. Binding Agreement.** This Agreement shall be binding and inure to the benefit of the Parties hereto and their respective heirs, legal successors, and assigns.
- 34. Headings.** The paragraph headings contained in this Agreement are included solely for convenience of reference and shall not in any way affect the meaning or interpretation of any of the provisions of this Agreement.
- 35. Choice of Law and Venue.** This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Texas. Any proceeding, claim, action, or alternative dispute resolution arising out of or relating to this Agreement or involving TIPS shall be brought in a State Court of competent jurisdiction in Camp County, Texas, or if Federal Court is legally required, a Federal Court of competent jurisdiction in the Eastern District of Texas, and each of the Parties irrevocably submits to the exclusive jurisdiction of said court in any such proceeding, waives any objection it may now or hereafter have to venue or to convenience of forum, agrees that all claims in respect of the proceeding shall be heard and determined only in any such court, and agrees not to bring any proceeding arising out of or relating to this procurement process or any contract resulting from or and contemplated transaction in any other court. The Parties agree that either or both of them may file a copy of this paragraph with any court as written evidence of the knowing, voluntary and freely bargained for agreement between the Parties irrevocably to waive any objections to venue or to convenience of forum.
- 36. Relationship of the Parties.** Nothing contained in this Agreement shall be construed to make one Party an agent of the other Party nor shall either party have any authority to bind the other in any respect, unless expressly authorized by the other party in writing. The Parties are independent contractors and nothing in this Agreement creates a relationship of employment, trust, agency or partnership between them.
- 37. Assignment.** No assignment of this Agreement or of any duty or obligation of performance hereunder, shall be made in whole or in part by a Party hereto without the prior written consent of the other Party. Written consent of TIPS shall not be unreasonably withheld.
- 38. Minimum Condition and Warranty Requirements for TIPS Sales.** All goods quoted or sold through a TIPS Sale shall be new unless clearly stated otherwise in writing. All new goods and services shall include the applicable manufacturers minimum standard warranty unless otherwise agreed to in the Supplemental Agreement.

- 39. Minimum Customer Support Requirements for TIPS Sales.** Vendor shall provide timely and commercially reasonable support for TIPS Sales or as agreed to in the applicable Supplemental Agreement.
- 40. Minimum Shipping Requirements for TIPS Sales.** Vendor shall ship, deliver, or provide ordered goods and services within a commercially reasonable time after acceptance of the order. If a delay in delivery is anticipated, Vendor shall notify the TIPS Member as to why delivery is delayed and provide an updated estimated time for completion. The TIPS Member may cancel the order if the delay is not commercially acceptable or not consistent with the Supplemental Agreement applicable to the order.
- 41. Minimum Vendor License Requirements.** Vendor shall maintain, in current status, all federal, state, and local licenses, bonds and permits required for the operation of the business conducted by Vendor. Vendor shall remain fully informed of and in compliance with all ordinances and regulations pertaining to the lawful provision of goods or services under the TIPS Agreement. TIPS and TIPS Members reserve the right to stop work and/or cancel a TIPS Sale or terminate this or any TIPS Sale Supplemental Agreement involving Vendor if Vendor's license(s) required to perform under this Agreement or under the specific TIPS Sale have expired, lapsed, are suspended or terminated subject to a 30-day cure period unless prohibited by applicable statute or regulation.
- 42. Minimum Vendor Legal Requirements.** Vendor shall remain aware of and comply with this Agreement and all local, state, and federal laws governing the sale of products/services offered by Vendor under this contract. Such applicable laws, ordinances, and policies must be complied with even if not specified herein.
- 43. Minimum Site Requirements for TIPS Sales (when applicable to TIPS Sale).**

Cleanup: When performing work on site at a TIPS Member's property, Vendor shall clean up and remove all debris and rubbish resulting from their work as required or directed by the TIPS Member or as agreed by the parties. Upon completion of work, the premises shall be left in good repair and an orderly, neat, clean and unobstructed condition.

Preparation: Vendor shall not begin a project for which a TIPS Member has not prepared the site, unless Vendor does the preparation work at no cost, or until TIPS Member includes the cost of site preparation in the TIPS Sale Site preparation includes, but is not limited to: moving furniture, installing wiring for networks or power, and similar pre-installation requirements.

Registered Sex Offender Restrictions: For work to be performed at schools, Vendor agrees that no employee of Vendor or a subcontractor who has been adjudicated to be a registered sex offender will perform work at any time when students are, or reasonably expected to be, present unless otherwise agreed by the TIPS Member. Vendor agrees that a violation of this condition shall be considered a material breach and may result in the cancellation of the TIPS Sale at the TIPS Member's discretion. Vendor must identify any additional costs associated with compliance of this term. If no costs are specified, compliance with this term will be provided at no additional charge.

Safety Measures: Vendor shall take all reasonable precautions for the safety of employees on the worksite, and shall erect and properly maintain all necessary safeguards for protection of workers and the public. Vendor shall post warning signs against all hazards created by the operation and work in progress. Proper precautions shall be taken pursuant to state law and standard practices to protect workers, general public and existing structures from injury or damage.

Smoking: Persons working under Agreement shall adhere to the TIPS Member's or local smoking statutes, codes, ordinances, and policies.

- 44. Payment for TIPS Sales.** TIPS Members may make payments for TIPS Sales directly to Vendor, Vendor's Authorized Reseller, or as otherwise agreed to in the applicable Supplemental Agreement after receipt of the invoice and in compliance with applicable payment statutes. Regardless of how payment is issued or received for a TIPS Sale, Vendor is responsible for all reporting and TIPS Administration Fee payment requirements as stated herein.
- 45. Marketing.** Vendor agrees to allow TIPS to use their name and logo within the TIPS website, database, marketing materials, and advertisements unless Vendor negotiates this term to include a specific acceptable-use directive. Any use of TIPS' name and logo or any form of publicity, inclusive of press release, regarding this Agreement by Vendor must have prior approval from TIPS which will not be unreasonably withheld. Request may be made by email to tips@tips-usa.com. For marketing efforts directed to TIPS Members, Vendor must request and execute a separate Joint Marketing Disclaimer, at marketing@tips-usa.com, before TIPS can release contact information for TIPS Member entities for the purpose of marketing your TIPS contract(s). Vendor must adhere to strict Marketing Requirements once a disclaimer is executed. The Joint Marketing Disclaimer is a supplemental agreement specific to joint marketing

efforts and has no effect on the terms of the TIPS Vendor Agreement. Vendor agrees that any images, photos, writing, audio, clip art, music, or any other intellectual property ("Property") or Vendor Data utilized, provided, or approved by Vendor during the course of the joint marketing efforts are either the exclusive property of Vendor, or Vendor has all necessary rights, license, and permissions to utilize said Property in the joint marketing efforts. Vendor agrees that they shall indemnify and hold harmless TIPS and its employees, officers, agents, representatives, contractors, assignees, designees, and TIPS Members from any and all claims, damages, and judgments involving infringement of patent, copyright, trade secrets, trade or services marks, and any other intellectual or intangible property rights and/or claims arising from the Vendor's (including Vendor's officers', employees', agents', Authorized Resellers', subcontractors', licensees', or invitees') unauthorized use or distribution of Vendor Data and Property.

46. **Tax Exempt Status of TIPS Members.** Most TIPS Members are tax exempt entities and the laws and regulations applicable to the specific TIPS Member customer shall control.
47. **Automatic Renewal Limitation for TIPS Sales.** No TIPS Sale may incorporate an automatic renewal clause that exceeds month to month terms with which the TIPS Member must comply. All renewal terms incorporated into a TIPS Sale Supplemental Agreement shall only be valid and enforceable when Vendor received written confirmation of acceptance of the renewal term from the TIPS Member for the specific renewal term. The purpose of this clause is to avoid a TIPS Member inadvertently renewing an Agreement during a period in which the governing body of the TIPS Member has not properly appropriated and budgeted the funds to satisfy the Agreement renewal. Any TIPS Sale Supplemental Agreement containing an "Automatic Renewal" clause that conflicts with these terms is rendered void and unenforceable.
48. **Choice of Law Limitation for TIPS Sales.** Vendor agrees that if any "Choice of Law" provision is included in any TIPS Sale agreement/contract between Vendor and a TIPS Member, that clause must provide that the "Choice of Law" applicable to the TIPS Sale agreement/contract between Vendor and TIPS Member shall be the state where the TIPS Member operates unless the TIPS Member expressly agrees otherwise. Any TIPS Sale Supplemental Agreement containing a "Choice of Law" clause that conflicts with these terms is rendered void and unenforceable.
49. **Venue Limitation for TIPS Sales.** Vendor agrees that if any "Venue" provision is included in any TIPS Sale Agreement/contract between Vendor and a TIPS Member, that clause must provide that the "Venue" for any litigation or alternative dispute resolution shall be in the state and county where the TIPS Member operates unless the TIPS Member expressly agrees otherwise. Any TIPS Sale Supplemental Agreement containing a "Venue" clause that conflicts with these terms is rendered void and unenforceable.
50. **Indemnity Limitation for TIPS Sales.** Texas and other jurisdictions restrict the ability of governmental entities to indemnify others. Vendor agrees that if any "Indemnity" provision which requires the TIPS Member to indemnify Vendor is included in any TIPS sales agreement/contract between Vendor and a TIPS Member, that clause must either be stricken or qualified by including that such indemnity is only permitted, "to the extent permitted by the laws and constitution of [TIPS Member's State]" unless the TIPS Member expressly agrees otherwise. Any TIPS Sale Supplemental Agreement containing an "Indemnity" clause that conflicts with these terms is rendered void and unenforceable.
51. **Arbitration Limitation for TIPS Sales.** Vendor agrees that if any "Arbitration" provision is included in any TIPS Sale agreement/contract between Vendor and a TIPS Member, that clause may not require that the arbitration is mandatory or binding. Vendor agrees that if any "Arbitration" provision is included in any TIPS Sale agreement/contract between Vendor and a TIPS Member, that clause provides for only voluntary and non-binding arbitration unless the TIPS Member expressly agrees otherwise. Any TIPS Sale Supplemental Agreement containing a "Arbitration" clause that conflicts with these terms is rendered void and unenforceable.
52. Except for claims which cannot be limited or excluded by the Constitution or the laws of the State of Texas or which cannot be limited pursuant to Section 14 of this Agreement, Vendor's aggregate liability for all matters whether in contract, tort or otherwise shall not exceed two (2) times the annual value of the Contract giving rise to such claim. Neither Party will be liable to the other Party for any indirect, incidental, consequential, or punitive damages, including (without limitation) loss of profit, income, or savings, even if a Party is advised of the possibility of these damages.

Following the signature page of this TIPS Vendor Agreement immediately below are attached Exhibits to this Vendor Agreement which are supplemental forms FacilityForce, Inc. proposes to use with the TIPS Member purchaser. These forms have not been reviewed or approved by TIPS for TIPS Members and it is the responsibility of the TIPS Member to review and negotiate any supplemental forms or agreements with FacilityForce, Inc. to the satisfaction of the TIPS Member entity.

In Witness Whereof, the parties hereto, each acting under due and proper authority, have signed this Agreement.

TIPS VENDOR AGREEMENT SIGNATURE FORM
TIPS 230102 Comprehensive Facilities Management and Services

Vendor Name: _____

Vendor Address: _____

City: _____ State: _____ Zip Code: _____

Vendor Authorized Signatory Name: _____

Vendor Authorized Signatory Title: _____

Vendor Authorized Signatory Phone: _____

Vendor Authorized Signatory Email: _____

Vendor Authorized Signature: Keith O'Brien Date: _____

(The following is for TIPS completion only)

TIPS Authorized Signatory Name: _____

TIPS Authorized Signatory Title: _____

TIPS Authorized Signature: David Wayne Fitts Date: 3-17-2023



230102

**FacilityForce, Inc.
Supplier Response**

Event Information

Number: 230102

Title: Comprehensive Facilities Management and Services

Type: Request for Proposal

Issue Date: 1/5/2023

Deadline: 2/17/2023 03:00 PM (CT)

Notes: This is a solicitation issued by The Interlocal Purchasing System (TIPS), a department of Texas Region 8 Education Service Center. It is an Indefinite Delivery, Indefinite Quantity ("IDIQ") solicitation. It will result in contracts that provide, through adoption/"piggyback" an indefinite quantity of supplies/services, during a fixed period of time, to TIPS public entity and qualifying non-profit "TIPS Members" throughout the nation. Thus, there is no specific project or scope of work to review. Rather this solicitation is issued as a prospective award for utilization when any TIPS Member needs the goods or services offered during the life of the agreement.

IF YOU CURRENTLY HOLDS TIPS CONTRACT COMPREHENSIVE FACILITIES MANAGEMENT AND SERVICES 200102 ("200102"), YOU MUST RESPOND TO THIS SOLICITATION TO PREVENT LAPSE OF CONTRACT UNLESS YOU HOLD ANOTHER CURRENT TIPS CONTRACT THAT COVERS ALL OF YOUR FACILITIES MANAGEMENT AND SERVICES OFFERINGS. THIS AWARDED CONTRACT WILL REPLACE YOUR EXPIRING TIPS CONTRACT 200102.

IF YOU HOLD ANOTHER TIPS CONTRACT OTHER THAN 200102 WHICH COVERS ALL OF YOUR FACILITIES MANAGEMENT AND SERVICES OFFERINGS AND YOU ARE SATISFIED

**WITH IT, THERE IS NO NEED TO RESPOND TO THIS SOLICITATION UNLESS YOU PREFER
TO HOLD BOTH CONTRACTS.**

Contact Information

Address: Region 8 Education Service Center
4845 US Highway 271 North
Pittsburg, TX 75686

Phone: +1 (866) 839-8477

Email: bids@tips-usa.com

FacilityForce, Inc. Information

Contact: Kevin Raasch
Address: 13359 North Highway 183, Ste 406-797
Austin, TX 78750
Phone: (800) 659-9001
Email: kevin.raasch@facilityforce.com
Web Address: www.facilityforce.com

By submitting your response, you certify that you are authorized to represent and bind your company.

Sharon Walsh

Signature

Submitted at 2/10/2023 04:27:03 PM (CT)

sharon.walsh@facilityforce.com

Email

Requested Attachments

Pricing Form 1

230102 Pricing Form 1 - FacilityForce.xlsx

Pricing Form 1 must be downloaded from the "Attachments" section of the IonWave eBid System, reviewed, properly completed as instructed, and uploaded to this location.

Pricing Form 2

230102 Pricing Form 2 - FacilityForce.xlsx

Pricing Form 2 must be downloaded from the "Attachments" section of the IonWave eBid System, reviewed, properly completed as instructed, and uploaded to this location.

Alternate or Supplemental Pricing Documents

No response

Optional. If when completing Pricing Form 1 & Pricing Form 2 you direct TIPS to view additional, alternate, or supplemental pricing documentation, you may upload that documentation.

Vendor Agreement

230102 Vendor Agreement - FacilityForce.pdf

The Vendor Agreement must be downloaded from the "Attachments" section of the IonWave eBid System, reviewed, Vendor Name placed in the line provided at the top, and uploaded to this location. If Vendor has proposed deviations to the Vendor Agreement, Vendor may assert so in the Attribute Questions and those shall be addressed during evaluation.

Vendor Agreement Signature Form

230102 Vendor Agreement Signature Form - FacilityForce.pdf

The Vendor Agreement Signature Form must be downloaded from the "Attachments" section of the IonWave eBid System, reviewed, properly completed, and uploaded to this location. If Vendor has proposed deviations to the Vendor Agreement, Vendor may leave the signature line of this page blank and assert so in the Attribute Questions and those shall be addressed during evaluation.

Reference Form

230102 Reference Form - FacilityForce.xlsx

The Reference Form must be downloaded from the "Attachments" section of the IonWave eBid System, reviewed, properly completed, and uploaded to this location. The Reference Form must be uploaded in Excel format.

Required Confidentiality Claim Form

230102 Required Confidentiality Claim Form - FacilityForce.pdf

The Required Confidentiality Claim Form must be downloaded from the "Attachments" section of the IonWave eBid System, reviewed, properly completed, and uploaded to this location. This is the only way for Vendor to assert confidentiality of any information submitted.

Conflict of Interest Questionnaire - Form CIQ

No response

Do not upload this form unless you have a reportable conflict with TIPS. There is an Attribute entitled "Conflict of Interest Questionnaire Requirement" immediately followed by an Attribute entitled "Conflict of Interest Questionnaire Requirement – Form CIQ – Continued." Properly respond to those Attributes and only upload this form if applicable/instructed. If upload is required based on your response to those Attributes, the Conflict of Interest Questionnaire – Form CIQ must be downloaded from the "Attachments" section of the IonWave eBid System, reviewed, properly completed, and uploaded at this location.

Disclosure of Lobbying Activities - Standard Form - LLL

No response

Do not upload this form unless Vendor has reportable lobbying activities. There are Attributes entitled, "2 CFR Part 200 or Federal Provision - Byrd Anti-Lobbying Amendment – Continued." Properly respond to those Attributes and only upload this form if applicable/instructed. If upload is required based on your response to those Attributes, the Disclosure of Lobbying Activities – Standard Form - LLL must be downloaded from the "Attachments" section of the IonWave eBid System, reviewed, properly completed, and uploaded to this location.

Current Form W-9

W-9 FacilityForce.pdf

Vendor must upload their current IRS Tax Form W-9. The legal name, EIN, and d/b/a's listed should match the information provided herein exactly. This form will be utilized by TIPS to properly identify your entity.

Certificates & Licenses (Supplemental Vendor Information Only)

No response

Optional. If Vendor would like to display any applicable certificates or licenses (including HUB certificates) for TIPS and TIPS Member Customer consideration, Vendor may upload those at this location. These supplemental documents shall not be considered part of the TIPS Contract. Rather, they are Vendor Supplemental Information for marketing and informational purposes only.

Vendor's Warranties, Terms, and Conditions (Supplemental Vendor Information Only)

FacilityForce Terms and Conditions.zip

Optional. If Vendor would like to display any standard warranties, terms, or conditions which are often applicable to their offerings for TIPS and TIPS Member Customer consideration, Vendor may upload those at this location. These supplemental documents shall not be considered part of the TIPS Contract. Rather, they are Vendor Supplemental Information for marketing and informational purposes only.

Supplemental Vendor Information (Supplemental Vendor Information Only)

FacilityForce Supplementals.zip

Optional. If Vendor would like to display or include any brochures, promotional documents, marketing materials, or other Vendor Information for TIPS and TIPS Member Customer consideration, Vendor may upload those at this location.

These supplemental documents shall not be considered part of the TIPS Contract. Rather, they are Vendor Supplemental Information for marketing and informational purposes only.

Vendor Logo (Supplemental Vendor Information Only)

FacilityForce Logo.png

Optional. If Vendor desires that their logo be displayed on their public TIPS profile for TIPS and TIPS Member viewing, Vendor may upload that logo at this location. These supplemental documents shall not be considered part of the TIPS Contract. Rather, they are Vendor Supplemental Information for marketing and informational purposes only.

Bid Attributes

1 Disadvantaged/Minority/Women Business & Federal HUBZone

Some participating public entities are required to seek Disadvantaged/Minority/Women Business & Federal HUBZone ("D/M/WBE/Federal HUBZone") vendors. Does Vendor certify that their entity is a D/M/WBE/Federal HUBZone vendor?

If you respond "Yes," you must upload current certification proof in the appropriate "Response Attachments" location.

NO

2 Historically Underutilized Business (HUB)

Some participating public entities are required to seek Historically Underutilized Business (HUB) vendors as defined by the Texas Comptroller of Public Accounts Statewide HUB Program. Does Vendor certify that their entity is a HUB vendor?

If you respond "Yes," you must upload current certification proof in the appropriate "Response Attachments" location.

No

3 National Coverage
Can the Vendor provide its proposed goods and services to all 50 US States?
<input type="text" value="Yes"/>

4 States Served
If Vendor answered "No" to the question entitled "National Coverage," please list all states where vendor can provide the goods and services proposed directly below. Your response may dictate which potential TIPS Member customers consider purchasing your offerings.
<input type="text" value="No response"/>

5 Description of Vendor Entity and Vendor's Goods & Services
If awarded, this description of Vendor and Vendor's goods and services will appear on the TIPS website for customer/public viewing.
<input type="text" value="FacilityForce was specifically created to address the asset and facilities management challenges that government organizations face today. FacilityForce was carved out of AssetWorks Facilities, a software developer with a rich history dating back to 1991 (30+ years ago). FacilityForce is a recognized leader in asset and facilities management software solutions for the public sector. We are a customer-centric organization, which is reflected in how we develop our products and service our customers. Customers are included in the design process, where new products go through a Special Interest Group of clients who help determine where we can improve our product line and what features will have the maximum impact. Customers further benefit from a myriad of ways to engage with us and provide feedback, including a customer care portal, a customer resource center, a user group, an annual user conference, a customer success and customer care team, and a one-stop shop for software and professional services. FacilityForce's Facilities Resource Planning (FRP) is a best-of-breed, full asset lifecycle and facilities management software solution that is offered as a commercial-off-the-shelf (COTS) unified platform for government organizations with a sizable portfolio of properties and assets to manage. FacilityForce's FRP removes any confusion surrounding how to best address current and future government organizational challenges by eliminating the data silos often created by implementing point solutions like CMMS, CAFM, CPM, or EAM. FacilityForce's FRP saves time and money by eliminating disparate systems and providing visibility across the organization."/>

6 Primary Contact Name
Please identify the individual who will be primarily responsible for all TIPS matters and inquiries for the duration of the contract.
<input type="text" value="Kevin Raasch"/>

7 Primary Contact Title
Primary Contact Title
<input type="text" value="VP Marketing"/>

8 Primary Contact Email
Please enter a valid email address that will definitely reach the Primary Contact.
<input type="text" value="kevin.raasch@facilityforce.com"/>

9 Primary Contact Phone

Numbers only, no symbols or spaces (Ex. 8668398477). The system will auto-populate your entry with commas once submitted which is appropriate and expected (Ex. 8,668,398,477).

Please provide the accurate and current phone number where the individual who will be primarily responsible for all TIPS matters and inquiries for the duration of the contract can be reached directly.

10 Primary Contact Fax

Numbers only, no symbols or spaces (Ex. 8668398477). The system will auto-populate your entry with commas once submitted which is appropriate and expected (Ex. 8,668,398,477).

11 Primary Contact Mobile

Numbers only, no symbols or spaces (Ex. 8668398477). The system will auto-populate your entry with commas once submitted which is appropriate and expected (Ex. 8,668,398,477).

12 Secondary Contact Name

Please identify the individual who will be secondarily responsible for all TIPS matters and inquiries for the duration of the contract.

13 Secondary Contact Title

Secondary Contact Title

14 Secondary Contact Email

Please enter a valid email address that will definitely reach the Secondary Contact.

15 Secondary Contact Phone

Numbers only, no symbols or spaces (Ex. 8668398477). The system will auto-populate your entry with commas once submitted which is appropriate and expected (Ex. 8,668,398,477).

Please provide the accurate and current phone number where the individual who will be secondarily responsible for all TIPS matters and inquiries for the duration of the contract can be reached directly.

16 Secondary Contact Fax

Numbers only, no symbols or spaces (Ex. 8668398477). The system will auto-populate your entry with commas once submitted which is appropriate and expected (Ex. 8,668,398,477).

17 Secondary Contact Mobile
Numbers only, no symbols or spaces (Ex. 8668398477). The system will auto-populate your entry with commas once submitted which is appropriate and expected (Ex. 8,668,398,477).

18 Administration Fee Contact Name
Please identify the individual who will be responsible for all payment, accounting, and other matters related to Vendor's TIPS Administration Fee due to TIPS for the duration of the contract.

19 Administration Fee Contact Email
Please enter a valid email address that will definitely reach the Administration Fee Contact.

20 Administration Fee Contact Phone
Numbers only, no symbols or spaces (Ex. 8668398477). The system will auto-populate your entry with commas once submitted which is appropriate and expected (Ex. 8,668,398,477).

21 Purchase Order and Sales Contact Name
Please identify the individual who will be responsible for receiving and processing purchase orders and sales under the TIPS Contract.

22 Purchase Order and Sales Contact Email
Please enter a valid email address that will definitely reach the Purchase Order and Sales Contact.

23 Purchase Order and Sales Contact Phone
Numbers only, no symbols or spaces (Ex. 8668398477). The system will auto-populate your entry with commas once submitted which is appropriate and expected (Ex. 8,668,398,477).

24 Company Website
Company Website (Format - www.company.com)

25 Entity D/B/A's and Assumed Names
You must confirm that you are responding to this solicitation under your legal entity name. Go now to your Supplier Profile in this eBid System and confirm that your profile reflects your "Legal Name" as it is listed on your W9.
In this question, please identify all of your entity's assumed names and D/B/A's. Please note that you will be identified publicly by the Legal Name under which you respond to this solicitation unless you organize otherwise with TIPS after award.

2 6	Primary Address Primary Address <input type="text" value="13359 North Highway 183, Ste 406-797"/>
2 7	Primary Address City Primary Address City <input type="text" value="Austin"/>
2 8	Primary Address State Primary Address State (2 Digit Abbreviation) <input type="text" value="TX"/>
2 9	Primary Address Zip Primary Address Zip <input type="text" value="78750"/>
3 0	Search Words Identifying Vendor Please list all search words and phrases to be included in the TIPS database related to your entity. Do not list words which are not associated with the bid category/scope (See bid title for general scope). This will help users find you through the TIPS website search function. You may include product names, manufacturers, specialized services, and other words associated with the scope of this solicitation. <input type="text" value="CMMS
Computerized Maintenance Management System
Facility Management
Enterprise Asset Management
Asset Management
Integrated Workplace Management System
IWMS
FRP"/>
3 1	Certification of Vendor Residency (Required by the State of Texas) Does Vendor's parent company or majority owner: (A) have its principal place of business in Texas; or (B) employ at least 500 persons in Texas? Texas Education Code Section 44.031 requires that this information be considered in evaluation for certain contracts. However, Vendor response does not affect points, scoring, or potential award. <input type="text" value="Yes"/>
3 2	Vendor's Principal Place of Business (City) In what city is Vendor's principal place of business located? <input type="text" value="Austin"/>
3 3	Vendor's Principal Place of Business (State) In what state is Vendor's principal place of business located? <input type="text" value="Texas"/>

3 Vendor's Years in Business

4 How many years has the business submitting this proposal been operating in its current capacity and field of work?

3 Certification Regarding Entire TIPS Agreement

5 Vendor agrees that, if awarded, Vendor's final TIPS Contract will consist of the provisions set forth in the finalized TIPS Vendor Agreement, Vendor's responses to these attribute questions, and: (1) The TIPS solicitation document resulting in this Agreement; (2) Any addenda or clarifications issued in relation to the TIPS solicitation; (3) All solicitation information provided to Vendor by TIPS through the TIPS eBid System; (3) Vendor's entire proposal response to the TIPS solicitation including all accepted required attachments, acknowledged notices and certifications, accepted negotiated terms, accepted pricing, accepted responses to questions, and accepted written clarifications of Vendor's proposal, and; any properly included attachments to the TIPS Contract.

Does Vendor agree?

3 Minimum Percentage Discount Offered to TIPS Members on all Goods and Services (READ CAREFULLY)

6 **Please read thoroughly and carefully as an error on your response can render your contract award unusable.**

TIPS Members often turn to TIPS Contracts for ease of use and to receive discounted pricing.

What is the minimum percentage discount that you can offer TIPS Members off of all goods and service pricing that you offer?

Vendor must respond with a percentage from 0%-100%. The percentage discount that you input below will be applied to your "Catalog Pricing", as defined in the solicitation, for all TIPS Sales made during the life of the contract. You cannot alter this percentage discount once the solicitation legally closes. You will always be required to discount every TIPS Sale by the percentage included below. If you add goods or services to your "Catalog Pricing" during the life of the contract, you will be required to sell those new items with this discount applied.

Example: In this example, you enter a 10% minimum percentage discount below. In year-one of your TIPS Contract, your published "Catalog Pricing" (website/store/published pricing) for "Tablet A" is \$100 and for "Tablet Set-Up Service" is \$100. In this example, you must sell those items under the TIPS Contract at the proposed 10% discounted price of: "Tablet A" - \$90, "Tablet Set-Up Service" - \$90. In year two of your TIPS Contract, you update your "Catalog Pricing" with the market. You add "Tablet B" to your "Catalog Pricing" for \$200 and have increased the price of "Tablet A" to \$110 and the price of "Tablet Set-Up Service" to \$110. In this example, after the "Catalog Pricing" update, you must still sell those items under the TIPS Contract at the proposed 10% discounted price of: "Tablet A" - \$99, "Tablet Set-Up Service" - \$99, and "Tablet B" - \$180.00.

If you cannot honor the discount on all goods and items now included or which may be added in the future with certainty, then you should offer a lesser discount percentage below.

What is the minimum percentage discount that you can offer TIPS Members off of all goods and service pricing that you offer?

37 Honoring Vendor's Minimum Percentage Discount

Vendor is asked in these Attribute Questions to provide a Minimum Percentage Discount offered to TIPS Members on all goods and services sold under the TIPS Contract. Points will be assigned for your response and scoring of your proposal will be affected. A "YES" answer will be awarded the maximum 10 points and a "NO" answer will be awarded 0 points.

Does Vendor agree to honor the Minimum Percentage Discount off of their TIPS "Catalog Pricing" that Vendor proposed for all TIPS Sales made for the duration of the TIPS Contract?

38 Volume and Additional Discounts

In addition to the Minimum Percentage Discount proposed herein, does Vendor ever expect and intend to offer additional, greater, or volume discounts to TIPS Members?

Point(s) may be assigned for your response in the category of "Pricing" during scoring and evaluation.

39 "Catalog Pricing" and Pricing Requirements

This is a requirement of the TIPS Contract and is non-negotiable.

In this solicitation and resulting contract, "Catalog Pricing" shall be defined as:

"The then available list of goods or services, in the most current listing regardless of date, that takes the form of a catalog, price list, price schedule, shelf-price or other viewable format that:

- A. is regularly maintained by the manufacturer or Vendor of an item; and
- B. is either published or otherwise available for review by TIPS or a customer during the purchase process;
- C. to which the Minimum Percentage Discount proposed by the proposing Vendor may be applied.

If awarded on this TIPS Contract, for the duration of the contract, Vendor agrees to provide, upon request, their then current "Catalog Pricing." Or, in limited circumstances where Vendor has proposed the Percentage Mark-Up method of pricing in this proposal, proof of Vendor's "cost" may be accepted by TIPS in place of catalog pricing.

4 **EXCEPTIONS & DEVIATIONS TO TIPS STANDARD TERMS AND CONDITIONS**

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Vendor agrees that, if awarded, Vendor's final TIPS Contract will consist of the provisions set forth in the finalized TIPS Vendor Agreement, Vendor's responses to these attribute questions, and: (1) The TIPS solicitation document resulting in this Agreement; (2) Any addenda or clarifications issued in relation to the TIPS solicitation; (3) All solicitation information provided to Vendor by TIPS through the TIPS eBid System; (3) Vendor's entire proposal response to the TIPS solicitation including all accepted required attachments, acknowledged notices and certifications, accepted negotiated terms, accepted pricing, accepted responses to questions, and accepted written clarifications of Vendor's proposal, and; any properly included attachments to the TIPS Contract. In the event of conflict between the terms of the finalized Vendor Agreement and one of the incorporated documents the terms and conditions which are in the best interest of governmental/qualifying non-profit TIPS Members shall control at TIPS sole discretion.

If Vendor responds, "No, Vendor does not agree" to this Attribute, after this solicitation legally closes and TIPS begins evaluating Vendor's file, TIPS will provide Vendor with a draft Word Document version of the Vendor Agreement and will be instructed to include all requested negotiations as redline edits for TIPS consideration. This is the only proper way to submit proposed deviations for TIPS consideration. TIPS reserves the right to accept, decline, or modify Vendor's requested negotiated terms. For this reason, answering "No, Vendor does not agree" may ultimately delay or prevent award.

Does Vendor agree with TIPS standard terms and conditions as presented in the TIPS solicitation document (RFP, RCSP, RFQ, or other) and the TIPS Vendor Agreement document?

No

4 **TIPS Sales Reporting Requirements**

1

This is a requirement of the TIPS Contract and is non-negotiable.

By submitting this proposal, Vendor certifies that Vendor will properly report all TIPS sales. With the exception of TIPS Automated Vendors, who have signed an exclusive agreement with TIPS regarding reporting, all TIPS Sales must be reported to TIPS by either:

(1) Emailing the purchase order or similar purchase document (with Vendor's Name, as known to TIPS, and the TIPS Contract Name and Number included) to TIPS at tipspo@tips-usa.com with "Confirmation Only" in the subject line of the email within three business days of Vendor's acceptance of the order, or;

(2) Within 3 business days of the order being accepted by Vendor, Vendor must login to the TIPS Vendor Portal and successfully self-report all necessary sale information within the Vendor Portal and confirm that it shows up accurately on your current Vendor Portal statement.

No other method of reporting is acceptable unless agreed to by the Parties in writing. Failure to report all sales pursuant to this provision may result in immediate cancellation of Vendor's TIPS Contract(s) for cause at TIPS' sole discretion.

**4
2** **TIPS Administration Fee Requirement and Acknowledgment**

This is a requirement of the TIPS Contract and is non-negotiable.

The collection of fees by TIPS, a government entity, for performance of these procurement services is required pursuant to Texas Government Code Section 791.011 et. seq. The TIPS Administration Fee is the amount legally owed by Vendor to TIPS for TIPS Sales made by Vendor. The TIPS Administration Fee amount is typically a set percentage of each TIPS Sale legally due to TIPS, but the exact TIPS Administration Fee for this Contract is published in the corresponding RFP or RCSP document. TIPS Administration Fees are due to TIPS immediately upon Vendor's receipt of payment, including partial payment, for a TIPS Sale.

By submitting a proposal, Vendor agrees that it has read, understands, and agrees to the published TIPS Administration Fee amount, calculation, and payment requirements. By submitting a proposal Vendor further confirms that all TIPS Pricing includes the TIPS Administration Fee and Vendor will not show adding the TIPS Administration Fee as a charge or line-item in any TIPS Sale.

**4
3** **TIPS Member Access to Vendor Proposal & Documentation**

This is a requirement of the TIPS Contract and is non-negotiable.

Notwithstanding any other information provided in this solicitation or Vendor designation of certain documentation as confidential or proprietary, Vendor's submission of this proposal constitutes Vendor's express consent to the disclosure of Vendor's comprehensive proposal, including any information deemed confidential or proprietary, **to TIPS Members**. The proposing Vendor agrees that TIPS shall not be responsible or liable for any use or distribution of information or documentation to TIPS Members or by TIPS Members. By submitting this proposal, Vendor certifies the foregoing.

**4
4** **Non-Collusive Bidding Certificate**

This is a requirement of the TIPS Contract and is non-negotiable.

By submission of this proposal, the Vendor certifies that:

- 1) This proposal has been independently arrived at without collusion with any other entity, bidder, or with any competitor;
- 2) This proposal has not been knowingly disclosed and will not be knowingly disclosed, prior to the opening of bids, or proposals for this project, to any other bidder, competitor or potential competitor;
- 3) No attempt has been or will be made to induce any other person, partnership or corporation to modify, submit, or not to submit a bid or proposal; and
- 4) The person signing this bid or proposal certifies that they are duly authorized to execute this proposal/contract on behalf of Vendor and they have fully informed themselves regarding the accuracy of the statements contained in this certification, and under the penalties being applicable to the bidder as well as to the person signing in its behalf;

4 Antitrust Certification Statements (Tex. Government Code § 2155.005)

5 This is a requirement of the TIPS Contract and is non-negotiable.

By submission of this bid or proposal, Vendor certifies under penalty of perjury of the laws of the State of Texas that:

(1) I am duly authorized to execute this proposal/contract on my own behalf or on behalf of the company, corporation, firm, partnership or individual (Vendor) identified herein;

(2) In connection with this proposal, neither I nor any representative of Vendor has violated any provision of the Texas Free Enterprise and Antitrust Act, Tex. Bus. & Comm. Code Chapter 15;

(3) In connection with this proposal, neither I nor any representative of the Vendor has violated any federal antitrust law;

(4) Neither I nor any representative of Vendor has directly or indirectly communicated any of the contents of this bid to a competitor of the Company or any other company, corporation, firm, partnership or individual engaged in the same line of business as the Company.

4 Limitation on Out-of-State Litigation - Texas Business and Commerce Code § 272

6 This is a requirement of the TIPS Contract and is non-negotiable.

Texas Business and Commerce Code § 272 prohibits a construction contract, or an agreement collateral to or affecting the construction contract, from containing a provision making the contract or agreement, or any conflict arising under the contract or agreement, subject to another state's law, litigation in the courts of another state, or arbitration in another state. If included in Texas construction contracts, such provisions are voidable by a party obligated by the contract or agreement to perform the work.

By submission of this proposal, Vendor acknowledges this law and ***if Vendor enters into a construction contract with a Texas TIPS Member*** under this procurement, Vendor certifies compliance.

4 Required Confidentiality Claim Form

7 This is a requirement of the TIPS Contract and is non-negotiable.

TIPS provides the required TIPS Confidentiality Claim Form in the "Attachments" section of this solicitation. Vendor must execute this form by either signing and waiving any confidentiality claim, or designating portions of Vendor's proposal confidential. If Vendor considers any portion of Vendor's proposal to be confidential and not subject to public disclosure pursuant to Chapter 552 Texas Gov't Code or other law(s) and orders, Vendor must have identified the claimed confidential materials through proper execution of the Confidentiality Claim Form.

If TIPS receives a public information act or similar request, any responsive documentation not deemed confidential by you in this manner will be automatically released. For Vendor documents deemed confidential by you in this manner, TIPS will follow procedures of controlling statute(s) regarding any claim of confidentiality and shall not be liable for any release of information required by law, including Attorney General determination and opinion.

Notwithstanding any other Vendor designation of Vendor's proposal as confidential or proprietary, Vendor's submission of this proposal constitutes Vendor's agreement that proper execution of the required TIPS Confidentiality Claim Form is the only way to assert any portion of Vendor's proposal as confidential.

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Non-Discrimination Statement and Certification

This is a requirement of the TIPS Contract and is non-negotiable.

In accordance with Federal civil rights law, all U.S. Departments, including but not limited to the USDA, USDE, FEMA, are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by federal funds (not all bases apply to all programs).

Vendor certifies that Vendor will comply with applicable Non-Discrimination and Equal Opportunity provisions set forth in TIPS Member Customers' policies and other regulations at the local, state, and federal levels of governments.

Yes, I certify (Yes)

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9

Limitation of Vendor Indemnification and Similar Clauses

This is a requirement of the TIPS Contract and is non-negotiable.

TIPS, a department of Region 8 Education Service Center, a political subdivision, and local government entity of the State of Texas, is prohibited from indemnifying third-parties (pursuant to the Article 3, Section 52 of the Texas Constitution) except as otherwise specifically provided for by law or as ordered by a court of competent jurisdiction. Article 3, Section 52 of the Texas Constitution states that "no debt shall be created by or on behalf of the State ... " and the Texas Attorney General has opined that a contractually imposed obligation of indemnity creates a "debt" in the constitutional sense. Tex. Att'y Gen. Op. No. MW-475 (1982). Thus, contract clauses which require TIPS to indemnify Vendor, pay liquidated damages, pay attorney's fees, waive Vendor's liability, or waive any applicable statute of limitations must be deleted or qualified with "to the extent permitted by the Constitution and Laws of the State of Texas."

Does Vendor agree?

Yes, I Agree (Yes)

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Alternative Dispute Resolution Limitations

This is a requirement of the TIPS Contract and is non-negotiable.

TIPS, a department of Region 8 Education Service Center, a political subdivision, and local government entity of the State of Texas, does not agree to binding arbitration as a remedy to dispute and no such provision shall be permitted in this Agreement with TIPS. Vendor agrees that any claim arising out of or related to this Agreement, except those specifically and expressly waived or negotiated within this Agreement, may be subject to non-binding mediation at the request of either party to be conducted by a mutually agreed upon mediator as prerequisite to the filing of any lawsuit arising out of or related to this Agreement. Mediation shall be held in either Camp or Titus County, Texas. Agreements reached in mediation will be subject to the approval by the Region 8 ESC's Board of Directors, authorized signature of the Parties if approved by the Board of Directors, and, once approved by the Board of Directors and properly signed, shall thereafter be enforceable as provided by the laws of the State of Texas.

Does Vendor agree?

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1 **No Waiver of TIPS Immunity**

This is a requirement of the TIPS Contract and is non-negotiable.

Vendor agrees that nothing in this Agreement shall be construed as a waiver of sovereign or government immunity; nor constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to Region 8 Education Service Center or its TIPS Department. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to Region 8 Education Service Center or its TIPS Department under this Agreement or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel.

Does Vendor agree?

Yes, Vendor agrees (Yes)

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2 **Payment Terms and Funding Out Clause**

This is a requirement of the TIPS Contract and is non-negotiable.

Vendor agrees that TIPS and TIPS Members shall not be liable for interest or late-payment fees on past-due balances at a rate higher than permitted by the laws or regulations of the jurisdiction of the TIPS Member.

Funding-Out Clause: Vendor agrees to abide by the applicable laws and regulations, including but not limited to Texas Local Government Code § 271.903, or any other statutory or regulatory limitation of the jurisdiction of any TIPS Member, which requires that contracts approved by TIPS or a TIPS Member are subject to the budgeting and appropriation of currently available funds by the entity or its governing body.

Does Vendor agree?

Yes, Vendor agrees (Yes)

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3 **Certification Regarding Prohibition of Certain Terrorist Organizations (Tex. Gov. Code 2270)**

Vendor certifies that Vendor is not a company identified on the Texas Comptroller's list of companies known to have contracts with, or provide supplies or services to, a foreign organization designated as a Foreign Terrorist Organization by the U.S. Secretary of State.

Does Vendor certify?

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4 **Certification Regarding Prohibition of Boycotting Israel (Tex. Gov. Code 2271)**

If (a) Vendor is not a sole proprietorship; (b) Vendor has ten (10) or more full-time employees; and (c) this Agreement or any agreement with a TIPS Member under this procurement has value of \$100,000 or more, the following certification shall apply; otherwise, this certification is not required. Vendor certifies, where applicable, that neither the Vendor, nor any affiliate, subsidiary, or parent company of Vendor, if any, boycotts Israel, and Vendor agrees that Vendor and Vendor Companies will not boycott Israel during the term of this Agreement. For purposes of this Agreement, the term "boycott" shall mean and include refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory but does not include an action made for ordinary business purposes.

When applicable, does Vendor certify?

Certification Regarding Prohibition of Contracts with Certain Foreign-Owned Companies (Tex. Gov. Code 2274)

Certain public entities are prohibited from entering into a contract or other agreement relating to critical infrastructure that would grant Vendor direct or remote access to or control of critical infrastructure in this state, excluding access specifically allowed by a customer for product warranty and support purposes.

Vendor certifies that neither it nor its parent company nor any affiliate of Vendor or its parent company, is (1) owned by or the majority of stock or other ownership interest of the company is held or controlled by individuals who are citizens of China, Iran, North Korea, Russia, or a designated country; (2) a company or other entity, including governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a designated country; or (3) headquartered in China, Iran, North Korea, Russia, or a designated country.

For purposes of this certification, "critical infrastructure" means "a communication infrastructure system, cybersecurity system, electric grid, hazardous waste treatment system, or water treatment facility." Vendor certifies that Vendor will not grant direct or remote access to or control of critical infrastructure, except for product warranty and support purposes, to prohibited individuals, companies, or entities, including governmental entities, owned, controlled, or headquartered in China, Iran, North Korea, Russia, or a designated country, as determined by the Governor.

When applicable, does Vendor certify?

**5 Certification Regarding Prohibition of Discrimination Against Firearm and Ammunition Industries (Tex.
6 Gov. Code 2274)**

If (a) Vendor is not a sole proprietorship; (b) Vendor has at least ten (10) full-time employees; and (c) this Agreement or any Supplemental Agreement with certain public entities have a value of at least \$100,000 that is paid wholly or partly from public funds; (d) the Agreement is not excepted under Tex. Gov. Code 2274 and (e) the purchasing public entity has determined that Vendor is not a sole-source provider or the purchasing public entity has not received any bids from a company that is able to provide this written verification, the following certification shall apply; otherwise, this certification is not required.

Vendor certifies that Vendor, or association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary parent company, or affiliate of these entities or associations, that exists to make a profit, does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of this contract against a firearm entity or firearm trade association.

For purposes of this Agreement, “discriminate against a firearm entity or firearm trade association” shall mean, with respect to the entity or association, to: “(1) refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association; (2) refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; or (3) terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association.”

“Discrimination against a firearm entity or firearm trade association” does not include: “(1) the established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories; and (2) a company’s refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship to comply with federal, state, or local law, policy, or regulations or a directive by a regulatory agency, or for any traditional business reason that is specific to the customer or potential customer and not based solely on an entity’s or association’s status as a firearm entity or firearm trade association.”

When applicable, does Vendor certify?

Yes

Certification Regarding Termination of Contract for Non-Compliance (Tex. Gov. Code 552.374)

If Vendor is not a governmental body and (a) this Agreement or any Supplemental Agreement with a public entity has a stated expenditure of at least \$1 million in public funds for the purchase of goods or services by certain public entities; or (b) this Agreement or any Supplemental Agreement results in the expenditure of at least \$1 million in public funds for the purchase of goods or services by certain public entities in their fiscal year, the following certification shall apply; otherwise, this certification is not required.

As required by Tex. Gov. Code 552.374, the following statement is included in the RFP and the Agreement (unless the Agreement is (1) related to the purchase or underwriting of a public security; (2) is or may be used as collateral on a loan; or (3) proceeds from which are used to pay debt service of a public security of loan): "The requirements of Subchapter J, Chapter 552, Government Code, may apply to this solicitation and Agreement and the Vendor agrees that this Agreement and any applicable Supplemental Agreement can be terminated if Vendor knowingly or intentionally fails to comply with a requirement of that subchapter."

Pursuant to Chapter 552 of the Texas Government Code, Vendor certifies that Vendor shall: (1) preserve all contracting information related to this Agreement as provided by the records retention requirements applicable to TIPS or the purchasing TIPS Member for the duration of the Agreement; (2) promptly provide to TIPS or the purchasing TIPS Member any contracting information related to the Agreement that is in the custody or possession of Vendor on request of TIPS or the purchasing TIPS Member; and (3) on completion of the Agreement, either (a) provide at no cost to TIPS or the purchasing TIPS Member all contracting information related to the Agreement that is in the custody or possession of Vendor, or (b) preserve the contracting information related to the Agreement as provided by the records retention requirements applicable to TIPS or the purchasing TIPS Member.

When applicable, does Vendor certify?

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Certification Regarding Prohibition of Boycotting Certain Energy Companies (Tex. Gov. Code 2274)

If (a) Vendor is not a sole proprietorship; (b) Vendor has ten (10) or more full-time employees; and (c) this Agreement or any Supplemental Agreement with certain public entities has a value of \$100,000 or more that is to be paid wholly or partly from public funds, the following certification shall apply; otherwise, this certification is not required.

Vendor certifies that Vendor, or any wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of these entities or business associations, if any, do not boycott energy companies and will not boycott energy companies during the term of the Agreement or any applicable Supplemental Agreement.

For purposes of this certification the term "company" shall mean an organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, that exists to make a profit.

The term "boycott energy company" shall mean "without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company (a) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law, or (b) does business with a company described by paragraph (a)." (See Tex. Gov. Code 809.001).

When applicable, does Vendor certify?

Yes

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Felony Conviction Notice - Texas Education Code 44.034

Texas Education Code, Section 44.034, Notification of Criminal History, Subsection (a), states, "a person or business entity that enters into a contract with a school district must give advance notice to the district if the person or an owner or operator of the business entity has been convicted of a felony. The notice must include a general description of the conduct resulting in the conviction of a felony."

Subsection (b) states, "a school district may terminate a contract with a person or business entity if the district determines that the person or business entity failed to give notice as required by Subsection (a) or misrepresented the conduct resulting in the conviction. The district must compensate the person or business entity for services performed before the termination of the contract."

Subsection (c) states, "This section does not apply to a publicly held corporation."

Vendor certifies one of the following:

- A. My firm is a publicly held corporation; therefore, this reporting requirement is not applicable, or;
- B. My firm is not owned nor operated by anyone who has been convicted of a felony, or;
- C. My firm is owned or operated by the following individual(s) who has/have been convicted of a felony.

If Vendor responds with Option (C), Vendor is required to provide information in the next attribute.

B. My firm is not owned nor operated by felon.

60 Felony Conviction Notice - Texas Education Code 44.034 - Continued

If Vendor selected Option (C) in the previous attribute, Vendor must provide the following information herein:

1. Name of Felon(s)
2. The Felon(s) title/role in Vendor's entity, and
3. Details of Felon(s) Conviction(s).

61 Conflict of Interest Questionnaire Requirement

Vendor agrees that it has looked up, read, and understood the current version of Texas Local Government Code Chapter 176 which generally requires disclosures of conflicts of interests by Vendor hereunder if Vendor:

- (1) has an employment or other business relationship with a local government officer of our local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);
- (2) has given a local government officer of our local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or
- (3) has a family relationship with a local government officer of our local governmental entity.
- (4) Any other financial, commercial, or familial relationship with our local government that may warrant reporting under this statute.

Does Vendor certify that it has NO reportable conflict of interest?

62 Conflict of Interest Questionnaire Requirement - Form CIQ - Continued

If you responded "No, Vendor does not certify - VENDOR HAS CONFLICT" to the Conflict of Interest Questionnaire question above, you are required by law to fully execute and upload the form attachment entitled "Conflict of Interest Questionnaire - Form CIQ." If you accurately claimed no conflict above, you may disregard the form attachment entitled "Conflict of Interest Questionnaire - Form CIQ."

Have you uploaded this form if applicable?

63 Upload of Current W-9 Required

Vendors are required by TIPS to upload a current, accurate W-9 Internal Revenue Service (IRS) Tax Form for your entity. This form will be utilized by TIPS to properly identify your entity.

You must confirm that you are responding to this solicitation under your legal entity name. Go now to your Supplier Profile in this eBid System and confirm that your profile reflects your "Legal Name" as it is listed on your W9.

64 Regulatory Good Standing Certification

Does Vendor certify that its entity is in good standing with all government entities and agencies, whether local, state, or federal, that regulate any aspect of Vendor's field of work or business operations?

If Vendor selects "No", Vendor must provide explanation on the following attribute question.

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5 **Regulatory Good Standing Certification - Explanation - Continued**

If Vendor responded to the prior attribute that "No", Vendor is not in good standing, Vendor must provide an explanation of that lack of good standing here for TIPS consideration.

No response

6
6 **Instructions Only - Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion**
Instructions for Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion

1. By answering yes to the next Attribute question below, the vendor and prospective lower tier participant is providing the certification set out herein in accordance with these instructions.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and / or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participants," "person," "primary covered transaction," "principal," "proposal" and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this form that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this form that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction" without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and / or debarment.

6 **Suspension or Debarment Certification**

7

Read the instructions in the attribute above and then answer the following accurately.

Vendor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

Does Vendor certify?

6 **Vendor Certification of Criminal History - Texas Education Code Chapter 22**

8

Texas Education Code Chapter 22 requires entities that contract with school districts to provide services to obtain criminal history record information regarding covered employees. Contractors must certify to the district that they have complied. Covered employees with disqualifying criminal histories are prohibited from serving at a school district pursuant to this law.

DEFINITIONS

Covered employees: Employees of a contractor or subcontractor who have or will have continuing duties related to the service to be performed at the District and have or will have direct contact with students. The District will be the final arbiter of what constitutes direct contact with students.

Disqualifying criminal history: Any conviction or other criminal history information designated by the District, or one of the following offenses, if at the time of the offense, the victim was under 18 or enrolled in a public school: (a) a felony offense under Title 5, Texas Penal Code; (b) an offense for which a defendant is required to register as a sex offender under Chapter 62, Texas Code of Criminal Procedure; or (c) an equivalent offense under federal law or the laws of another state.

Vendor certifies:

NONE (Section A): None of the employees of Vendor and any subcontractors are covered employees, as defined above. If this box is checked, I further certify that Contractor has taken precautions or imposed conditions to ensure that the employees of Vendor and any subcontractor will not become covered employees. Contractor will maintain these precautions or conditions throughout the time the contracted services are provided under this procurement.

OR

SOME (Section B): Some or all of the employees of Vendor and any subcontractor are covered employees. If this box is checked, I further certify that: (1) Vendor has obtained all required criminal history record information regarding its covered employees. None of the covered employees has a disqualifying criminal history; (2) If Vendor receives information that a covered employee subsequently has a reported criminal history, Vendor will immediately remove the covered employee from contract duties and notify the purchasing entity in writing within 3 business days; (3) Upon request, Vendor will provide the purchasing entity with the name and any other requested information of covered employees so that the purchasing entity may obtain criminal history record information on the covered employees; (4) If the purchasing entity objects to the assignment of a covered employee on the basis of the covered employee's criminal history record information, Vendor agrees to discontinue using that covered employee to provide services at the purchasing entity.

Which option does Vendor certify?

69 Certification Regarding "Choice of Law" Terms with TIPS Members

Vendor agrees that if any "Choice of Law" provision is included in any sales agreement/contract between Vendor and a TIPS Member, that clause must provide that the "Choice of Law" applicable to the sales agreement/contract between Vendor and TIPS Member shall be the state where the TIPS Member operates unless the TIPS Member expressly agrees otherwise. Any TIPS Sale Supplemental Agreement containing a "Choice of Law" clause that conflicts with these terms is rendered void and unenforceable.

If Vendor disagrees, after this solicitation legally closes and TIPS begins evaluating Vendor's file, TIPS will provide Vendor with a draft Word Document version of the Vendor Agreement and will be instructed to include all requested negotiations as redline edits for TIPS consideration.

Does Vendor agree?

70 Certification Regarding "Venue" Terms with TIPS Members

Vendor agrees that if any "Venue" provision is included in any sales agreement/contract between Vendor and a TIPS Member, that clause must provide that the "Venue" for any litigation or alternative dispute resolution is shall be in the state and county where the TIPS Member operates unless the TIPS Member expressly agrees otherwise. Any TIPS Sale Supplemental Agreement containing a "Venue" clause that conflicts with these terms is rendered void and unenforceable.

If Vendor disagrees, after this solicitation legally closes and TIPS begins evaluating Vendor's file, TIPS will provide Vendor with a draft Word Document version of the Vendor Agreement and will be instructed to include all requested negotiations as redline edits for TIPS consideration.

Does Vendor agree?

71 Certification Regarding "Automatic Renewal" Terms with TIPS Members

Vendor agrees that no TIPS Sale may incorporate an "Automatic Renewal" clause that exceeds month to month terms with which the TIPS Member must comply. All renewal terms incorporated into a TIPS Sale Supplemental Agreement shall only be valid and enforceable when Vendor received written confirmation of acceptance of the renewal term from the TIPS Member for the specific renewal term. The purpose of this clause is to avoid a TIPS Member inadvertently renewing a Supplemental Agreement during a period in which the governing body of the TIPS Member has not properly appropriated and budgeted the funds to satisfy the Agreement renewal. Any TIPS Sale Supplemental Agreement containing an "Automatic Renewal" clause that conflicts with these terms is rendered void and unenforceable.

If Vendor disagrees, after this solicitation legally closes and TIPS begins evaluating Vendor's file, TIPS will provide Vendor with a draft Word Document version of the Vendor Agreement and will be instructed to include all requested negotiations as redline edits for TIPS consideration.

Does Vendor agree?

**7
2 Certification Regarding "Indemnity" Terms with TIPS Members**

Texas and other jurisdictions restrict the ability of governmental entities to indemnify others. Vendor agrees that if any "Indemnity" provision which requires the TIPS Member to indemnify Vendor is included in any sales agreement/contract between Vendor and a TIPS Member, that clause must either be stricken or qualified by including that such indemnity is only permitted, "to the extent permitted by the laws and constitution of [TIPS Member's State]" unless the TIPS Member expressly agrees otherwise. Any TIPS Sale Supplemental Agreement containing an "Indemnity" clause that conflicts with these terms is rendered void and unenforceable.

If Vendor disagrees, after this solicitation legally closes and TIPS begins evaluating Vendor's file, TIPS will provide Vendor with a draft Word Document version of the Vendor Agreement and will be instructed to include all requested negotiations as redline edits for TIPS consideration.

Does Vendor agree?

**7
3 Certification Regarding "Arbitration" Terms with TIPS Members**

Vendor agrees that if any "Arbitration" provision is included in any TIPS Sale agreement/contract between Vendor and a TIPS Member, that clause may **not** require that the arbitration is mandatory or binding. Vendor agrees that if any "Arbitration" provision is included in any TIPS Sale agreement/contract between Vendor and a TIPS Member, that clause provides for only voluntary and non-binding arbitration unless the TIPS Member expressly agrees otherwise. Any TIPS Sale Supplemental Agreement containing a "Arbitration" clause that conflicts with these terms is rendered void and unenforceable.

If Vendor disagrees, after this solicitation legally closes and TIPS begins evaluating Vendor's file, TIPS will provide Vendor with a draft Word Document version of the Vendor Agreement and will be instructed to include all requested negotiations as redline edits for TIPS consideration.

Does Vendor agree?

**7
4 2 CFR PART 200 AND FEDERAL CONTRACT PROVISIONS EXPLANATION**

TIPS and TIPS Members will sometimes seek to make purchases with federal funds. In accordance with 2 C.F.R. Part 200 of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (sometimes referred to as "EDGAR"), Vendor's response to the following questions labeled "2 CFR Part 200 or Federal Provision" will indicate Vendor's willingness and ability to comply with certain requirements which may be applicable to TIPS purchases paid for with federal funds, if accepted by Vendor.

Your responses to the following questions labeled "2 CFR Part 200 or Federal Provision" will dictate whether TIPS can list this awarded contract as viable to be considered for a federal fund purchase. **Failure to certify all requirements labeled "2 CFR Part 200 or Federal Provision" will mean that your contract is listed as not viable for the receipt of federal funds. However, it will not prevent award.**

If you do enter into a TIPS Sale when you are accepting federal funds, the contract between you and the TIPS Member will likely require these same certifications.

7 5 2 CFR Part 200 or Federal Provision - Vendor Willingness to Accept Federal Funds

This certification is not required by federal law. However, TIPS Members are public entities and qualifying non-profits which often receive federal funding and grants (ESSER, CARES Act, EDGAR, etc.) **Accepting such funds often requires additional required certifications and responsibilities for Vendor.** The following attribute questions include these required certifications. Your response to this questions, the following certifications, and other factors will determine whether your contract award will be deemed as eligible for federal fund expenditures by TIPS Members.

If awarded, is Vendor willing to accept payment for goods and services offered under this contract paid for by a TIPS Member with federal funds?

7 6 2 CFR Part 200 or Federal Provision - Contracts

Contracts for more than the simplified acquisition threshold currently set at \$250,000 (2 CFR § 200.320), which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

Notice: Pursuant to the above, when federal funds are expended by ESC Region 8 and TIPS Members, ESC Region 8 and TIPS Members reserve all rights and privileges under the applicable laws and regulations with respect to this procurement in the event of breach of contract by either party.

Does vendor agree?

7 7 2 CFR Part 200 or Federal Provision - Termination

Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000)

Pursuant to the above, when federal funds are expended by ESC Region 8 and TIPS Members, ESC Region 8 and TIPS Members reserve the right to terminate any agreement in excess of \$10,000 resulting from this procurement process for cause after giving the vendor an appropriate opportunity and up to 30 days, to cure the causal breach of terms and conditions. ESC Region 8 and TIPS Members reserve the right to terminate any agreement in excess of \$10,000 resulting from this procurement process for convenience with 30 days notice in writing to the awarded vendor. The Vendor would be compensated for work performed and goods procured as of the termination date if for convenience of the ESC Region 8 and TIPS Members. Any award under this procurement process is not exclusive and the ESC Region 8 and TIPS reserves the right to purchase goods and services from other vendors when it is in the best interest of the ESC Region 8 and TIPS.

Does vendor agree?

7 **2 CFR Part 200 or Federal Provision - Clean Air Act**

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Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

Pursuant to the Clean Air Act, et al above, when federal funds are expended by ESC Region 8 and TIPS Members, ESC Region 8 and TIPS Members require that the proposer certify that during the term of an award by the ESC Region 8 and TIPS Members resulting from this procurement process the vendor agrees to comply with all of the above regulations, including all of the terms listed and referenced therein.

Does vendor agree?

7 **2 CFR Part 200 or Federal Provision - Byrd Anti-Lobbying Amendment**

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Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

Pursuant to the above, when federal funds are expended by ESC Region 8 and TIPS Members, ESC Region 8 and TIPS Members require the proposer certify that during the term and during the life of any contract with ESC Region 8 and TIPS Members resulting from this procurement process the vendor certifies that it is in compliance with all applicable provisions of the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).

Does Vendor agree?

8 2 CFR Part 200 or Federal Provision - Byrd Anti-Lobbying Amendment - Continued

Applicable to Grants, Subgrants, Cooperative Agreements, and Contracts Exceeding \$100,000 in Federal Funds

Submission of this certification is a prerequisite for making or entering into this transaction and is imposed by the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid by or on behalf of the undersigned, 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 the awarding of a Federal contract, the making of a Federal grant, the making of a Federal loan, the entering into a cooperative agreement, and the extension, continuation, renewal, amendment, or modification of a 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 this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all covered subawards exceeding \$100,000 in Federal funds at all appropriate tiers and that all subrecipients shall certify and disclose accordingly.

Does Vendor certify that it has NOT lobbied as described herein?

8 2 CFR Part 200 or Federal Provision - Byrd Anti-Lobbying Amendment - Continued

If you answered "No, Vendor does not certify - Lobbying to Report" to the above attribute question, you must download, read, execute, and upload the attachment entitled "Disclosure of Lobbying Activities - Standard Form - LLL", as instructed, to report the lobbying activities you performed or paid others to perform.

8 2 CFR Part 200 or Federal Provision - Federal Rule

Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of \$100,000)

Pursuant to the above, when federal funds are expended by ESC Region 8 and TIPS Members, ESC Region 8 and TIPS Members requires the proposer certify that in performance of the contracts, subcontracts, and subgrants of amounts in excess of \$250,000, the vendor will be in compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).

Does vendor certify compliance?

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2 CFR Part 200 or Federal Provision - Procurement of Recovered Materials

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include: (1) procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; (2) procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

Does vendor certify that it is in compliance with these provisions?

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2 CFR Part 200 or Federal Provision - Rights to Inventions

If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

Pursuant to the above, when the foregoing applies to ESC Region 8 and TIPS Members, Vendor certifies that during the term of an award resulting from this procurement process, Vendor agrees to comply with all applicable requirements as referenced in the Federal rule above.

Does vendor certify?

2 CFR Part 200 or Federal Provision - Domestic Preferences for Procurements and Compliance with Buy America Provisions

As appropriate and to the extent consistent with law, TIPS Member Customers, to the greatest extent practicable under a Federal award, may provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). Vendor agrees that the requirements of this section will be included in all subawards including all contracts and purchase orders for work or products under this award, to the greatest extent practicable under a Federal award. For purposes of 2 CFR Part 200.322, "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. Moreover, for purposes of 2 CFR Part 200.322, "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum, plastics and polymer-based products such as polyvinyl chloride pipe, aggregates such as concrete, glass, including optical fiber, and lumber.

Vendor certifies that it is in compliance with all applicable provisions of the Buy America Act. Purchases made in accordance with the Buy America Act must still follow the applicable procurement rules calling for free and open competition. For purposes of 2 CFR Part 200.322,

"Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

"Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

Pursuant to the above, when federal funds are expended by ESC Region 8 and TIPS Members, Vendor certifies that to the greatest extent practicable Vendor will provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products).

Does Vendor Certify?

8 2 CFR Part 200 or Federal Provision - Ban on Foreign Telecommunications

ESC 8 and TIPS Members are prohibited from obligating or expending Federal financial assistance, to include loan or grant funds, to: (1) procure or obtain, (2) extend or renew a contract to procure or obtain, or (3) enter into a contract (or extend or renew a contract) to procure or obtain, equipment, services, or systems that use "covered telecommunications" equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. "Covered telecommunications" equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities), and physical security surveillance of critical infrastructure and other national security purposes, and video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities) for the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes detailed in 2 CFR § 200.216.

Pursuant to the above, when federal funds are expended by ESC Region 8 and TIPS Members, Vendor certifies that Vendor will not purchase equipment, services, or systems that use "covered telecommunications", as defined by 2 CFR §200.216 equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

Does vendor certify?

8 2 CFR Part 200 or Federal Provision - Contract Cost & Price

For contracts more than the simplified acquisition threshold currently set at \$250,000, a TIPS Member may, in very rare circumstances, be required to negotiate profit as a separate element of the price pursuant to 2 C.F.R. 200.324(b). Under those circumstances, Vendor agrees to provide information and negotiate with the TIPS Member regarding profit as a separate element of the price. However, Vendor certifies that the total price charged by the Vendor shall not exceed the Vendor's TIPS pricing and pricing terms proposed.

Does Vendor certify?

8 2 CFR Part 200 or Federal Provision - Equal Employment Opportunity

Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

Pursuant to the above, when federal funds are expended by ESC Region 8 and TIPS Members on any federally assisted construction contract, the equal

opportunity clause is incorporated by reference here.

Does Vendor Certify?

8 2 CFR Part 200 or Federal Provision - Davis Bacon Act Compliance

Texas Statute requires compliance with Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146- 3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non- Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

Pursuant to state and federal requirements, Vendor certifies that it will be in compliance with all applicable Davis-Bacon Act provisions if/when applicable.

Does Vendor certify?

9 2 CFR Part 200 or Federal Provision - Contract Work Hours and Safety Standards

Where applicable, all contracts awarded by ESC 8 and TIPS Members in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

Pursuant to the above, when federal funds are expended by ESC Region 8 and TIPS Members, Vendor certifies that during the term of an award for all contracts resulting from this procurement process, Vendor will be in compliance with all applicable provisions of the Contract Work Hours and Safety Standards Act.

Does Vendor certify?

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2 CFR Part 200 or Federal Provision - FEMA Fund Certification & Certification of Access to Records

If and when Vendor accepts a TIPS purchase paid for in full or part with FEMA funds, Vendor certifies that:

(1) Vendor agrees to provide the TIPS Member, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to and rights to reproduce any books, documents, papers, and records of the Contractor which are directly pertinent to this contract, or any contract resulting from this procurement, for the purposes of making audits, examinations, excerpts, and transcriptions. This right also includes timely and reasonable access to Vendor's personnel for the purpose of interview and discussion relating to such documents. Vendor agrees to provide the FEMA Administrator or an authorized representatives access to construction or other work sites pertaining to the work being completed under the contract. Vendor acknowledges and agrees that no language in this contract or the contract with the TIPS Member is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

(2) The Vendor shall not use the Department of Homeland Security's seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

(3) The Vendor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

(4) The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

(5) The Vendor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Vendor's actions pertaining to this contract.

Does Vendor certify?

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2

2 CFR Part 200 or Federal Provision - Certification of Compliance with the Energy Policy and Conservation Act

When appropriate and to the extent consistent with the law, Vendor certifies that it will comply with the Energy Policy and Conservation Act (42 U.S.C. 6321 et seq; 49 C.F.R. Part 18) and any state mandatory standards and policies relating to energy efficiency which are contained in applicable state energy conservation plans issued in compliance with the Act.

Does Vendor certify?

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3

2 CFR Part 200 or Federal Provision - Certification of Compliance with Never Contract with the Enemy

Where applicable, all contracts awarded by ESC 8 and TIPS Members in excess of \$50,000.00, within the period of performance, and which are performed outside of the United States, including U.S. territories, are subject to the regulations implementing Never Contract with the Enemy in 2 CFR part 183. Per 2 CFR part 183, in the situation specified, ESC 8 and TIPS Members shall terminate any contract or agreement resulting from this procurement which violates the Never Contract with the Enemy regulation in 2 CFR part 183, including if Vendor is actively opposing the United States or coalition forces involved in a contingency operation in which members of the the Armed Forces are actively engaged in hostilities. Vendor certifies that it is neither an excluded entity under the System for Award Management (SAM) nor Federal Awardee Performance and Integrity Information System (FAPIS) for any contract terminated due to Never Contract with the Enemy as a Termination for Material Failure to Comply.

Does Vendor certify?

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4

2 CFR Part 200 or Federal Provision - Certification of Compliance with EPA Regulations

For contracts resulting from this procurement, in excess of \$100,000.00 and paid for with federal funds, Vendor certifies that Vendor will comply with all applicable standards, orders, regulations, and/or requirements issued pursuant to the Clean Air Act of 1970, as amended (42 U.S.C. 1857(h)), Section 508 of the Clean Water Act, as amended (33 U.S.C. 1368), Executive Order 117389 and Environmental Protection Agency Regulation, 40 CFR Part 15.

Does Vendor certify?

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5

2 CFR Part 200 or Federal Provision - Record Retention Requirements

For contracts resulting from this procurement, paid for by ESC 8 or TIPS Members with federal funds, Vendor certifies that Vendor will comply with the record retention requirements detailed in 2 CFR § 200.334. Vendor certifies that Vendor will retain all records as required by 2 CFR § 200.334 for a period of three years after final expenditure or financial reports, as applicable, and all other pending matters are closed.

Does Vendor certify?

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6

2 CFR Part 200 or Federal Provision - Subcontracting and Affirmative Steps for Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms.

Do you ever anticipate the possibility of subcontracting any of your work under this award if you are successful?

If you respond "Yes", you must respond to the following attribute question accurately. If you respond "No", you may skip the following attribute question.

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2 CFR Part 200 or Federal Provision - If "Yes" Response to Above Attribute - Continued - Subcontracting and Affirmative Steps for Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms.

Only respond to this question if you responded "Yes" to the attribute question directly above. Skip this question if you responded "No" to the attribute question directly above.

Does Vendor certify that it will follow the following affirmative steps? Federal Regulation 2 CFR §200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms. (a)The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(b) Affirmative steps must include:

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce ; and
- (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs(1) through (5) of this section.

Does Vendor certify?

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ACKNOWLEDGMENT & BINDING CORPORATE AUTHORITY

By submitting this proposal, the individual(s) submitting on behalf of the Vendor certify that they are authorized by Vendor to complete and submit this proposal on behalf of Vendor and that this proposal was duly submitted on behalf of Vendor by authority of its governing body, if any, and within the scope of its corporate powers.

Vendor further certifies that it has read, examined, and understands all portions of this solicitation including but not limited to all attribute questions, attachments, solicitation documents, bid notes, and the Vendor Agreement(s). Vendor certifies that, if necessary, Vendor has consulted with counsel in understanding all portions of this solicitation.

TIPS CONTRACT _____

REQUIRED CONFIDENTIALITY CLAIM FORM

(VENDOR MUST COMPLETE THE FOLLOWING VENDOR INFORMATION)

Vendor Entity Name: FacilityForce, Inc

Vendor Authorized Signatory Name: Keith O'Brien

Vendor Authorized Signatory Title: CEO

Vendor Authorized Signatory Email: keith.obrien@facilityforce.com

Vendor Address: 13359 North Highway 183, Suite 406 - 797

City: Austin State: TX Zip Code: 78750

Vendor agrees that it is voluntarily providing its data (including but not limited to: Vendor information, Vendor documentation, Vendor's proposal, Vendor pricing submitted or provided to TIPS, TIPS contract documents, TIPS correspondence, Vendor logos and images, Vendor's contact information, Vendor's brochures and commercial information, Vendor's financial information, Vendor's certifications, and any other Vendor information or documentation submitted to TIPS by Vendor and its agents) (Hereinafter, "Vendor Data") to TIPS. Vendor understands and agrees that TIPS is a government entity subject to public information laws including but not limited to Texas Government Code (TGC) Chapter 552. Vendor agrees that regardless of confidentiality designations herein, Vendor's submission of a proposal constitutes Vendor's consent to the disclosure and release of Vendor's Data and comprehensive proposal, including any information deemed confidential or proprietary herein, to and by TIPS Members.

Notwithstanding the foregoing permissible release to TIPS Members, if Vendor considers any portion of Vendor's proposal to be otherwise confidential and not subject to public disclosure pursuant to public information laws, including but not limited to TGC Chapter 552, Vendor must properly execute Option 1 only below, attach to this PDF all documents and information that Vendor deems confidential, and upload the consolidated documentation. Regardless of the Option selected below, this form must be completed and uploaded to the "Response Attachments" section of the eBid System entitled "Required Confidentiality Claim Form." Execution and submission of this form is the sole indicator of whether Vendor considers any Vendor Data confidential in the event TIPS receives a request, a Public Information Request, or subpoena. If TIPS receives a request, any responsive documentation not deemed confidential by you through proper execution of Option 1 of this form will be automatically released. For information deemed confidential by you through proper execution of Option 1 of this form, TIPS will follow procedures of controlling statute(s) regarding withholding that documentation and shall not be liable for any release of information required by law, including Attorney General opinion or court order.

(VENDOR MUST COMPLETE ONE OF THE TWO OPTIONS AND UPLOAD IN THE EBID SYSTEM)

OPTION 1 – DESIGNATING CONFIDENTIAL MATERIALS – YES, VENDOR HAS ATTACHED CONFIDENTIAL MATERIALS

OPTION 2 – WAIVER OF CONFIDENTIALITY – NO, VENDOR HAS NOT ATTACHED CONFIDENTIAL MATERIALS

(Confirm each bullet point and sign below)

(Confirm each bullet point and sign below)

- Vendor claims some Vendor Data confidential to the extent permitted by TGC Chapter 552 and other applicable law.
Vendor attached to this PDF all potentially confidential Vendor Data and listed the number of attached pages below.
Vendor's authorized signatory has signed below and shall upload this document in the proper location in the eBid System.
Vendor agrees that TIPS shall not be liable for any release of confidential information required by law.

By signing for Option 2 below, Vendor expressly waives any confidentiality claim for all Vendor Data submitted in relation to this proposal and resulting contract. Vendor confirms that TIPS may freely release Vendor Data submitted in relation to this proposal or resulting contract to any requestor. Vendor agrees that TIPS shall not be responsible or liable for any use or distribution of Vendor Data by TIPS or TIPS Members.

- Vendor's authorized signatory has signed below and shall upload this document in the proper location in the eBid System.
Vendor agrees that TIPS shall not be liable for any release of confidential information required by law.

Number of pages attached deemed confidential: _____

Authorized Signature: _____

Authorized Signature: Keith O'Brien

VENDOR SUPPLEMENTAL INFORMATION

TIPS permits Vendors to submit supplemental documentation and information (“Vendor Supplemental Information”) with their proposals to display to TIPS Member Customers their qualifications, offerings, and special terms. The following documents are for marketing and informational purposes only. They are not terms of Vendor’s TIPS Contract. If the Vendor Supplemental Information herein contains any warranties, terms, or conditions, the TIPS Member Customer may review and determine whether or not those are applicable and acceptable for any TIPS purchase before proceeding. If the Vendor Supplemental Information contains any licenses or certificates, TIPS encourages the TIPS Member Customer to ensure current accuracy at the time of a TIPS purchase.

SOFTWARE SUPPORT AGREEMENT

THIS AGREEMENT is between FacilityForce, Inc. a Delaware corporation, with an office located at 13359 North Highway 183 Suite 406-797 Austin, TX 78750 (hereinafter called "FacilityForce") and **Insert Name and Address** (hereinafter called "CUSTOMER").

A. BACKGROUND

1. FacilityForce and CUSTOMER are parties to a Software License Agreement dated **INSERT DATE** pursuant to which CUSTOMER has licensed certain software products ("Software") from FacilityForce.
2. Support ("Support") for the Software is available as an option. Support includes bug fixes and telephone support and may include, when made available generally from FacilityForce, program updates and enhancements.
3. The purpose of this Agreement is to set forth the terms and conditions upon which CUSTOMER has agreed, at its option, to subscribe to Support from FacilityForce.

B. TERMS AND CONDITIONS

1. Term

Support shall commence upon delivery of the Software and shall thereafter have a term of twelve (12) months. The term shall automatically renew each year thereafter for an additional twelve (12) month period unless terminated as set forth below.

2. Correction of Deviations

In the event that the CUSTOMER encounters an error and/or malfunction ("Deviation") in the Software, it shall communicate the circumstances and any supporting information to FacilityForce. Upon receipt, FacilityForce will respond as follows:

- a. In the event that, in the mutual and reasonable opinion of FacilityForce and the CUSTOMER, there exists a Deviation that does not constitute a serious impediment to the normal intended use of the Software, FacilityForce may correct the Deviation and distribute the correction to the CUSTOMER in accordance with FacilityForce' normal Software revision schedule;
- b. In the event that, in the mutual and reasonable opinion of FacilityForce and the CUSTOMER, there exists a Deviation that does constitute a serious impediment to the normal intended use of the Software, FacilityForce will take such steps as are required to correct the Deviation with all due dispatch. Corrections will be applied and distributed to the latest software release. FacilityForce will have no obligation to provide development support for an issue that can be resolved by Customer installing a revision to the software.

3. Software Revisions

The Software may be revised by FacilityForce as a result of the correction of Deviations and/or the release of upgrades or improvements or modifications designed to improve the performance of the Software and/or to increase the capabilities of the Software (hereafter "Revisions"). Revisions shall be of two kinds:

-
- a. Revisions that the CUSTOMER is obliged to implement ("Mandatory Revisions");
 - b. Revisions that may be implemented by the CUSTOMER at its option ("Optional Revisions").

FacilityForce currently offers 2 planned releases/updates per year that are available to all customers that are current on their software Support agreement. No charge shall be made to the CUSTOMER for either Mandatory Revisions or Optional Revisions.

4. Telephone Hotline Assistance

FacilityForce, at its expense, shall make available technically qualified personnel to respond to all reasonable telephone requests that may be made by the CUSTOMER relating to the application and operation of the Software.

5. Technical Literature

FacilityForce shall make available to the CUSTOMER all technical literature that is considered by FacilityForce to be relevant to the Software and its use within the scope of CUSTOMER's operations.

6. Transmission

All Revisions and New Releases (software distributions) will be transmitted to the CUSTOMER via FTP or other suitable media, at the option of FacilityForce. The CUSTOMER shall be solely responsible for mounting the software distribution and executing the appropriate instructions in order to transfer the Revisions or New Releases onto to its system.

7. Remote Diagnostic Access

The CUSTOMER shall provide appropriate access by which FacilityForce may, with the permission of the CUSTOMER, remotely access the Software for the purpose of remote diagnostics and support.

8. Proper Use

- a. The CUSTOMER agrees that all reasonable effort shall be taken to ensure that neither the Software nor data files are misused.
- b. In the event that the CUSTOMER does misuse the Software or data files, correction of the situation will be at CUSTOMER's expense.
- c. In the event that diagnostic assistance is provided by FacilityForce, which, in the reasonable opinion of FacilityForce and the CUSTOMER, relates to problems not caused by a Deviation in the Software, such assistance shall be at the CUSTOMER's expense.

9. Software Support Fee – Paid Up License

In consideration of the Support services to be provided by FacilityForce for the first twelve month period hereunder, CUSTOMER shall pay to FacilityForce **Insert Fee Here.**

10. Additional Software Support Fee – Paid Up License

In the event the CUSTOMER acquires Software in addition to that indicated in Schedule 1 of the Software License Agreement (the "Additional Software"), the Support shall automatically be extended to cover the Additional Software, and the CUSTOMER shall pay an additional annual Support fee in an amount equal to twenty percent (20%) of the then current license fee for the Additional Software.

11. Other Fees and Expenses

If onsite Support is required, CUSTOMER will pay reasonable travel and living expenses.

12. Payment Terms

- a. Annual payments for Support will be due in advance of the commencement of the initial one-year term of the Support and each anniversary thereafter.
- b. FacilityForce reserves the right to change the annual Support fee by providing CUSTOMER written notice of the increase at least thirty (30) days prior to any scheduled renewal date.
- c. Payment is due 30 days from receipt of invoice.
- d. Overdue payments of fees and charges shall bear interest at the rate of 1.5% per month.
- e. FacilityForce reserves the right to suspend Support and Support Services for overdue payments.

13. Default and Termination

- a. The CUSTOMER shall have the right to terminate Support upon delivery of written notice at least thirty (30) days prior to any scheduled renewal date.
- b. Upon notice as set forth in subsection 13c, FacilityForce may cancel Support in the event that the CUSTOMER does not implement a Mandatory Revision within sixty (60) days of receipt thereof or such longer period as FacilityForce may consent to in writing.
- c. In the event of any breach of the terms and conditions of this Agreement by the CUSTOMER, FacilityForce will, by written notice to the CUSTOMER, give the CUSTOMER a period of thirty (30) days within which to institute remedies to correct such breach. In the event that such breach has not been corrected to FacilityForce' satisfaction within said thirty (30) day period, FacilityForce may then cancel Support, effective immediately, by notice in writing to the CUSTOMER.
- d. In the event that Support is terminated by FacilityForce, FacilityForce shall have no continuing obligations to the CUSTOMER of any nature whatsoever with respect to Support. Furthermore, termination by FacilityForce pursuant to the provisions hereof shall be without prejudice to any right or recourse available to FacilityForce, and without prejudice to FacilityForce' right to collect any amounts which remain due to it hereunder.

14. Limitation of Liability

- a. In the event of any claim brought by one party against another hereunder, a party will be liable only for actual, direct losses or damages incurred (including cost of cover), limited to the amount of fees paid to FacilityForce for Support services.
- b. Irrespective of the basis of the claim, neither party will be liable for any special, indirect, incidental or consequential damages of any kind, including, without limitation, lost profits or loss of data.

15. Intellectual Property

- a. FacilityForce is the owner of all right, title and interest in the Software, including (i) any source code, object code, enhancements and modifications; (ii) all documentation related to the Software; and (iii) all related material that is furnished by FacilityForce. Customer's rights in the Software are set forth in the license between the parties. Customer expressly waives any claim of ownership to or right in any suggestions, feedback, or ideas made by Customer to FacilityForce to improve or change the Software

C. General Terms

- 1. Neither FacilityForce nor CUSTOMER will assign or transfer its interest in this Agreement without the prior written consent of the other party.
- 2. All provisions of this Agreement, which by their nature should survive termination of this Agreement, will so survive.
- 3. No delay or failure by either party to exercise any right hereunder, or to enforce any provision of this Agreement will be considered a waiver thereof. No single waiver will constitute a continuing or subsequent waiver. To be valid, a waiver must be in writing, but need not be supported by consideration.
- 4. If any provision of this Agreement is held to be illegal, invalid or unenforceable, in whole or in part, such provision will be modified to the minimum extent necessary to make it legal, valid and enforceable, and the remaining provisions of this Agreement will not be affected.
- 5. This Agreement, including its interpretation and enforcement, will be governed by the substantive laws of the State of Texas excluding its conflict of laws rules.
- 6. Any communication or notice hereunder must be in writing, and will be deemed given and effective: (i) when delivered personally; (ii) when sent by e-mail; (iii) when delivered by overnight express; or (iv) three (3) days after the postmark date when mailed by certified or registered mail, postage prepaid, return receipt requested and addressed to a party at its address for notices. Each party's address for notices is stated below. Such address may be changed by a notice delivered to the other party in accordance with the provisions of this Section.

FacilityForce, Inc. _____
13359 North Highway 183 #406-797 _____
Austin, Texas 78750 _____
Attn.: Leeann Grindlinger Attn.: _____

- 7. In any action at law or in equity to enforce or interpret the terms of this Agreement, the prevailing party will be entitled to recover its reasonable attorneys' fees and costs, in addition to any other relief ordered by the court. Such fees and costs will include those incurred in connection with the enforcement of any resulting judgment or order, and any post judgment order will provide for the right to receive such attorneys' fees and costs.
- 8. Neither party will be liable for any failure to perform or any delay in performing any of its obligations hereunder when such failure or delay is due to circumstances beyond its reasonable control and without its fault ("Force Majeure"), including without limitation, any natural catastrophe, fire, war, riot, strike, or any general shortage or unavailability of materials, components or transportation facilities, or any governmental action or inaction. Upon the occurrence of such event of Force Majeure, the affected party will immediately give notice to the other party with relevant details, and will keep the other party informed of related developments.
- 9. This Agreement constitutes the entire agreement between the parties and supersedes all prior or contemporaneous oral, and all prior written, negotiations, commitments and understandings of the parties relating to the subject matter hereof. This Agreement may not be modified except by a writing executed by both parties.

IN WITNESS WHEREOF, the parties have entered into Agreement, effective this **Insert Date Here**.

FacilityForce

Customer

Signature

Signature

Printed Name

Printed Name

Title

Title

Date

Date

SOFTWARE LICENSE AGREEMENT

THIS AGREEMENT is between FacilityForce, Inc. a Delaware corporation, with an office located at 13359 North Highway 183 Suite 406-797 Austin, TX 78750 (hereinafter called "FacilityForce") and **Insert Name and Address** (hereinafter called "CUSTOMER").

ARTICLE I - LICENSE

- A. FacilityForce grants to CUSTOMER a non-exclusive, perpetual (subject to Article VI) and non-transferable license for use of the Engage, Operate, Perform software specified in Schedule 1 ("Software") on the CUSTOMER's database servers and application servers and within the scope of permitted use as set forth in Schedule 1 (the database servers and application servers shall be referred to as the "Environment"); pursuant to this license, CUSTOMER may have one production instance and up to two non-production instances. If any part of the Environment becomes temporarily inoperative the license may be extended to backup servers until such time as the Environment becomes operative again at which time all Software will be returned to the Environment. Except as provided above, use of Software other than in the Environment requires additional fees to those specified in Schedule 1. CUSTOMER'S license is to use the Software in its own business; CUSTOMER has no right to use the Software in processing work for third parties. If procuring a site license, "Site" is defined as the size of the CUSTOMER's organization as of the effective date of this Agreement; any expansion of the organization via acquisition, consolidation, merger, restructuring or similar acts could result in additional license fees and increased Support fees, as reasonably required by FacilityForce.
- B. The specific components included in the term Software to be provided to CUSTOMER hereunder are listed on Schedule 1.

ARTICLE II - FEES AND PAYMENTS

- A. CUSTOMER shall pay FacilityForce the license fees specified in Schedule 1. All fees are payable by CUSTOMER within thirty (30) days of receipt of invoice.
- B. CUSTOMER shall be responsible for all taxes and charges assessed or imposed with respect to amounts payable hereunder, including without limitation state and local, occupation, sales, use or excise taxes paid or payable by FacilityForce, exclusive however of taxes imposed on FacilityForce' net income by the United States or any political subdivision thereof.
- C. Overdue payments of fees and charges shall bear interest at the rate of 1.5% per month.

ARTICLE III - NON-DISCLOSURE

- A. Subject to the other paragraphs in this Article III, CUSTOMER agrees that the Software shall be held in confidence by CUSTOMER and shall not be disclosed to others without the prior written consent of FacilityForce. This obligation to hold confidential does not apply to any portion of the Software (1) developed by CUSTOMER and in CUSTOMER's possession prior to the receipt of same from FacilityForce; (2) which at the time of disclosure is part of the public domain through no act or failure to act by CUSTOMER; or (3) which is lawfully disclosed to CUSTOMER without restriction on further disclosure by another party who did not acquire same from FacilityForce.
- B. The CUSTOMER may copy, in whole or in part, any printed material relative to the Software that may be provided by FacilityForce under this Agreement. Additional copies provided by FacilityForce will be billed to CUSTOMER at FacilityForce' standard rates.

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- C. Any Software provided by FacilityForce in machine-readable form may be copied by CUSTOMER for use with the designated servers to the extent necessary for archive or emergency restart purposes, to replace a worn copy, or to understand the contents of such machine-readable material.
 - D. The CUSTOMER agrees to keep the original and any copies of that Software at the same location as the CUSTOMER's designated servers, except that a machine-readable copy of the Software may be kept for archive or emergency restart purposes only at another facility.

ARTICLE IV – WARRANTIES

- A. FacilityForce represents that it has the right to license the Software to CUSTOMER as provided in ARTICLE I. FacilityForce further represents that the Software will conform to the specifications published by FacilityForce or provided by FacilityForce to Customer (“Documentation”). In the event the Software fails to conform to the Documentation, FacilityForce’ sole obligation shall be to correct the errors in accordance with the provisions of Article IV D.
- B. FacilityForce will defend, at its own expense, any action brought against CUSTOMER to the extent that it is based on a claim that the FacilityForce Software infringes a United States patent or copyright, and FacilityForce will pay those costs and damages finally awarded against CUSTOMER in any such action that are attributable to any such claim, but such defense and payments are conditioned on the following: (1) that FacilityForce shall be promptly notified in writing by CUSTOMER following its receipt of any such claim; (2) that FacilityForce shall have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; (3) should the Software become, or in FacilityForce’ opinion is likely to become, the subject of a claim of infringement of a United States patent or copyright, then CUSTOMER shall permit FacilityForce, at its option and expense, either to (A) procure for CUSTOMER a non-infringing license to use the Software; (B) modify the Software so that it becomes non-infringing; (C) procure for CUSTOMER a depreciated credit for the Software and accept its return. Depreciation shall be an equal amount per year from the date of receipt of the Software, which the parties agree shall be five (5) years. FacilityForce shall have no liability to CUSTOMER under any provision of this clause with respect to any claim of patent or copyright infringement that is based on CUSTOMER's unauthorized use or combination of the Software with software or data not supplied by FacilityForce as part of the Software.
- C. CUSTOMER agrees to defend and hold FacilityForce harmless against any claims made by any third party against FacilityForce arising out of CUSTOMER's use of the Software unless such claims are due to the negligence or willful misconduct of FacilityForce.
- D. The warranty period for the Software shall extend for a period of ninety (90) days from the date of delivery of the Software. During the warranty period, in the event that the CUSTOMER encounters an error and/or malfunction whereby the Software does not conform to the description in the Documentation, FacilityForce will respond as follows:
 - 1. In the event that, in the mutual and reasonable opinion of FacilityForce and the CUSTOMER, there exists an error or nonconformance to the Documentation, FacilityForce will take such steps as are required to correct the error with due dispatch.
 - 2. In the event that, in the mutual and reasonable opinion of FacilityForce and the CUSTOMER, the error or nonconformance to the Documentation does not constitute a serious impediment to the normal intended use of the Software, FacilityForce will correct the error and distribute the correction to the CUSTOMER in accordance with FacilityForce’ normal Software revision schedule.

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- E. FacilityForce does not warrant third party software. Warranties, if any, for third party software is passed through to CUSTOMER.
- F. THE ABOVE WARRANTIES ARE THE ONLY WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, THAT ARE MADE BY FACILITYFORCE AND FACILITYFORCE DISCLAIMS ALL OTHER WARRANTIES, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY FACILITYFORCE, ITS AGENTS OR EMPLOYEES SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THE WARRANTIES IN THIS AGREEMENT. SUCH WARRANTIES SHALL NOT BE DEEMED TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE SO LONG AS FACILITYFORCE IS MAKING GOOD FAITH EFFORTS TO CORRECT DEFECTS OR FAILURES UNDER THE TERMS OF THE WARRANTY. NEITHER FACILITYFORCE NOR ANYONE ELSE WHO HAS BEEN INVOLVED IN THE CREATION, PRODUCTION OR DELIVERY OF THE FACILITYFORCE SOFTWARE SHALL BE LIABLE FOR ANY CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES (INCLUDING DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, AND THE LIKE) ARISING OUT OF THIS AGREEMENT OR THE USE OF OR INABILITY TO USE THE FACILITYFORCE SOFTWARE EVEN IF FACILITYFORCE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO CASE SHALL FACILITYFORCE' AGGREGATE LIABILITY FOR ALL MATTERS ARISING OUT OF THE SUBJECT MATTER OF THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR OTHERWISE, EXCEED THE AMOUNT ACTUALLY RECEIVED BY FACILITYFORCE PURSUANT TO THIS AGREEMENT.

ARTICLE V – INTELLECTUAL PROPERTY RIGHTS

- A. CUSTOMER acknowledges and agrees that the Software consists of proprietary source code developed and owned by FacilityForce ("FacilityForce Software") as well as contributions made by third parties whose source code ("Third Party Software") is incorporated into and made a part of the Software.
- B. The current list of Third Party Software is listed in the Documentation, and CUSTOMER acknowledges and agrees that future updates, enhancements and upgrades to the Software may include additional Third Party Software, which will be identified in the revised Documentation furnished to CUSTOMER with such updates, enhancements and upgrades to the Software. CUSTOMER agrees to be bound by the terms and conditions, if any, imposed by the developer/owner of each component of the Third Party Software, which may be found at web site(s) listed in the Documentation, as amended from time to time.
- C. CUSTOMER agrees that FacilityForce is the owner of all right, title and interest in all FacilityForce Software, including (i) any Source Code, Object Code, enhancements and modifications; (ii) all files, including input and output materials pertaining to the FacilityForce Software; (iii) all documentation related to the FacilityForce Software; (iv) all media upon which any such computer programs, files and documentation are located (including tapes, disks and other storage media); and (v) all related material that is furnished by FacilityForce.
- D. CUSTOMER agrees that, notwithstanding inclusion of Third Party Software in the Software, neither the FacilityForce Software nor the Software shall enter the public domain by reason of the terms and conditions of this Agreement or the inclusion of Third Party Software in the Software, and CUSTOMER shall do nothing to cause any infringement of FacilityForce' proprietary rights or to cause the FacilityForce Software or the Software to enter the public domain.
- E. CUSTOMER agrees that it will not remove or alter any legends, trademarks, trade names, service marks, copyrights, logos, markings or other brand designations of the FacilityForce Software, the Third Party Software or the Software.

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- F. Neither Party grants to the other Party under this Agreement any actual or implied license to use its trademarks, trade names, service marks, copyrights, logos, markings or other brand designations.

ARTICLE VI - TERMINATION

- A. The license conveyed pursuant to Article I-A may be terminated by FacilityForce in the event of material breach or default by CUSTOMER under this Agreement if FacilityForce notifies CUSTOMER in writing of the breach or default and CUSTOMER does not correct same within thirty (30) days of FacilityForce' written notice. Non-payment is material breach of this agreement.
- B. All Software and Documentation supplied hereunder by FacilityForce shall be and remain the property of FacilityForce. Upon termination of this Agreement, whatever the reason, such Software and documentation and any copies thereof made by CUSTOMER pursuant to this Agreement shall be returned to FacilityForce.

ARTICLE VII - ASSIGNMENT

This Agreement shall not be assignable by either party without the prior written consent of the other party, and any attempted assignment without such consent shall be void. No assignment of this Agreement shall be valid until and unless consented to in writing by the consenting party and assumed by the assignee in writing. When duly assigned in accordance with the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the assignee.

ARTICLE VIII- OTHER AUTHORIZED BUYERS

If the CUSTOMER is a governmental entity, the parties agree that other governmental entities (including state agencies) ("Other Buyers") may purchase under these license terms. If Other Buyers exercise the right to purchase under this provision, the Other Buyer shall be substituted for "CUSTOMER" herein and shall be entitled to all rights and be responsible for all obligations with respect to the Other Buyer's purchases; the Other Buyer is not responsible for the CUSTOMER purchases. The CUSTOMER and each Other Buyer will be responsible for its purchases only and shall not be responsible for any Other Buyer's obligations. FacilityForce reserves the right to request each Other Buyer execute separate documentation with identical terms unless FacilityForce and such Other Buyer agree otherwise.

ARTICLE IX- ENTIRE AGREEMENT

This Agreement supersedes all prior proposals, oral or written, all previous negotiations and all other communications or understandings between FacilityForce and CUSTOMER with respect to the subject matter hereof. It is expressly agreed that if CUSTOMER issues a purchase order or other document for the services provided under this Agreement, such instrument will be deemed for CUSTOMER'S use only, and any provisions in consistent with this Agreement shall have no effect whatsoever upon this Agreement. This Agreement sets forth the sole and entire understanding between FacilityForce and CUSTOMER with respect to the software license. No amendments to this Agreement, either at the execution or subsequently, shall be binding on FacilityForce or CUSTOMER unless agreed to in writing by both parties.

ARTICLE X - GOVERNING LAW; DISPUTES

This Agreement shall be governed by the law(s) of the State of Texas. In any action at law or in equity to enforce or interpret the terms of this Agreement, the prevailing party will be entitled to recover its reasonable attorneys' fees and costs, in addition to any other relief ordered by the court. Such fees and costs will include those incurred in connection with the enforcement of any resulting judgment or order, and any post judgment order will provide for the right to receive such attorneys' fees and costs.

ARTICLE XI - SCHEDULES

Schedule 1 and any additional schedules referenced thereon are hereby incorporated into this Agreement.

IN WITNESS WHEREOF, the parties enter into this Agreement as of **Insert DATE**, the effective date of this Agreement.

FacilityForce

CUSTOMER

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

SCHEDULE 1 – SOFTWARE FEES

A. FacilityForce PRODUCTS:

INSERT PRODUCTS AND FEES HERE

SOFTWARE AS A SERVICE AGREEMENT

This Software as a Service Agreement (“Agreement”) is effective , 20 (“Effective Date”) and entered into between FacilityForce, Inc. (“FacilityForce”), a Delaware limited liability company, located at 13359 North Highway 183 Suite 406-797 Austin, TX 78750 and (“Customer”), a , located at . In consideration of the mutual covenants contained herein, the parties agree as follows:

Overview

This is a Software as a Service cloud-based distribution model that delivers software applications, hosting and support as a combined service provided by FacilityForce under this Agreement (collectively the “SaaS”). This Agreement describes the respective responsibilities of the parties and the service levels. This Agreement incorporates the following Schedules that shall be considered an integral part of this Agreement:

- Schedule 1 Solution Packages
- Schedule 2 Hosting Services
- Schedule 3 Support
- Schedule 4 Professional Services
- Schedule 5 Fee Schedule

1. Software as a Service, Support and Professional Services

- A. Software as a Service. In consideration of the fees paid by Customer under this Agreement, FacilityForce will provide Customer with access, through a website or designated IP address, to specific components in its proprietary software (“Software”), hereunder listed on Schedule 1, in an isolated, single-tenant environment, which is maintained by FacilityForce in a hosted environment at a third-party data center (“Hosting Services”) as set forth in Schedule 2.
- B. Support. FacilityForce will provide (i) online and telephone support relating to the use of the SaaS and (ii) updates, enhancements and modifications to the Software as they are developed and made generally available (“Support”), as set forth in Schedule 3.
- C. Services. Subject to the payment of Service fees, FacilityForce will provide Customer with training, consultation, and other related services (“Professional Services”), as set forth in Schedule 4.

2. Rights and Permitted Use

- A. Right of Use Grant. Subject to the terms and conditions of this Agreement, FacilityForce grants to Customer a non-exclusive and non-transferable right for Authorized Users to access and use the Engage, Operate and Perform Software, and Documentation for Customer’s internal business operations. “Authorized Users” means Customer’s employees or independent contractors working within their job responsibilities or engagement by Customer or other end user for which FacilityForce has granted Customer the right to use the SaaS. “Documentation” means documentation in the form of instructions, videos, digital curriculum and manuals provided by FacilityForce electronically, that describes the function and use of the SaaS. The Customer may copy, in whole or in part, any printed material relative to the Software that may be provided by FacilityForce under this Agreement. Additional copies provided by FacilityForce will be billed to Customer at FacilityForce’ standard rates.
- B. Restrictions. Customer will not (i) directly or indirectly decompile, disassemble, reverse engineer, or otherwise attempt to discover the source code or underlying structure, ideas, know-how or algorithms relevant to the SaaS, Software, Documentation, or any data related to the SaaS; (ii) copy, modify, enhance, translate, change the data structures for or create derivative works from, the SaaS; (iii) rent, lease, sell, or otherwise provide access to the SaaS to any third party or to anyone other than Customer’s Authorized Users; (iv) interfere with or disrupt the integrity or performance of the SaaS or third party data contained therein; or (v) attempt to gain unauthorized access to the SaaS or its related systems or networks.

- C. Customer Data. Customer shall retain all right, title, and interest in and to the data entered or submitted by Customer by means of the SaaS (“Customer Data”). Customer grants to FacilityForce a royalty-free, non-exclusive, non-transferable license for the term of this Agreement to use Customer Data to the extent necessary to perform its obligations under this Agreement. Notwithstanding anything to the contrary, FacilityForce shall have the right to collect and analyze data and other information relating to the provision, use and performance of various aspects of the SaaS and related systems and technologies (including, without limitation, information concerning Customer Data and data derived therefrom), and FacilityForce will be free (during and after the term hereof) to (i) use such information and data to improve and enhance the SaaS and for other development, diagnostic and corrective purposes in connection with the SaaS and other FacilityForce offerings, and (ii) disclose such data solely in aggregate or other de-identified form in connection with its business which includes but not limited to anonymized institutional and transactional data for use in its sales, marketing and training material and/or demonstrations.

3. Term

The Term of the Agreement shall commence as of the Effective Date and shall continue for three (3) years (“Initial Term”) unless terminated earlier as set forth below.

At the end of the Initial Term, the Agreement shall automatically renew for successive one-year terms, unless or until either party provides the other party with written notice of non-renewal at least ninety (90) days prior to the end of the then current term.

4. Fees and Payments

- A. Customer shall pay FacilityForce the applicable fees as set forth in Schedule 5. The Annual Service Fee will increase 5% on each anniversary of the successive one-year renewal terms.
- B. Customer shall be responsible for all taxes and charges assessed or imposed with respect to amounts payable hereunder, including without limitation state and local, occupation, sales, GST, PST, use or excise taxes paid or payable by FacilityForce, exclusive however of taxes imposed on FacilityForce’ net income by the United States or any political subdivision thereof.
- C. If Customer wishes to make payments by credit card or P-Card or any other type of purchasing card program all to which such transaction constitutes a credit card charge, an additional credit card processing transaction fee will be calculated at four and one half percent (4.5%)
- D. FacilityForce shall invoice Customer annually, in advance, and all invoiced fees shall be due and payable within 30 days of the date of an invoice. Annual invoices shall include charges defined in Schedule 5. All payments shall be made in United States Dollars without deduction for any taxes or withholding or other offset.
- E. Any amounts not paid when due will be subject to interest accrued at eighteen percent (18%) per annum compounded quarterly, which interest will be immediately due and payable from the due date for payment until the date of actual receipt of the amount in cleared funds by FacilityForce. Interest payments that are accrued during billing disputes should be credited back to the Customer if said dispute is found to be through no fault of the Customer.
- F. A Customer will be considered delinquent if payment in full is not received forty-five (45) days from the date of the invoice. FacilityForce reserves the right to suspend any Service including Customer’s access to the SaaS if the Customer account becomes delinquent and is not cured within ten (10) days of written notice from FacilityForce. Customer will continue to be charged and hereby agrees to pay for SaaS during any period of suspension. Customer’s failure to pay any invoice after this ten (10) day period shall constitute a material default hereunder and shall entitle FacilityForce without any additional notice, the termination of the Agreement.
- G. If Customer terminates this Agreement other than pursuant to Section 3, a Service Termination Fee equal to 100% of the current Annual Service Fee will be billed annually until the end of the then current Term of this Agreement.

5. Ownership of Software and Data

Customer shall not obtain any ownership rights, title or interest in the software, hardware or systems developed or employed by FacilityForce in providing Services under the Agreement. FacilityForce shall not obtain any ownership rights, title or interest to Customer's data files. Upon expiration or termination of the Agreement for any reason, FacilityForce agrees to provide Customer with a copy of Customer's data files, as they exist at the date of expiration or termination. Nothing contained herein is intended to modify the Customer's rights under any separate license agreement between Customer and FacilityForce. For avoidance of doubt, Customer shall not obtain ownership or any other rights, title or interest in the Solutions referenced in Schedule 1 either during the Term of this Agreement or after the termination of this Agreement.

6. Intellectual Property Rights

- A. Customer acknowledges and agrees that the Software consists of proprietary source code developed and owned by FacilityForce as well as contributions made by third parties whose source code ("Third Party Software") is incorporated into and made a part of the Software.
- B. FacilityForce owns all intellectual property rights in and to: (i) the SaaS; (ii) the Software; (iii) all updates, enhancements and modifications to the Software and SaaS; (iv) any Documentation or data related to the SaaS; and (v) any software, applications, inventions, or other technology developed in connection with the Software or the SaaS. Customer obtains no rights, title or interest in the Software, SaaS, or Documentation and only is permitted a license to use the Software and SaaS as expressly provided in this Agreement.
- C. Neither party grants to the other party under this Agreement any actual or implied license to use its trademarks, trade names, service marks, copyrights, logos, markings, or other brand designations.

7. Confidentiality

- A. Each party acknowledges it may have access to confidential information of the other party. "Confidential Information" shall mean any information relating to trade secrets, data, designs, drawings, documentation, software (regardless of form or media), prototypes, processes, methods, concepts, research, development, facilities, employees, vendors, clients, marketing, financials, business activities, and other similar information whether obtained or disclosed orally or in writing. To the extent practicable, the disclosing party shall mark and/or identify Confidential Information as confidential or proprietary at the time of disclosure; provided however, the obligation of Confidentiality shall also apply to information which, based on its nature, is reasonably expected to be deemed confidential.
- B. Confidential Information shall not include information that: (a) becomes generally available to the public through no fault of the receiving party; (b) is lawfully provided to the receiving party by a third party not under an obligation of confidentiality; (c) was lawfully possessed by the receiving party prior to receiving the Confidential Information from the disclosing party, as evidenced by the receiving party's records; or (d) the receiving party can demonstrate was independently developed by receiving party without use of the disclosing party's Confidential Information.
- C. The receiving party agrees it will not disclose Confidential Information to any third party without the prior written consent of the disclosing party. The receiving party will limit access to the Confidential Information to its directors, officers, employees, agents, advisors, and contractors who (i) have a need to know the Confidential Information in connection with the Purpose, (ii) are bound to confidentiality obligations no less restrictive than those set forth herein, and (iii) have been informed of the confidential nature of such information. The receiving party shall protect the Confidential Information from unauthorized use, access, or disclosure in the same manner as it protects its own confidential and proprietary information of a similar nature, and, in any event, with at least a reasonable degree of care.

8. Warranty Disclaimer/Limitation of Liability

- A. FacilityForce represents that it has the right to grant right of use of the Software to Customer as provided in Section 2. FacilityForce further represents that the Software will conform to the specifications published by FacilityForce or provided by FacilityForce to Customer in the Documentation. In the event the Software fails to conform to the

Documentation, FacilityForce' sole obligation shall be to correct the errors in accordance with the provisions of this Section 8D.

- B. FacilityForce will defend, at its own expense, any action brought against Customer to the extent that it is based on a claim that the FacilityForce Software infringes a United States patent or copyright, and FacilityForce will pay those costs and damages finally awarded against Customer in any such action that are attributable to any such claim, but such defense and payments are conditioned on the following: (1) that FacilityForce shall be promptly notified in writing by Customer following its receipt of any such claim; (2) that FacilityForce shall have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; (3) should the Software become, or in FacilityForce' opinion is likely to become, the subject of a claim of infringement of a United States patent or copyright, then Customer shall permit FacilityForce, at its option and expense, either to (A) procure for Customer a non-infringing license to use the Software; (B) modify the Software so that it becomes non-infringing; (C) procure for Customer a depreciated credit for the Software and accept its return. Depreciation shall be an equal amount per year from the date of receipt of the Software, which the parties agree shall be five (5) years. FacilityForce shall have no liability to Customer under any provision of this clause with respect to any claim of patent or copyright infringement that is based on Customer's unauthorized use or combination of the Software with software or data not supplied by FacilityForce as part of the Software.
- C. Customer agrees to defend and hold FacilityForce harmless against any claims made by any third party against FacilityForce arising out of Customer's use of the Software unless such claims are due to the negligence or willful misconduct of FacilityForce.
- D. The warranty period for the Software shall extend for a period of ninety (90) days from the date of delivery of the Software. During the warranty period, in the event that the Customer encounters an error and/or malfunction whereby the Software does not conform to the description in the Documentation, FacilityForce will respond as follows:
 - a. In the event that, in the mutual and reasonable opinion of FacilityForce and the Customer, there exists an error or nonconformance to the Documentation, FacilityForce will take such steps as are required to correct the error with due dispatch.
 - b. In the event that, in the mutual and reasonable opinion of FacilityForce and the Customer, the error or nonconformance to the Documentation does not constitute a serious impediment to the normal intended use of the Software, FacilityForce will correct the error and distribute the correction to the Customer in accordance with FacilityForce' normal Software revision schedule.
- E. FacilityForce does not warrant third party software. Warranties, if any, for third party software is passed through to Customer.
- F. THE ABOVE WARRANTIES ARE THE ONLY WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, THAT ARE MADE BY FACILITYFORCE AND FACILITYFORCE DISCLAIMS ALL OTHER WARRANTIES, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY FACILITYFORCE, ITS AGENTS OR EMPLOYEES SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THE WARRANTIES IN THIS AGREEMENT. SUCH WARRANTIES SHALL NOT BE DEEMED TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE SO LONG AS FACILITYFORCE IS MAKING GOOD FAITH EFFORTS TO CORRECT DEFECTS OR FAILURES UNDER THE TERMS OF THE WARRANTY. NEITHER FACILITYFORCE NOR ANYONE ELSE WHO HAS BEEN INVOLVED IN THE CREATION, PRODUCTION OR DELIVERY OF THE FACILITYFORCE SOFTWARE SHALL BE LIABLE FOR ANY CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES (INCLUDING DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, AND THE LIKE) ARISING OUT OF THIS AGREEMENT OR THE USE OF OR INABILITY TO USE THE FACILITYFORCE SOFTWARE EVEN IF FACILITYFORCE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- G. IN NO CASE SHALL FACILITYFORCE' AGGREGATE LIABILITY FOR ALL MATTERS ARISING OUT OF THE SUBJECT MATTER OF THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR OTHERWISE, EXCEED THE AMOUNT ACTUALLY RECEIVED BY FACILITYFORCE PURSUANT TO THIS AGREEMENT DURING THE PREVIOUS TWELVE (12) MONTH PERIOD. THE PARTIES AGREE TO THE FOREGOING LIABILITY RISK ALLOCATION. ANY CLAIM BY CUSTOMER AGAINST FACILITYFORCE RELATING TO THIS AGREEMENT MUST BE MADE IN WRITING AND PRESENTED TO

FACILITYFORCE WITHIN SIX (6) MONTHS AFTER THE DATE ON WHICH THIS AGREEMENT EXPIRES OR IS OTHERWISE TERMINATED.

9. Termination

- A. Except as otherwise provided in Section 4. F. of this Agreement, a default shall occur if: (1) a party fails to perform any of its material obligations under the Agreement and such failure remains uncured for 30 days after receipt of written notice thereof; or (2) a party ceases to conduct business, becomes or is declared insolvent or bankrupt, is the subject of any proceeding relating to its liquidation or insolvency which is not dismissed within 90 days or makes an assignment for the benefit of creditors.
- B. If default occurs, the non-defaulting party, in addition to any other rights available to it under law or equity, may withhold its performance hereunder or may terminate the Agreement by written notice to the defaulting party. Unless otherwise provided in the Agreement, remedies shall be cumulative and there shall be no obligation to exercise a particular remedy.
- C. Upon termination of this Agreement, whatever the reason, the Documentation and any copies thereof made by Customer pursuant to this Agreement shall be returned to FacilityForce.
- D. Upon termination of this Agreement, FacilityForce will terminate Customer's access to Solutions referenced in Schedule 1. All hosting and Support as set forth in Schedules 2 and 3 shall terminate on the same date.

10. Third Party Integration

Customer acknowledges that Customer may need to obtain additional third party technology ("Third Party Technology"). Customer agrees that the rights and licenses with respect to Third Party Technology shall be under a separate purchase, license or services agreement by and between the Customer and the vendors of such Third Party Technology. Customer shall comply with the applicable purchase and/or license agreement with respect to any Third Party Technology. Any amounts payable to any such vendors shall be the Customer's responsibility and Customer assumes all risks and liabilities to third party vendors.

11. Assignment

This Agreement shall not be assignable by either party without the prior written consent of the other party, and any attempted assignment without such consent shall be void. No assignment of this Agreement shall be valid until and unless consented to in writing by the consenting party and assumed by the assignee in writing. When duly assigned in accordance with the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the assignee.

12. [Reserved]

13. Entire Agreement

This Agreement sets forth the sole and entire understanding between FacilityForce and Customer and supersedes all prior proposals and negotiations, oral or written, and any other communications or understandings between FacilityForce and Customer with respect to the subject matter hereof. It is expressly agreed that if Customer issues a purchase order or other document for the services provided under this Agreement, such instrument will be deemed for Customer's use only, and any provisions inconsistent with this Agreement shall have no effect whatsoever upon this Agreement. No amendments to this Agreement, either at the execution or subsequently, shall be binding on FacilityForce or Customer unless agreed to in writing by both parties.

14. Governing Law

The Agreement shall be governed and construed in accordance with the laws of the State of Texas without regard to choice of law principles. Subject to Section 21 below, the parties agree that the sole jurisdiction and venue for actions

related to the subject matter hereof shall be the state and U.S. Federal courts in the State of Texas. Both parties consent to the jurisdiction of such courts and waive any objections regarding venue in such courts.

15. Severability

If any provision of the Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any manner.

16. Force Majeure

Neither party shall be liable for any failure of or delay in performance of its obligations (except for payment obligations) under this Agreement to the extent such failure or delay is due to acts of God, acts of a public enemy, fires, floods, power outages, wars, civil disturbances, sabotage, terrorism, accidents, insurrections, blockades, embargoes, storms, explosions, labor disputes (whether or not the employees' demands are reasonable and/or within the party's power to satisfy), failure of common carriers, Internet Service Providers, or other communication devices, acts of cyber criminals, terrorists or other criminals, acts of any governmental body (whether civil or military, foreign or domestic), failure or delay of third parties or governmental bodies from whom a party is obtaining or must obtain approvals, authorizations, licenses, franchises or permits, inability to obtain labor, materials, power, equipment, or transportation, or other circumstances beyond its reasonable control (collectively referred to herein as "Force Majeure Occurrences"). Any such delays shall not be a breach of or failure to perform this Agreement or any part thereof and the date on which the obligations hereunder are due to be fulfilled shall be extended for a period equal to the time lost as a result of such delays. Neither party shall be liable to the other for any liability claims, damages or other loss caused by or resulting from a Force Majeure Occurrence.

17. Waiver

No provision of the Agreement may be waived unless in writing, signed by both of the parties hereto. Waiver of default of any provision of the Agreement shall not operate or be construed as a waiver of any subsequent default of such provision, nor shall a waiver of any one provision of the Agreement be deemed to be a waiver of any other provision.

18. Notices

All notices under this Agreement will be in writing and will be delivered by personal service, facsimile, e-mail or certified mail, postage prepaid, or overnight courier to such person and address as may be designated from time to time by the relevant party, which initially shall be the address set forth in the signature block below.

19. Headings

The Section headings in the Agreement are inserted only as a matter of convenience, and in no way define, limit, or extend or interpret the scope of the Agreement or of any particular Section.

20. Authorization

Each of the parties represents and warrants that the Agreement is a valid and binding obligation enforceable against it and that the representative executing the Agreement is duly authorized and empowered to sign the Agreement.

21. Dispute Resolution

The parties will seek a fair and prompt negotiated resolution within ten (10) days of the initial notice of a controversy, claim or dispute (Dispute). If the Dispute has not been resolved after such time or a time period as

mutually agreed upon between the parties, the parties will escalate the Dispute to more senior levels within its organization. If the parties are unable to resolve any Dispute at the senior management level, then the Dispute arising out of or relating to this Agreement shall be resolved by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect. The arbitration shall take place in the State of Texas. The arbitrator(s) shall be bound to follow the provisions of this Agreement in resolving the dispute, and may not award any damages, which are excluded by this Agreement. The decision of the arbitrator(s) shall be final and binding on the parties, and any award of the arbitrator(s) may be entered or enforced in any court of competent jurisdiction. Any request for arbitration of a claim by either party against the other relating to this Agreement must be filed no later than six (6) months after the date on which FacilityForce concludes performance under this Agreement.

22. Relationship of Parties

The relationship of the parties shall at all times be one of independent contractors. Nothing contained herein shall be construed as creating any agency, partnership or other form of joint enterprise between the parties.

23. Conflicting Provisions

This Agreement and all of the exhibits, schedules, and documents attached hereto are intended to be read and construed in harmony with each other, but in the event any provision in any attachment conflicts with any provision of this Agreement, then this Agreement shall be deemed to control, and such conflicting provision to the extent it conflicts shall be deemed removed and replaced with the governing provision herein.

24. Counterparts

The Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

25. Counsel

By execution of this Agreement, each of the parties acknowledges and agrees that it has had an opportunity to consult with legal counsel and that it knowingly and voluntarily waives any right to a trial by jury of any dispute pertaining to or relating in any way to the transactions contemplated by the Agreement, the provisions of any federal, state or local law, regulation or ordinance notwithstanding.

26. Third Party Beneficiaries

This Agreement does not create, and shall not be construed as creating, any rights or interests enforceable by any person not a party to this Agreement.

SIGNATURES

IN WITNESS WHEREOF, the parties have executed this Agreement through their duly authorized representative(s).

FacilityForce Inc.

Customer

Name: _____

Name: _____

Title: _____

Title: _____

Sign: _____

Sign: _____

Date: _____

Date: _____

Notice Address:

13359 North Highway 183

Suite 406-797

Austin, Texas 78750

Att: Leeann Grindlinger

leeann.grindlinger@FacilityForce.com

Notice Address:

INSERT ADDRESS

Telephone (xxx) xxx-xxxx

Telephone: **INSERT PHONE**

Fax (512) 249-7443

FAX: **INSERT FAX**

SCHEDULE 1 SOLUTION PACKAGES

For avoidance of doubt, Customer shall not obtain ownership or any other rights, title or interest in the Solutions referenced in this Schedule either during the Term of this Agreement or after the termination of this Agreement.

SCHEDULE 2 HOSTING SERVICES

OVERVIEW

FacilityForce uses data centers, including but not limited to Amazon Web Services Data Centers (“Data Center”) to provide hosting services and related support to customers that wish to outsource the operation and Support of computer applications listed in Schedule 1.

This Schedule describes the services to be provided by FacilityForce the respective responsibilities of the parties, and the service levels.

SERVICES

FacilityForce will perform the services as described in the Scope of Hosting Services (“Services”).

The general scope of services addressed by this Schedule includes the operation and support of the:

- Database software for the Applications hosted under this Agreement
- Database security
- Data Center

The Services specifically excludes operation and Support of the following:

- Customer hardware, including Customer’s servers, printers, network hardware (including routers and switches) and other Customer site computing equipment;
- Customer application software other than noted in Schedule 1; and
- Customer Local Area Networks (“LAN”)
- Customer network infrastructure for connecting to the Internet and to the Data Center.

CUSTOMER RESPONSIBILITIES

The Customer is responsible for:

- Assigning a primary and alternate Customer representative to coordinate all communications and activities related to FacilityForce services.
- Providing user identification data and determining the appropriate security profile for each user. Customer will control security at the Application level.
- All printing. No print job will print at the Data Center and all physical printing requirements will be handled by the Customer.
- The purchase and installation of printers at Customer’s sites for the Application being utilized as defined in Schedule 1.
- Installation, operation and Support of all workstation software (and Customer’s LAN, existing data communications configuration, hardware, or software required at the Customer’s site. FacilityForce network and network responsibility extends from the Data Center routers at Data Center to all connected equipment at Data Center.
- Testing updates and fixes applied by FacilityForce to Applications used by Customer. With the exception of emergency fixes, Customer will test updates and fixes prior to their introduction to the Production environment within a mutually agreed upon time frame.
- Testing upgrades. Upgrades will be moved to production by the FacilityForce at the end of the Customer testing period unless specific problems are documented in writing to FacilityForce.
- Diligent analysis of suspected problems to determine their specific nature and possible causes before calling the FacilityForce for assistance. Notwithstanding this diligence requirement, Customer is responsible for informing FacilityForce of any problems encountered in a timely manner.

SCOPE OF HOSTING SERVICES

All of the services, functions, processes, and activities described below will be collectively described as the “Services” for purposes of this Schedule. All Services will be provided by FacilityForce to and for the Customer’s benefit in a manner that will meet the objectives outlined in this Schedule.

Software

Support Software includes the application instances, operating system, utilities, database software, and all necessary licenses required to operate the Application and provided by FacilityForce as part of the Services.

Infrastructure

All infrastructure; e.g., servers, is physically located in the United States. Sufficient resources; e.g., bandwidth, disk space, CPU, VPN tunnels, for typical production and non-production deployments are included. In the event additional resources are required the following rates apply:

- FacilityForce provides 1 TB of Bandwidth (outgoing/month) o Customer agrees to pay \$100/month for every additional 100 GB of data transfer (out) in excess of the amount included in the monthly recurring fee for bandwidth contracted under above pricing model.
- FacilityForce provides a standard allotment of 1 TB for Document Repositories/Data Repositories. Additional resources can be purchased in 100GB increments for an additional \$250/month each.

Application Instances

FacilityForce will maintain a single Production Application instance. The Production Application Instance will provide the daily, real-time transaction data to the Application users.

In addition to the Production Application Instance, FacilityForce will maintain one additional, non-production application instance, the Test Application Instance. Upon request by Customer, FacilityForce will refresh the Test Application Instance with Customer’s Production data up to 4 times throughout the calendar year at no additional cost.

Backups

Full database and incremental file system backups are taken each night and stored at an offsite facility. Backup data is retained for 10 days. Customer may request, at no additional charge, one backup of the databases once per quarter, not to exceed four times per year. Each additional change request will incur a 2-hour Technical Services engagement at the contracted hourly rate.

VPN Access to the Hosted Database

One site to site VPN tunnel is allotted with two IP address configurations. FacilityForce will provision Customers with read-only access to the Database. Each additional change request will incur a 2-hour Technical Services engagement at the contracted hourly rate.

Hours of System Operations

The Application will be accessible and available to the Customer and capable of any and all normal operating functions 24 hours a day, seven days a week except for periods of Scheduled Support and previously approved outages. FacilityForce will not be held responsible for inaccessibility arising from communications problems occurring anywhere beyond the Amazon Web Services side of the router resident at the Data Center, nor will these hours of unavailability be counted as unavailable. Standard Support hours are M-F, 7am – 7pm Central, excluding holidays. After-hours support is only available for connectivity or system inaccessibility issues and can be reached at (800) 659-9001 Option: 4.

Support in Data Center

Customer agrees to be responsible for maintaining and updating the Authorized Contact list with FacilityForce (Customer Care). FacilityForce will not be held responsible for Support notifications missed due to out-of-date Authorized Contact information.

Planned Support

FacilityForce will complete routine Support on the Application on a monthly basis. The Support schedule will be published and provided to the Customer's Authorized Contact. FacilityForce will provide at least 14 day notice to any changes in the published Support schedule.

Unplanned Support

If FacilityForce is required to perform additional Support outside of the scheduled Support window, FacilityForce will use reasonable efforts to provide Customer with prior (written) notice of said "unplanned Support" (except for emergency Support) and Customer agrees to use reasonable efforts to comply with any Support requirements requested by FacilityForce. With written notification of "unplanned Support" and agreement from Customer, SLAs will not apply during unplanned Support.

Emergency Support

FacilityForce reserves the right to perform emergency Support as needed outside the scheduled Support. In such event, FacilityForce will make a reasonable effort to notify the Customer, if feasible, under the circumstances. Any such Support will be considered an "Emergency Support". SLAs will apply during Emergency Support.

Application Support. In addition to FacilityForce Support in the Data Center, Customer is entitled to additional Support and support as set forth in a separate agreement between the parties.

Service Level

This Service Level Agreement ("SLA") is intended to provide an understanding of the level of service to be delivered by the FacilityForce for the Services specified in this Schedule. The service levels set forth below apply to the Services provided by FacilityForce under the Agreement.

Availability

FacilityForce will use commercially reasonable efforts to provide Services with an average of 95% Availability (as such term is hereinafter defined) for each quarter during the Term. For purposes of the Agreement, "Availability" during any quarter refers to an Authorized User's ability to log into the Application during such quarter, and will be calculated in accordance with the following formula:

$$x = (y - z) / y * 100$$

Where,

- "x" is the Availability of the Application during the quarter;
- "y" is the total number of hours in such quarter minus the number of hours during such quarter that the Customer is unable to log into the Application because of (a) regularly scheduled Support windows for the Application and for times in which Customer has been notified in writing (including e-mail) by FacilityForce in advance thereof; (b) a Force Majeure Event; (c) non-performance of hardware, software, ISP connections, and other equipment that is not provided by FacilityForce or certified by FacilityForce for use in conjunction with the Services (except as such non-performance is directly or indirectly caused by FacilityForce).
- "z" is the number of hours in such month during which the Customer is unable to log into the Application (other than for reasons set forth in the definition of "y" above); provided that FacilityForce has been notified or is otherwise aware (or reasonably should be aware) of Customer's inability to utilize the Application.

Fee Adjustment

In the event that FacilityForce does not meet the Availability levels set forth below, the amount of fees payable by Customer will be reduced as follows:

In the event the average Availability for the Application is less than ninety five percent (95%) during any two consecutive quarters, Customer will receive a credit to its account with FacilityForce of five percent (5%) of the amount of a quarter's aggregate Services Fees paid or payable by Customer to FacilityForce. Custom reports, scripts, action codes, web services or other interfacing programs causing the inability to log into the application will not be considered downtime for the purpose of the availability calculation.

FacilityForce' obligation to provide Customer with fee adjustments as set forth above is conditioned on Customer providing detailed written notice to FacilityForce of its contention that FacilityForce was unable to meet the applicable Availability levels. Upon receipt of such notice, FacilityForce shall have thirty (30) calendar days to investigate the contention. If, at the end of the thirty (30) calendar day period it is determined that FacilityForce did in fact fail to meet the applicable Availability levels, Customer will receive the appropriate credit to its account during the next invoice cycle.

The remedies set forth in this Section of this Schedule shall be Customer's sole remedy and FacilityForce' entire liability in the event of a breach of this Service including the failure of any Availability measurements to meet the thresholds set forth above.

SCHEDULE 3 SOFTWARE SUPPORT

OVERVIEW

FacilityForce Support rapidly resolves technical issues, provides high-quality customer service, gives you access to the newest versions of software, and offers a wealth of valuable benefits.

This Schedule describes the services to be provided by FacilityForce the respective responsibilities of the parties, and the service levels.

Correction of Deviations

In the event that the Customer encounters an error and/or malfunction (“Deviation”) in the Software, it shall communicate the circumstances and any supporting information to FacilityForce. Upon receipt, FacilityForce will respond as follows:

- a. In the event that, in the mutual and reasonable opinion of FacilityForce and the Customer, there exists a Deviation that does not constitute a serious impediment to the normal intended use of the Software, FacilityForce may correct the Deviation and distribute the correction to the Customer in accordance with FacilityForce’ normal Software revision schedule;
- b. In the event that, in the mutual and reasonable opinion of FacilityForce and the Customer, there exists a Deviation that does constitute a serious impediment to the normal intended use of the Software, FacilityForce will take such steps as are required to correct the Deviation with all due dispatch. Corrections will be applied and distributed to the latest software release. FacilityForce will have no obligation to provide development support for an issue that can be resolved by Customer installing a revision to the software.
- c. FacilityForce may in its sole discretion investigate issues related to Third Party Software, but FacilityForce has no obligation to remedy or to pursue any workaround to any such defects, deviations or breaking changes introduced by Third Party Software or Third Party Technology.

Software Revisions

The Software may be revised by FacilityForce as a result of the correction of Deviations and/or the release of upgrades or improvements or modifications designed to improve the performance of the Software and/or to increase the capabilities of the Software (hereafter "Revisions"). Revisions shall be of two kinds:

- a. Revisions that the Customer is obliged to implement (“Mandatory Revisions”);
- b. Revisions that may be implemented by the Customer at its option (“Optional Revisions”).

FacilityForce currently offers 2 planned releases/updates per year. No charge shall be made to the Customer for either Mandatory Revisions or Optional Revisions.

Customer shall update the Software at least once annually with a major release (excluding patches and minor revisions). All Software must be within one (1) major version from the latest major release. For example, a major version is identified as (X4.01) and minor is (X4.01.01). Customer shall accept all minor versions. FacilityForce will only support one prior major version behind the latest major update of the Software.

Telephone Hotline Assistance

FacilityForce, at its expense, shall make available technically qualified personnel to respond to all reasonable telephone requests that may be made by the Customer relating to the application and operation of the Software.

Technical Literature

FacilityForce shall make available to the Customer all technical literature that is considered by FacilityForce to be relevant to the Software and its use within the scope of Customer's operations.

Transmission

All Revisions and New Releases (software distributions) will be transmitted to the Customer via FTP or other suitable media, at the option of FacilityForce. The Customer shall be solely responsible for mounting the software distribution and executing the appropriate instructions in order to transfer the Revisions or New Releases onto to its system.

Exclusions

Unless otherwise agreed in the Statement of Work under Schedule 4, no customized solutions, e.g., transformative logic for system integrations, whether created by the Customer, a third party or FacilityForce are included within the FacilityForce obligations under this Schedule or the Agreement.

Proper Use

- a. The Customer agrees that all reasonable effort shall be taken to ensure that neither the Software nor data files are misused.
- b. In the event that the Customer misuses the Software or data files, correction of the situation will be at Customer's expense.
- c. In the event that diagnostic assistance is provided by FacilityForce, which, in the reasonable opinion of FacilityForce and the Customer, relates to problems not caused by a Deviation in the Software, such assistance shall be at the Customer's expense.

Customizations

FacilityForce may remotely access the Software for the purpose of remote diagnostics and support.

SCHEDULE 4 PROFESSIONAL SERVICES

Scope of Services

FacilityForce will perform the professional services (“Services”) and deliver (“Deliverables”) described in the Statement of Work (SOW) hereto as Exhibit A. During the term of this Agreement, Customer may request changes in the SOW. However, any such change, including technical requirements, schedule, or any increase or decrease in the compensation due to FacilityForce, shall be prosecuted in accordance with Section 4 of this Schedule and requires the mutual agreement of the parties. Said change shall be effective when incorporated by written amendment into the SOW or this Agreement.

1. Place of Performance

Unless otherwise provided in a SOW, FacilityForce may perform the Services in whole or in part at FacilityForce' place of business, Customer’s place of business, and/or such other locations as FacilityForce selects.

2. Project Responsibilities

The implementation process is interactive and intensive, and success requires close teamwork between Customer and FacilityForce.

FacilityForce Responsibilities

The work performed by FacilityForce and their employees will be done in a professional manner and at a level of competence equal to the general level of competence of their profession in the industry and that the applications that they develop will perform and work correctly.

- FacilityForce will assign an Implementation Specialist to oversee the implementation. The Implementation Specialist has responsibility for FacilityForce tasks.
- FacilityForce will maintain implementation continuity from phase to phase for the complete project. The Implementation Specialist will be the primary single point of contact for all issues. Customer will likewise assign a primary point of contact for all communications during the project. Continuity by FacilityForce will be assured through the supervisory involvement of the Program Manager.
- Customer expects FacilityForce to drive the tasks required to meet the project requirements as defined in the SOW.

Customer Responsibilities

- Customer will actively participate in implementation activities and apply necessary resources to complete tasks that are assigned to the Customer.
- Customer will ensure that the required institutional data are loaded into templates provided by FacilityForce, scrubbed, and delivered in a timely manner, in accordance with the project schedule. Delays may affect overall costs and timeline for this project.
- Any data that cannot be loaded from the FacilityForce-provided templates due to data anomalies or faulty data is the Customer’s responsibility to load manually.
- Customer is responsible for: adding new Operate users to support the products being implemented as part of this SOW, and the addition or modification of Operate user WorkDesks to support the products being implemented as part of this SOW.
- Customer is responsible for any live training sessions with their end users.

3. Project Standards

- Actual Start and Completion dates will be determined during the Implementation Planning session and adjust during the course of the project as necessary, assuming such changes are mutually agreed upon.
- This is a Time & Materials services effort. Times indicated for implementation support, are based on the current understanding of Customer's requirements and may be adjusted during implementation as needed and coordinated between the Customer and FacilityForce for changes in requirements. Any change to the scope of the project not contained in this SOW will be subject to the Change Order Process described in Section 4.
- Customer will go-live with the most recent version of FacilityForce that has been released at the time of the official project kickoff meeting.

4. Changes

- (a) Issuance of Change Orders. The Customer may, at any time by a written Change Order, make changes consistent with this Schedule and/or make changes outside the SOW, if mutually agreed by the parties in advance. Such changes may include revisions to Services or Deliverables. All Change Orders shall be subject to requirements and limitations of the applicable law.
- (b) FacilityForce' Response. FacilityForce shall respond in writing to a Change Order issued by the Customer within thirty (30) days of receipt, advising the Customer of any impact on the costs, resources, and/or implementation schedule. If there is a cost increase or change in schedule attributable to a Change Order, FacilityForce shall so notify the Customer in writing. The Customer shall accept or reject FacilityForce' response within thirty (30) days of receipt. Failure of the parties to agree to an equitable adjustment shall relieve FacilityForce of any obligation to act upon a Change Order.
- (c) FacilityForce identified Change. In the event that FacilityForce determines that a Customer action or inaction results in or necessitates a change that may have an impact on the costs, resources and/or implementation schedule, FacilityForce will notify Customer as soon as reasonably possible. Within 20 days after said notice FacilityForce shall provide Customer with a proposal that addresses the change and its impact on the costs, resources and/or implementation schedule for Customer to accept or reject. The Customer shall accept or reject FacilityForce' response within thirty (30) days of receipt. Disagreements under this clause will be resolved using the Disputes clause.

5. Acceptance of Deliverables

Upon completion of any deliverable set forth in a mutually executed SOW, FacilityForce shall provide a copy thereof to Customer. At such time, if Customer requests, FacilityForce will demonstrate to Customer that the deliverable conforms to the description specified for such deliverable in the corresponding Section of the SOW. If the deliverable does not conform to the description for such deliverable specified in a SOW, Customer shall have three (3) business days after FacilityForce' submission of the deliverable ("acceptance period") to give FacilityForce written notice which shall specify the deficiencies in detail. FacilityForce shall promptly cure any such deficiencies. After completing such cure, FacilityForce shall resubmit the deliverable for Customer review. Upon accepting any deliverable submitted by FacilityForce, Customer shall provide FacilityForce with written acceptance of such deliverable. If Customer fails to provide written notice of any deficiencies within the acceptance period, as provided above, such deliverable shall be deemed accepted at the end of the acceptance period.

Exhibit A

SCHEDULE 5 FEE SCHEDULE

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is between FacilityForce, Inc. a Delaware corporation, with an office located at 13359 North Highway 183 Suite 406-797 Austin, TX 78750 (hereinafter called "FacilityForce") and **Insert Name and Address** (hereinafter called "CUSTOMER").

WHEREAS, CUSTOMER requires implementation services; and

WHEREAS, FacilityForce is willing to provide such services.

NOW, THEREFORE, in consideration of the mutual terms, conditions and covenants set forth herein, the parties agree as follows:

1. Scope of Services

FacilityForce will perform the professional services ("Services") and deliver the deliverables ("Deliverables") described in the Scope of Services hereto as Exhibit A. During the term of this Agreement, CUSTOMER may request changes in the Scope of Services. Any such change, including technical requirements, schedule, or any increase or decrease in the compensation due to FacilityForce, shall be prosecuted in accordance with Article 6 of this Agreement and requires the mutual agreement of the parties. Said change shall be effective when incorporated by written amendment into the contract.

2. Place of Performance

Unless otherwise provided in this Agreement, FacilityForce may perform the Services in whole or in part at FacilityForce' place of business, CUSTOMER's place of business, and/or such other locations as FacilityForce selects.

3. Effective Date; Term

This Agreement shall be effective as of the date first above written (the "Effective Date"), and shall continue in full force and effect the Services have been completed or the Agreement has been terminated in accordance with section 10 hereof, whichever first occurs.

4. Price and Payment Terms

(a) CUSTOMER shall pay FacilityForce the price set forth on Exhibit B (the "Price"). Payments shall be made according to the schedule and provisions set forth in Exhibit B.

(b) FacilityForce shall have a lien upon and may retain or repossess any and all Deliverables if CUSTOMER does not make full payment to FacilityForce.

(c) Invoiced amounts are due and payable 30 days from the date of the invoice. The preferred means of payment is by electronic funds transfer (EFT). EFT payments can be accomplished as either a Funds Transfer (Fed Wire) or Direct Deposit (ACH). For payment by EFT please contact FacilityForce.

-
- (e) If CUSTOMER's action or inaction results in non-receipt of payment by FacilityForce for the total amount of an invoice within fifteen (15) days of the due date of such invoice, interest compounded at the rate of one percent (1%) per month, or the maximum rate permitted by law if lower, shall thereafter be added to all amounts unpaid and outstanding. If CUSTOMER's action or inaction results in non-receipt of payment by FacilityForce, FacilityForce shall have the right exercisable in FacilityForce' sole discretion, in addition to its other rights and remedies, to cease further performance of the Services hereunder.
- (f) Bill To Address. The invoice will be mailed to Customer at: **Insert Address Here**

5. Resources to be Provided by CUSTOMER

- (a) CUSTOMER shall provide, maintain and make available to FacilityForce, at CUSTOMER's expense and in a timely manner, the resources described in the Scope of Work, and such other additional resources as FacilityForce may from time to time reasonably request in connection with FacilityForce' performance of the Services. Delays in the provision of these resources may result in delays in the performance of the Services, or an increase in the Price.
- (b) CUSTOMER will designate qualified CUSTOMER personnel or representatives to consult with FacilityForce on a regular basis in connection with the Services. CUSTOMER will furnish such documentation and other information as is reasonably necessary to perform the Services.
- (c) CUSTOMER shall furnish access to CUSTOMER's premises, and appropriate workspace for any FacilityForce personnel working at CUSTOMER's premises, as necessary for performance of those portions of the Services to be performed at CUSTOMER's premises.

6. Changes

- (a) Issuance of Change Orders. The CUSTOMER may, at any time by a written Change Order, make changes consistent with the scope of this Agreement or changes outside the scope of this Agreement, if mutually agreed by the parties in advance. Such changes may include revisions to Services or Deliverables. All Change Orders shall be subject to requirements and limitations of the applicable law.
- (b) FacilityForce' Response. FacilityForce shall respond in writing to a Change Order issued by the CUSTOMER within thirty (30) days of receipt, advising the CUSTOMER of any impact on the costs, resources, and/or implementation schedule. If there is a cost increase or change in schedule attributable to a Change Order, FacilityForce shall so notify the CUSTOMER in writing. The CUSTOMER shall accept or reject FacilityForce' response within thirty (30) days of receipt. Failure of the parties to agree to an equitable adjustment shall relieve FacilityForce of any obligation to act upon a Change Order.
- (c) FacilityForce identified Change. In the event that FacilityForce determines that a CUSTOMER action or inaction results in or necessitates a change that may have an impact on the costs, resources and/or implementation schedule, FacilityForce will notify CUSTOMER as soon as reasonably possible. Within 20 days after said notice FacilityForce shall provide CUSTOMER with a proposal that addresses the change and its impact on the costs, resources and/or implementation schedule for CUSTOMER to accept or reject. The CUSTOMER shall accept or reject FacilityForce' response within thirty (30) days of receipt. Disagreements under this clause will be resolved using the Dispute clause.

7. Confidentiality

Concurrently with the execution of this Agreement the parties shall execute a Non-Disclosure Agreement in the form and content of Exhibit C attached hereto. The Non-Disclosure Agreement is independent of this Agreement and shall survive the termination of this Agreement. Nothing in this Agreement or in any such Non-Disclosure Agreement shall be deemed to restrict or prohibit FacilityForce from providing to others services and deliverables the same as or similar to the Services and Deliverables.

8. Intellectual Property

(a) CUSTOMER and FacilityForce shall each retain ownership of, and all right, title and interest in and to, their respective pre-existing Intellectual Property, and expressed as stated in this Agreement, no license is granted as a result of the Services performed hereunder. To the extent the parties wish to grant to the other rights or interests in pre-existing Intellectual Property, separate license agreements on mutually acceptable terms will be executed.

(b) FacilityForce shall retain ownership of and unrestricted right to use any Intellectual Property derived in any fashion or manner from its pre-existing Intellectual Property. The Services performed and any Deliverables produced pursuant to this Agreement are not “works for hire.”

(c) As used herein, “Intellectual Property” shall mean inventions (whether or not patentable), works of authorship, trade secrets, techniques, know-how, ideas, concepts, algorithms, and other intellectual property incorporated into any Deliverable whether or not first created or developed by FacilityForce in providing the Services.

9. Taxes

(a) In no event whatsoever shall FacilityForce be liable for sales, use, business, gross receipts or any other tax that may be levied by any State or Federal Government entity against a contractor to such governmental entity other than taxes upon income earned by FacilityForce for the goods and/or services provided pursuant this Agreement. This exclusion of tax liability is also applicable to any goods and/or services that may be provided by FacilityForce under any later task order or amendment hereto regardless of changes in legislation or policy.

(b) In the event a taxing authority conducts an audit of this Agreement and determines that an additional tax should have been imposed on the Services or Deliverables provided by FacilityForce to CUSTOMER (other than those taxes levied on FacilityForce’ income), CUSTOMER shall reimburse FacilityForce for any such additional tax, including interest and penalties thereon. Similarly, if a taxing authority determines that a refund of tax is due as it relates to the Services or Deliverables provided by FacilityForce to CUSTOMER (except those taxes relating to FacilityForce’ income), FacilityForce shall reimburse CUSTOMER such refund, including any interest paid thereon by the taxing authority.

10. Termination for Default

Either party may terminate this Agreement if (i) the other party fails to perform a material obligation of the Agreement and such failure remains uncured for a period of 30 days after receipt of notice from the non-breaching party specifying such failure; or (ii) a party ceases to conduct business, becomes or is declared insolvent or bankrupt, is the subject of any proceeding relating to its liquidation or insolvency which is not dismissed within 90 days or makes an assignment for the benefit of creditors. In addition, FacilityForce may terminate this Agreement effective immediately upon written notice to CUSTOMER if CUSTOMER fails to make any payment in full as and when due hereunder.

Upon termination for whatever reason and regardless of the nature of the default (if any), CUSTOMER agrees to pay FacilityForce in full for all goods and/or services provided to, and accepted by, CUSTOMER under this Agreement and/or any order hereto as of the effective date of the Agreement within 30 days of the invoice date.

11. Indemnification

FacilityForce agrees to defend, indemnify, and hold harmless CUSTOMER from and against third party claims, judgments, and awards, as well as the reasonable costs related thereto (hereinafter collectively referred to as "Damages") to the extent such Damages result from the gross negligence or willful acts or omissions of FacilityForce occurring in the performance of its obligations hereunder. FacilityForce shall not be responsible for any damages or liability resulting, in whole or in part, from the negligence or willful misconduct of CUSTOMER its employees, consultants or agents.

12. Limited Warranty

(a) FacilityForce warrants that the Services provided under this Agreement shall be performed with that degree of skill and judgment normally exercised by recognized professional firms performing the same or substantially similar services. In the event of any breach of the foregoing warranty, provided CUSTOMER has delivered to FacilityForce timely notice of such breach as hereinafter required, FacilityForce shall, at its own expense, in its discretion either (1) re-perform the non-conforming Services and correct the non-conforming Deliverables to conform to this standard; or (2) refund to CUSTOMER that portion of the Price received by FacilityForce attributable to the non-conforming Services and/or Deliverables. No warranty claim shall be effective unless CUSTOMER has delivered to FacilityForce written notice specifying in detail the non-conformities within 90 days after performance of the non-conforming Services or tender of the non-conforming Deliverables. The remedy set forth in this section 11(a) is the sole and exclusive remedy for breach of the foregoing warranty.

(b) FACILITYFORCE SPECIFICALLY DISCLAIMS ANY OTHER EXPRESS OR IMPLIED STANDARDS, GUARANTEES, OR WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, AND ANY WARRANTIES THAT MAY BE ALLEGED TO ARISE AS A RESULT OF CUSTOM OR USAGE, ANY WARRANTY OF ERROR-FREE PERFORMANCE, OR ANY WARRANTY OF THIRD PARTY PRODUCTS, OR FUNCTIONALITY OF THE CUSTOMER'S HARDWARE, SOFTWARE, FIRMWARE, OR COMPUTER SYSTEMS.

(c) CUSTOMER represents and warrants to FacilityForce that CUSTOMER has the right to use and furnish to FacilityForce for FacilityForce' use in connection with this Agreement any information, specifications, data or Intellectual Property that CUSTOMER has provided or will provide to FacilityForce in order for FacilityForce to perform the Services and to create the Deliverables identified in Exhibit A.

13. Limitation of Liability

(a) CUSTOMER hereby agrees that FacilityForce' total liability to CUSTOMER for any and all liabilities, claims or damages arising out of or relating to this Agreement, howsoever caused and regardless of the legal theory asserted, including breach of contract or warranty, tort, strict liability, statutory liability or otherwise, shall not, in the aggregate, exceed fees paid to FacilityForce under this Agreement. The parties acknowledge and agree to the foregoing liability risk allocation. Any claim by CUSTOMER against FacilityForce relating to this Agreement must be made in writing and presented to FacilityForce within six (6) months after the date on which this Agreement expires or is otherwise terminated.

(b) In no event shall either FacilityForce or CUSTOMER be liable to the other for any punitive, exemplary, special, indirect, incidental or consequential damages (including, but not limited to, lost profits, lost business opportunities, loss of use or equipment down time, and loss of or corruption to data) arising out of or relating to this Agreement, regardless of the legal theory under which such damages are sought, and even if the parties have been advised of the possibility of such damages or loss and notwithstanding any failure of essential purpose of any limited remedy.

14. Notices

All notices under this Agreement will be in writing and will be delivered by personal service, facsimile, e-mail or certified mail, postage prepaid, or overnight courier to such person and address as may be designated from time to time by the relevant party, which initially shall be the address set forth below:

FacilityForce, Inc.
13359 North Highway 183 #406-797
Austin, Texas 78750
Attn: Leeann Grindlinger

Attn: _____

15. Non-Waiver of Rights

The failure of either party to insist upon performance of any provision of this Agreement, or to exercise any right, remedy or option provided herein, shall not be construed as a waiver of the right to assert any of the same at any time thereafter.

16. Rights and Remedies Not Exclusive

Unless otherwise expressly provided herein, no right or remedy of a party expressed herein shall be deemed exclusive, but shall be cumulative with, and not in substitution for, any other right or remedy of that party.

17. Severability

If any provision of the Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any manner.

18. Assignment

Neither party may sell, assign, transfer, or otherwise convey any of its rights or delegate any of its duties under this Agreement without the prior written consent of the other party. Notwithstanding the foregoing, FacilityForce may without violation of this paragraph engage the services of independent contractors to assist in the performance of its duties hereunder.

19. Governing Law; Venue

This Agreement shall be governed by and construed under the laws of the State of Texas, without regard to its laws relating to conflict or choice of laws.

20. Interpretation

The captions and headings used in this Agreement are solely for the convenience of the parties, and shall not be used in the interpretation of the text of this Agreement. Each party has read and agreed to the specific language of this Agreement; therefore no conflict, ambiguity, or doubtful interpretation shall be construed against the drafter.

21. Disputes

The parties will seek a fair and prompt negotiated resolution within ten (10) days of the initial notice of the dispute ("Dispute"). If the Dispute has not been resolved after such time, the parties will escalate the issue to more senior levels. If the parties are unable to resolve any Dispute at the senior management level, then a party may commence a legal action to resolve any controversy, claim or Dispute arising out of or relating to this Agreement.

22. Multiple Copies or Counterparts of Agreement

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement shall not be effective until the execution and delivery between each of the parties of at least one set of the counterparts.

23. Force Majeure

Neither party shall be liable for any failure of or delay in performance of its obligations (except for payment obligations) under this Agreement to the extent such failure or delay is due to acts of God, acts of a public enemy, fires, floods, power outages, wars, civil disturbances, epidemics, pandemics, sabotage, terrorism, accidents, insurrections, blockades, embargoes, storms, explosions, labor disputes (whether or not the employees' demands are reasonable and/or within the party's power to satisfy), failure of common carriers, Internet Service Providers, or other communication devices, acts of cyber criminals, terrorists or other criminals, acts of any governmental body (whether civil or military, foreign or domestic), failure or delay of third parties or governmental bodies from whom a party is obtaining or must obtain approvals, authorizations, licenses, franchises or permits, inability to obtain labor, materials, power, equipment, or transportation, or other circumstances beyond its reasonable control (collectively referred to herein as "Force Majeure Occurrences"). Any such delays shall not be a breach of or failure to perform this Agreement or any part thereof and the date on which the obligations hereunder are due to be fulfilled shall be extended for a period equal to the time lost as a result of such delays. Neither party shall be liable to the other for any liability claims, damages or other loss caused by or resulting from a Force Majeure Occurrence.

24. Relationship of Parties

FacilityForce is an independent contractor in all respects with regard to this Agreement. Nothing contained in this Agreement shall be deemed or construed to create a partnership, joint venture, agency, or other relationship other than that of contractor and customer.

25. Third Party Beneficiaries

This Agreement does not create, and shall not be construed as creating, any rights or interests enforceable by any person not a party to this Agreement.

26. Modification

No provision of the Agreement may be waived or modified unless in writing specifically referencing this Agreement and signed by representatives of both parties against whom enforcement of the

purported modification or waiver is sought. Waiver of default of any provision of the Agreement shall not operate or be construed as a waiver of any subsequent default of such provision, nor shall a waiver of any one provision of the Agreement be deemed to be a waiver of any other provision.

27. Entire Agreement; Conflicting Provisions

The Agreement and any schedules and exhibits thereto contain the entire agreement and understanding of the parties with respect to the subject matter hereof, and supersedes and replaces any and all prior or contemporaneous proposals, discussions, agreements, CUSTOMER issued purchase order or document of like intent or purpose, understandings, commitments, representations of any kind, whether oral or written, relating to the subject matter hereof or the Services to be provided hereunder. In the event that any provision in any attachment conflicts with any provision of this Agreement, then this Agreement shall be deemed to control, and such conflicting provision to the extent it conflicts shall be deemed removed and replaced with the governing provision herein.

28. Authorization

Each of the parties represents and warrants that the Agreement is a valid and binding obligation enforceable against it and that the representative executing the Agreement is duly authorized and empowered to sign the Agreement.

29. Survival

All provisions of this Agreement, which by their nature should survive termination of this Agreement, will so survive.

IN WITNESS WHEREOF, the parties have executed this Agreement through their duly authorized representatives effective this **Insert Date Here**.

AGREED BY:
FacilityForce

By: _____
Name: _____
Title: _____
Date: _____

CUSTOMER

By: _____
Name: _____
Title: _____
Date: _____

Exhibit A

Scope of Services

Description of Services: **SOW TO BE ATTACHED**

Deliverables: **SOW TO BE ATTACHED**

Exhibit B

Price and Payment

Price:

Insert Fee Here

Payment for services will be made on a monthly basis as invoiced by FacilityForce for reimbursement of actual labor and expenses.

SOFTWARE LICENSE AGREEMENT

THIS AGREEMENT is between FacilityForce, Inc. a Delaware corporation, with an office located at 13359 North Highway 183 Suite 406-797 Austin, TX 78750 (hereinafter called "FacilityForce") and **Insert Name and Address** (hereinafter called "CUSTOMER").

ARTICLE I - LICENSE

- A. FacilityForce grants to CUSTOMER a non-exclusive, perpetual (subject to Article VI) and non-transferable license for use of the Engage, Operate, Perform software specified in Schedule 1 ("Software") on the CUSTOMER's database servers and application servers and within the scope of permitted use as set forth in Schedule 1 (the database servers and application servers shall be referred to as the "Environment"); pursuant to this license, CUSTOMER may have one production instance and up to two non-production instances. If any part of the Environment becomes temporarily inoperative the license may be extended to backup servers until such time as the Environment becomes operative again at which time all Software will be returned to the Environment. Except as provided above, use of Software other than in the Environment requires additional fees to those specified in Schedule 1. CUSTOMER'S license is to use the Software in its own business; CUSTOMER has no right to use the Software in processing work for third parties. If procuring a site license, "Site" is defined as the size of the CUSTOMER's organization as of the effective date of this Agreement; any expansion of the organization via acquisition, consolidation, merger, restructuring or similar acts could result in additional license fees and increased Support fees, as reasonably required by FacilityForce.
- B. The specific components included in the term Software to be provided to CUSTOMER hereunder are listed on Schedule 1.

ARTICLE II - FEES AND PAYMENTS

- A. CUSTOMER shall pay FacilityForce the license fees specified in Schedule 1. All fees are payable by CUSTOMER within thirty (30) days of receipt of invoice.
- B. CUSTOMER shall be responsible for all taxes and charges assessed or imposed with respect to amounts payable hereunder, including without limitation state and local, occupation, sales, use or excise taxes paid or payable by FacilityForce, exclusive however of taxes imposed on FacilityForce' net income by the United States or any political subdivision thereof.
- C. Overdue payments of fees and charges shall bear interest at the rate of 1.5% per month.

ARTICLE III - NON-DISCLOSURE

- A. Subject to the other paragraphs in this Article III, CUSTOMER agrees that the Software shall be held in confidence by CUSTOMER and shall not be disclosed to others without the prior written consent of FacilityForce. This obligation to hold confidential does not apply to any portion of the Software (1) developed by CUSTOMER and in CUSTOMER's possession prior to the receipt of same from FacilityForce; (2) which at the time of disclosure is part of the public domain through no act or failure to act by CUSTOMER; or (3) which is lawfully disclosed to CUSTOMER without restriction on further disclosure by another party who did not acquire same from FacilityForce.
- B. The CUSTOMER may copy, in whole or in part, any printed material relative to the Software that may be provided by FacilityForce under this Agreement. Additional copies provided by FacilityForce will be billed to CUSTOMER at FacilityForce' standard rates.

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- C. Any Software provided by FacilityForce in machine-readable form may be copied by CUSTOMER for use with the designated servers to the extent necessary for archive or emergency restart purposes, to replace a worn copy, or to understand the contents of such machine-readable material.
 - D. The CUSTOMER agrees to keep the original and any copies of that Software at the same location as the CUSTOMER's designated servers, except that a machine-readable copy of the Software may be kept for archive or emergency restart purposes only at another facility.

ARTICLE IV – WARRANTIES

- A. FacilityForce represents that it has the right to license the Software to CUSTOMER as provided in ARTICLE I. FacilityForce further represents that the Software will conform to the specifications published by FacilityForce or provided by FacilityForce to Customer (“Documentation”). In the event the Software fails to conform to the Documentation, FacilityForce’ sole obligation shall be to correct the errors in accordance with the provisions of Article IV D.
- B. FacilityForce will defend, at its own expense, any action brought against CUSTOMER to the extent that it is based on a claim that the FacilityForce Software infringes a United States patent or copyright, and FacilityForce will pay those costs and damages finally awarded against CUSTOMER in any such action that are attributable to any such claim, but such defense and payments are conditioned on the following: (1) that FacilityForce shall be promptly notified in writing by CUSTOMER following its receipt of any such claim; (2) that FacilityForce shall have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; (3) should the Software become, or in FacilityForce’ opinion is likely to become, the subject of a claim of infringement of a United States patent or copyright, then CUSTOMER shall permit FacilityForce, at its option and expense, either to (A) procure for CUSTOMER a non-infringing license to use the Software; (B) modify the Software so that it becomes non-infringing; (C) procure for CUSTOMER a depreciated credit for the Software and accept its return. Depreciation shall be an equal amount per year from the date of receipt of the Software, which the parties agree shall be five (5) years. FacilityForce shall have no liability to CUSTOMER under any provision of this clause with respect to any claim of patent or copyright infringement that is based on CUSTOMER's unauthorized use or combination of the Software with software or data not supplied by FacilityForce as part of the Software.
- C. CUSTOMER agrees to defend and hold FacilityForce harmless against any claims made by any third party against FacilityForce arising out of CUSTOMER's use of the Software unless such claims are due to the negligence or willful misconduct of FacilityForce.
- D. The warranty period for the Software shall extend for a period of ninety (90) days from the date of delivery of the Software. During the warranty period, in the event that the CUSTOMER encounters an error and/or malfunction whereby the Software does not conform to the description in the Documentation, FacilityForce will respond as follows:
 - 1. In the event that, in the mutual and reasonable opinion of FacilityForce and the CUSTOMER, there exists an error or nonconformance to the Documentation, FacilityForce will take such steps as are required to correct the error with due dispatch.
 - 2. In the event that, in the mutual and reasonable opinion of FacilityForce and the CUSTOMER, the error or nonconformance to the Documentation does not constitute a serious impediment to the normal intended use of the Software, FacilityForce will correct the error and distribute the correction to the CUSTOMER in accordance with FacilityForce’ normal Software revision schedule.

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- E. FacilityForce does not warrant third party software. Warranties, if any, for third party software is passed through to CUSTOMER.
- F. THE ABOVE WARRANTIES ARE THE ONLY WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, THAT ARE MADE BY FACILITYFORCE AND FACILITYFORCE DISCLAIMS ALL OTHER WARRANTIES, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY FACILITYFORCE, ITS AGENTS OR EMPLOYEES SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THE WARRANTIES IN THIS AGREEMENT. SUCH WARRANTIES SHALL NOT BE DEEMED TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE SO LONG AS FACILITYFORCE IS MAKING GOOD FAITH EFFORTS TO CORRECT DEFECTS OR FAILURES UNDER THE TERMS OF THE WARRANTY. NEITHER FACILITYFORCE NOR ANYONE ELSE WHO HAS BEEN INVOLVED IN THE CREATION, PRODUCTION OR DELIVERY OF THE FACILITYFORCE SOFTWARE SHALL BE LIABLE FOR ANY CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES (INCLUDING DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, AND THE LIKE) ARISING OUT OF THIS AGREEMENT OR THE USE OF OR INABILITY TO USE THE FACILITYFORCE SOFTWARE EVEN IF FACILITYFORCE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO CASE SHALL FACILITYFORCE' AGGREGATE LIABILITY FOR ALL MATTERS ARISING OUT OF THE SUBJECT MATTER OF THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR OTHERWISE, EXCEED THE AMOUNT ACTUALLY RECEIVED BY FACILITYFORCE PURSUANT TO THIS AGREEMENT.

ARTICLE V – INTELLECTUAL PROPERTY RIGHTS

- A. CUSTOMER acknowledges and agrees that the Software consists of proprietary source code developed and owned by FacilityForce ("FacilityForce Software") as well as contributions made by third parties whose source code ("Third Party Software") is incorporated into and made a part of the Software.
- B. The current list of Third Party Software is listed in the Documentation, and CUSTOMER acknowledges and agrees that future updates, enhancements and upgrades to the Software may include additional Third Party Software, which will be identified in the revised Documentation furnished to CUSTOMER with such updates, enhancements and upgrades to the Software. CUSTOMER agrees to be bound by the terms and conditions, if any, imposed by the developer/owner of each component of the Third Party Software, which may be found at web site(s) listed in the Documentation, as amended from time to time.
- C. CUSTOMER agrees that FacilityForce is the owner of all right, title and interest in all FacilityForce Software, including (i) any Source Code, Object Code, enhancements and modifications; (ii) all files, including input and output materials pertaining to the FacilityForce Software; (iii) all documentation related to the FacilityForce Software; (iv) all media upon which any such computer programs, files and documentation are located (including tapes, disks and other storage media); and (v) all related material that is furnished by FacilityForce.
- D. CUSTOMER agrees that, notwithstanding inclusion of Third Party Software in the Software, neither the FacilityForce Software nor the Software shall enter the public domain by reason of the terms and conditions of this Agreement or the inclusion of Third Party Software in the Software, and CUSTOMER shall do nothing to cause any infringement of FacilityForce' proprietary rights or to cause the FacilityForce Software or the Software to enter the public domain.
- E. CUSTOMER agrees that it will not remove or alter any legends, trademarks, trade names, service marks, copyrights, logos, markings or other brand designations of the FacilityForce Software, the Third Party Software or the Software.

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- F. Neither Party grants to the other Party under this Agreement any actual or implied license to use its trademarks, trade names, service marks, copyrights, logos, markings or other brand designations.

ARTICLE VI - TERMINATION

- A. The license conveyed pursuant to Article I-A may be terminated by FacilityForce in the event of material breach or default by CUSTOMER under this Agreement if FacilityForce notifies CUSTOMER in writing of the breach or default and CUSTOMER does not correct same within thirty (30) days of FacilityForce' written notice. Non-payment is material breach of this agreement.
- B. All Software and Documentation supplied hereunder by FacilityForce shall be and remain the property of FacilityForce. Upon termination of this Agreement, whatever the reason, such Software and documentation and any copies thereof made by CUSTOMER pursuant to this Agreement shall be returned to FacilityForce.

ARTICLE VII - ASSIGNMENT

This Agreement shall not be assignable by either party without the prior written consent of the other party, and any attempted assignment without such consent shall be void. No assignment of this Agreement shall be valid until and unless consented to in writing by the consenting party and assumed by the assignee in writing. When duly assigned in accordance with the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the assignee.

ARTICLE VIII- OTHER AUTHORIZED BUYERS

If the CUSTOMER is a governmental entity, the parties agree that other governmental entities (including state agencies) ("Other Buyers") may purchase under these license terms. If Other Buyers exercise the right to purchase under this provision, the Other Buyer shall be substituted for "CUSTOMER" herein and shall be entitled to all rights and be responsible for all obligations with respect to the Other Buyer's purchases; the Other Buyer is not responsible for the CUSTOMER purchases. The CUSTOMER and each Other Buyer will be responsible for its purchases only and shall not be responsible for any Other Buyer's obligations. FacilityForce reserves the right to request each Other Buyer execute separate documentation with identical terms unless FacilityForce and such Other Buyer agree otherwise.

ARTICLE IX- ENTIRE AGREEMENT

This Agreement supersedes all prior proposals, oral or written, all previous negotiations and all other communications or understandings between FacilityForce and CUSTOMER with respect to the subject matter hereof. It is expressly agreed that if CUSTOMER issues a purchase order or other document for the services provided under this Agreement, such instrument will be deemed for CUSTOMER'S use only, and any provisions in consistent with this Agreement shall have no effect whatsoever upon this Agreement. This Agreement sets forth the sole and entire understanding between FacilityForce and CUSTOMER with respect to the software license. No amendments to this Agreement, either at the execution or subsequently, shall be binding on FacilityForce or CUSTOMER unless agreed to in writing by both parties.

ARTICLE X - GOVERNING LAW; DISPUTES

This Agreement shall be governed by the law(s) of the State of Texas. In any action at law or in equity to enforce or interpret the terms of this Agreement, the prevailing party will be entitled to recover its reasonable attorneys' fees and costs, in addition to any other relief ordered by the court. Such fees and costs will include those incurred in connection with the enforcement of any resulting judgment or order, and any post judgment order will provide for the right to receive such attorneys' fees and costs.

ARTICLE XI - SCHEDULES

Schedule 1 and any additional schedules referenced thereon are hereby incorporated into this Agreement.

IN WITNESS WHEREOF, the parties enter into this Agreement as of **Insert DATE**, the effective date of this Agreement.

FacilityForce

CUSTOMER

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

SCHEDULE 1 – SOFTWARE FEES

A. FacilityForce PRODUCTS:

INSERT PRODUCTS AND FEES HERE

SOFTWARE SUPPORT AGREEMENT

THIS AGREEMENT is between FacilityForce, Inc. a Delaware corporation, with an office located at 13359 North Highway 183 Suite 406-797 Austin, TX 78750 (hereinafter called "FacilityForce") and **Insert Name and Address** (hereinafter called "CUSTOMER").

A. BACKGROUND

1. FacilityForce and CUSTOMER are parties to a Software License Agreement dated **INSERT DATE** pursuant to which CUSTOMER has licensed certain software products ("Software") from FacilityForce.
2. Support ("Support") for the Software is available as an option. Support includes bug fixes and telephone support and may include, when made available generally from FacilityForce, program updates and enhancements.
3. The purpose of this Agreement is to set forth the terms and conditions upon which CUSTOMER has agreed, at its option, to subscribe to Support from FacilityForce.

B. TERMS AND CONDITIONS

1. Term

Support shall commence upon delivery of the Software and shall thereafter have a term of twelve (12) months. The term shall automatically renew each year thereafter for an additional twelve (12) month period unless terminated as set forth below.

2. Correction of Deviations

In the event that the CUSTOMER encounters an error and/or malfunction ("Deviation") in the Software, it shall communicate the circumstances and any supporting information to FacilityForce. Upon receipt, FacilityForce will respond as follows:

- a. In the event that, in the mutual and reasonable opinion of FacilityForce and the CUSTOMER, there exists a Deviation that does not constitute a serious impediment to the normal intended use of the Software, FacilityForce may correct the Deviation and distribute the correction to the CUSTOMER in accordance with FacilityForce' normal Software revision schedule;
- b. In the event that, in the mutual and reasonable opinion of FacilityForce and the CUSTOMER, there exists a Deviation that does constitute a serious impediment to the normal intended use of the Software, FacilityForce will take such steps as are required to correct the Deviation with all due dispatch. Corrections will be applied and distributed to the latest software release. FacilityForce will have no obligation to provide development support for an issue that can be resolved by Customer installing a revision to the software.

3. Software Revisions

The Software may be revised by FacilityForce as a result of the correction of Deviations and/or the release of upgrades or improvements or modifications designed to improve the performance of the Software and/or to increase the capabilities of the Software (hereafter "Revisions"). Revisions shall be of two kinds:

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- a. Revisions that the CUSTOMER is obliged to implement ("Mandatory Revisions");
 - b. Revisions that may be implemented by the CUSTOMER at its option ("Optional Revisions").

FacilityForce currently offers 2 planned releases/updates per year that are available to all customers that are current on their software Support agreement. No charge shall be made to the CUSTOMER for either Mandatory Revisions or Optional Revisions.

4. Telephone Hotline Assistance

FacilityForce, at its expense, shall make available technically qualified personnel to respond to all reasonable telephone requests that may be made by the CUSTOMER relating to the application and operation of the Software.

5. Technical Literature

FacilityForce shall make available to the CUSTOMER all technical literature that is considered by FacilityForce to be relevant to the Software and its use within the scope of CUSTOMER's operations.

6. Transmission

All Revisions and New Releases (software distributions) will be transmitted to the CUSTOMER via FTP or other suitable media, at the option of FacilityForce. The CUSTOMER shall be solely responsible for mounting the software distribution and executing the appropriate instructions in order to transfer the Revisions or New Releases onto to its system.

7. Remote Diagnostic Access

The CUSTOMER shall provide appropriate access by which FacilityForce may, with the permission of the CUSTOMER, remotely access the Software for the purpose of remote diagnostics and support.

8. Proper Use

- a. The CUSTOMER agrees that all reasonable effort shall be taken to ensure that neither the Software nor data files are misused.
- b. In the event that the CUSTOMER does misuse the Software or data files, correction of the situation will be at CUSTOMER's expense.
- c. In the event that diagnostic assistance is provided by FacilityForce, which, in the reasonable opinion of FacilityForce and the CUSTOMER, relates to problems not caused by a Deviation in the Software, such assistance shall be at the CUSTOMER's expense.

9. Software Support Fee – Paid Up License

In consideration of the Support services to be provided by FacilityForce for the first twelve month period hereunder, CUSTOMER shall pay to FacilityForce **Insert Fee Here.**

10. Additional Software Support Fee – Paid Up License

In the event the CUSTOMER acquires Software in addition to that indicated in Schedule 1 of the Software License Agreement (the "Additional Software"), the Support shall automatically be extended to cover the Additional Software, and the CUSTOMER shall pay an additional annual Support fee in an amount equal to twenty percent (20%) of the then current license fee for the Additional Software.

11. Other Fees and Expenses

If onsite Support is required, CUSTOMER will pay reasonable travel and living expenses.

12. Payment Terms

- a. Annual payments for Support will be due in advance of the commencement of the initial one-year term of the Support and each anniversary thereafter.
- b. FacilityForce reserves the right to change the annual Support fee by providing CUSTOMER written notice of the increase at least thirty (30) days prior to any scheduled renewal date.
- c. Payment is due 30 days from receipt of invoice.
- d. Overdue payments of fees and charges shall bear interest at the rate of 1.5% per month.
- e. FacilityForce reserves the right to suspend Support and Support Services for overdue payments.

13. Default and Termination

- a. The CUSTOMER shall have the right to terminate Support upon delivery of written notice at least thirty (30) days prior to any scheduled renewal date.
- b. Upon notice as set forth in subsection 13c, FacilityForce may cancel Support in the event that the CUSTOMER does not implement a Mandatory Revision within sixty (60) days of receipt thereof or such longer period as FacilityForce may consent to in writing.
- c. In the event of any breach of the terms and conditions of this Agreement by the CUSTOMER, FacilityForce will, by written notice to the CUSTOMER, give the CUSTOMER a period of thirty (30) days within which to institute remedies to correct such breach. In the event that such breach has not been corrected to FacilityForce' satisfaction within said thirty (30) day period, FacilityForce may then cancel Support, effective immediately, by notice in writing to the CUSTOMER.
- d. In the event that Support is terminated by FacilityForce, FacilityForce shall have no continuing obligations to the CUSTOMER of any nature whatsoever with respect to Support. Furthermore, termination by FacilityForce pursuant to the provisions hereof shall be without prejudice to any right or recourse available to FacilityForce, and without prejudice to FacilityForce' right to collect any amounts which remain due to it hereunder.

14. Limitation of Liability

- a. In the event of any claim brought by one party against another hereunder, a party will be liable only for actual, direct losses or damages incurred (including cost of cover), limited to the amount of fees paid to FacilityForce for Support services.
- b. Irrespective of the basis of the claim, neither party will be liable for any special, indirect, incidental or consequential damages of any kind, including, without limitation, lost profits or loss of data.

15. Intellectual Property

- a. FacilityForce is the owner of all right, title and interest in the Software, including (i) any source code, object code, enhancements and modifications; (ii) all documentation related to the Software; and (iii) all related material that is furnished by FacilityForce. Customer's rights in the Software are set forth in the license between the parties. Customer expressly waives any claim of ownership to or right in any suggestions, feedback, or ideas made by Customer to FacilityForce to improve or change the Software

C. General Terms

1. Neither FacilityForce nor CUSTOMER will assign or transfer its interest in this Agreement without the prior written consent of the other party.
2. All provisions of this Agreement, which by their nature should survive termination of this Agreement, will so survive.
3. No delay or failure by either party to exercise any right hereunder, or to enforce any provision of this Agreement will be considered a waiver thereof. No single waiver will constitute a continuing or subsequent waiver. To be valid, a waiver must be in writing, but need not be supported by consideration.
4. If any provision of this Agreement is held to be illegal, invalid or unenforceable, in whole or in part, such provision will be modified to the minimum extent necessary to make it legal, valid and enforceable, and the remaining provisions of this Agreement will not be affected.
5. This Agreement, including its interpretation and enforcement, will be governed by the substantive laws of the State of Texas excluding its conflict of laws rules.
6. Any communication or notice hereunder must be in writing, and will be deemed given and effective: (i) when delivered personally; (ii) when sent by e-mail; (iii) when delivered by overnight express; or (iv) three (3) days after the postmark date when mailed by certified or registered mail, postage prepaid, return receipt requested and addressed to a party at its address for notices. Each party's address for notices is stated below. Such address may be changed by a notice delivered to the other party in accordance with the provisions of this Section.

FacilityForce, Inc.

13359 North Highway 183 #406-797

Austin, Texas 78750

Attn.: Leeann Grindlinger

Attn.: _____

7. In any action at law or in equity to enforce or interpret the terms of this Agreement, the prevailing party will be entitled to recover its reasonable attorneys' fees and costs, in addition to any other relief ordered by the court. Such fees and costs will include those incurred in connection with the enforcement of any resulting judgment or order, and any post judgment order will provide for the right to receive such attorneys' fees and costs.
8. Neither party will be liable for any failure to perform or any delay in performing any of its obligations hereunder when such failure or delay is due to circumstances beyond its reasonable control and without its fault ("Force Majeure"), including without limitation, any natural catastrophe, fire, war, riot, strike, or any general shortage or unavailability of materials, components or transportation facilities, or any governmental action or inaction. Upon the occurrence of such event of Force Majeure, the affected party will immediately give notice to the other party with relevant details, and will keep the other party informed of related developments.
9. This Agreement constitutes the entire agreement between the parties and supersedes all prior or contemporaneous oral, and all prior written, negotiations, commitments and understandings of the parties relating to the subject matter hereof. This Agreement may not be modified except by a writing executed by both parties.

IN WITNESS WHEREOF, the parties have entered into Agreement, effective this **Insert Date Here**.

FacilityForce

Customer

Signature

Signature

Printed Name

Printed Name

Title

Title

Date

Date

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is between FacilityForce, Inc. a Delaware corporation, with an office located at 13359 North Highway 183 Suite 406-797 Austin, TX 78750 (hereinafter called "FacilityForce") and **Insert Name and Address** (hereinafter called "CUSTOMER").

WHEREAS, CUSTOMER requires implementation services; and

WHEREAS, FacilityForce is willing to provide such services.

NOW, THEREFORE, in consideration of the mutual terms, conditions and covenants set forth herein, the parties agree as follows:

1. Scope of Services

FacilityForce will perform the professional services ("Services") and deliver the deliverables ("Deliverables") described in the Scope of Services hereto as Exhibit A. During the term of this Agreement, CUSTOMER may request changes in the Scope of Services. Any such change, including technical requirements, schedule, or any increase or decrease in the compensation due to FacilityForce, shall be prosecuted in accordance with Article 6 of this Agreement and requires the mutual agreement of the parties. Said change shall be effective when incorporated by written amendment into the contract.

2. Place of Performance

Unless otherwise provided in this Agreement, FacilityForce may perform the Services in whole or in part at FacilityForce' place of business, CUSTOMER's place of business, and/or such other locations as FacilityForce selects.

3. Effective Date; Term

This Agreement shall be effective as of the date first above written (the "Effective Date"), and shall continue in full force and effect the Services have been completed or the Agreement has been terminated in accordance with section 10 hereof, whichever first occurs.

4. Price and Payment Terms

(a) CUSTOMER shall pay FacilityForce the price set forth on Exhibit B (the "Price"). Payments shall be made according to the schedule and provisions set forth in Exhibit B.

(b) FacilityForce shall have a lien upon and may retain or repossess any and all Deliverables if CUSTOMER does not make full payment to FacilityForce.

(c) Invoiced amounts are due and payable 30 days from the date of the invoice. The preferred means of payment is by electronic funds transfer (EFT). EFT payments can be accomplished as either a Funds Transfer (Fed Wire) or Direct Deposit (ACH). For payment by EFT please contact FacilityForce.

(e) If CUSTOMER's action or inaction results in non-receipt of payment by FacilityForce for the total amount of an invoice within fifteen (15) days of the due date of such invoice, interest compounded at the rate of one percent (1%) per month, or the maximum rate permitted by law if lower, shall thereafter be added to all amounts unpaid and outstanding. If CUSTOMER's action or inaction results in non-receipt of payment by FacilityForce, FacilityForce shall have the right exercisable in FacilityForce' sole discretion, in addition to its other rights and remedies, to cease further performance of the Services hereunder.

(f) Bill To Address. The invoice will be mailed to Customer at: **Insert Address Here**

5. Resources to be Provided by CUSTOMER

(a) CUSTOMER shall provide, maintain and make available to FacilityForce, at CUSTOMER's expense and in a timely manner, the resources described in the Scope of Work, and such other additional resources as FacilityForce may from time to time reasonably request in connection with FacilityForce' performance of the Services. Delays in the provision of these resources may result in delays in the performance of the Services, or an increase in the Price.

(b) CUSTOMER will designate qualified CUSTOMER personnel or representatives to consult with FacilityForce on a regular basis in connection with the Services. CUSTOMER will furnish such documentation and other information as is reasonably necessary to perform the Services.

(c) CUSTOMER shall furnish access to CUSTOMER's premises, and appropriate workspace for any FacilityForce personnel working at CUSTOMER's premises, as necessary for performance of those portions of the Services to be performed at CUSTOMER's premises.

6. Changes

(a) Issuance of Change Orders. The CUSTOMER may, at any time by a written Change Order, make changes consistent with the scope of this Agreement or changes outside the scope of this Agreement, if mutually agreed by the parties in advance. Such changes may include revisions to Services or Deliverables. All Change Orders shall be subject to requirements and limitations of the applicable law.

(b) FacilityForce' Response. FacilityForce shall respond in writing to a Change Order issued by the CUSTOMER within thirty (30) days of receipt, advising the CUSTOMER of any impact on the costs, resources, and/or implementation schedule. If there is a cost increase or change in schedule attributable to a Change Order, FacilityForce shall so notify the CUSTOMER in writing. The CUSTOMER shall accept or reject FacilityForce' response within thirty (30) days of receipt. Failure of the parties to agree to an equitable adjustment shall relieve FacilityForce of any obligation to act upon a Change Order.

(c) FacilityForce identified Change. In the event that FacilityForce determines that a CUSTOMER action or inaction results in or necessitates a change that may have an impact on the costs, resources and/or implementation schedule, FacilityForce will notify CUSTOMER as soon as reasonably possible. Within 20 days after said notice FacilityForce shall provide CUSTOMER with a proposal that addresses the change and its impact on the costs, resources and/or implementation schedule for CUSTOMER to accept or reject. The CUSTOMER shall accept or reject FacilityForce' response within thirty (30) days of receipt. Disagreements under this clause will be resolved using the Dispute clause.

7. Confidentiality

Concurrently with the execution of this Agreement the parties shall execute a Non-Disclosure Agreement in the form and content of Exhibit C attached hereto. The Non-Disclosure Agreement is independent of this Agreement and shall survive the termination of this Agreement. Nothing in this Agreement or in any such Non-Disclosure Agreement shall be deemed to restrict or prohibit FacilityForce from providing to others services and deliverables the same as or similar to the Services and Deliverables.

8. Intellectual Property

(a) CUSTOMER and FacilityForce shall each retain ownership of, and all right, title and interest in and to, their respective pre-existing Intellectual Property, and expressed as stated in this Agreement, no license is granted as a result of the Services performed hereunder. To the extent the parties wish to grant to the other rights or interests in pre-existing Intellectual Property, separate license agreements on mutually acceptable terms will be executed.

(b) FacilityForce shall retain ownership of and unrestricted right to use any Intellectual Property derived in any fashion or manner from its pre-existing Intellectual Property. The Services performed and any Deliverables produced pursuant to this Agreement are not “works for hire.”

(c) As used herein, “Intellectual Property” shall mean inventions (whether or not patentable), works of authorship, trade secrets, techniques, know-how, ideas, concepts, algorithms, and other intellectual property incorporated into any Deliverable whether or not first created or developed by FacilityForce in providing the Services.

9. Taxes

(a) In no event whatsoever shall FacilityForce be liable for sales, use, business, gross receipts or any other tax that may be levied by any State or Federal Government entity against a contractor to such governmental entity other than taxes upon income earned by FacilityForce for the goods and/or services provided pursuant this Agreement. This exclusion of tax liability is also applicable to any goods and/or services that may be provided by FacilityForce under any later task order or amendment hereto regardless of changes in legislation or policy.

(b) In the event a taxing authority conducts an audit of this Agreement and determines that an additional tax should have been imposed on the Services or Deliverables provided by FacilityForce to CUSTOMER (other than those taxes levied on FacilityForce’ income), CUSTOMER shall reimburse FacilityForce for any such additional tax, including interest and penalties thereon. Similarly, if a taxing authority determines that a refund of tax is due as it relates to the Services or Deliverables provided by FacilityForce to CUSTOMER (except those taxes relating to FacilityForce’ income), FacilityForce shall reimburse CUSTOMER such refund, including any interest paid thereon by the taxing authority.

10. Termination for Default

Either party may terminate this Agreement if (i) the other party fails to perform a material obligation of the Agreement and such failure remains uncured for a period of 30 days after receipt of notice from the non-breaching party specifying such failure; or (ii) a party ceases to conduct business, becomes or is declared insolvent or bankrupt, is the subject of any proceeding relating to its liquidation or insolvency which is not dismissed within 90 days or makes an assignment for the benefit of creditors. In addition, FacilityForce may terminate this Agreement effective immediately upon written notice to CUSTOMER if CUSTOMER fails to make any payment in full as and when due hereunder.

Upon termination for whatever reason and regardless of the nature of the default (if any), CUSTOMER agrees to pay FacilityForce in full for all goods and/or services provided to, and accepted by, CUSTOMER under this Agreement and/or any order hereto as of the effective date of the Agreement within 30 days of the invoice date.

11. Indemnification

FacilityForce agrees to defend, indemnify, and hold harmless CUSTOMER from and against third party claims, judgments, and awards, as well as the reasonable costs related thereto (hereinafter collectively referred to as "Damages") to the extent such Damages result from the gross negligence or willful acts or omissions of FacilityForce occurring in the performance of its obligations hereunder. FacilityForce shall not be responsible for any damages or liability resulting, in whole or in part, from the negligence or willful misconduct of CUSTOMER its employees, consultants or agents.

12. Limited Warranty

(a) FacilityForce warrants that the Services provided under this Agreement shall be performed with that degree of skill and judgment normally exercised by recognized professional firms performing the same or substantially similar services. In the event of any breach of the foregoing warranty, provided CUSTOMER has delivered to FacilityForce timely notice of such breach as hereinafter required, FacilityForce shall, at its own expense, in its discretion either (1) re-perform the non-conforming Services and correct the non-conforming Deliverables to conform to this standard; or (2) refund to CUSTOMER that portion of the Price received by FacilityForce attributable to the non-conforming Services and/or Deliverables. No warranty claim shall be effective unless CUSTOMER has delivered to FacilityForce written notice specifying in detail the non-conformities within 90 days after performance of the non-conforming Services or tender of the non-conforming Deliverables. The remedy set forth in this section 11(a) is the sole and exclusive remedy for breach of the foregoing warranty.

(b) FACILITYFORCE SPECIFICALLY DISCLAIMS ANY OTHER EXPRESS OR IMPLIED STANDARDS, GUARANTEES, OR WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, AND ANY WARRANTIES THAT MAY BE ALLEGED TO ARISE AS A RESULT OF CUSTOM OR USAGE, ANY WARRANTY OF ERROR-FREE PERFORMANCE, OR ANY WARRANTY OF THIRD PARTY PRODUCTS, OR FUNCTIONALITY OF THE CUSTOMER'S HARDWARE, SOFTWARE, FIRMWARE, OR COMPUTER SYSTEMS.

(c) CUSTOMER represents and warrants to FacilityForce that CUSTOMER has the right to use and furnish to FacilityForce for FacilityForce' use in connection with this Agreement any information, specifications, data or Intellectual Property that CUSTOMER has provided or will provide to FacilityForce in order for FacilityForce to perform the Services and to create the Deliverables identified in Exhibit A.

13. Limitation of Liability

(a) CUSTOMER hereby agrees that FacilityForce' total liability to CUSTOMER for any and all liabilities, claims or damages arising out of or relating to this Agreement, howsoever caused and regardless of the legal theory asserted, including breach of contract or warranty, tort, strict liability, statutory liability or otherwise, shall not, in the aggregate, exceed fees paid to FacilityForce under this Agreement. The parties acknowledge and agree to the foregoing liability risk allocation. Any claim by CUSTOMER against FacilityForce relating to this Agreement must be made in writing and presented to FacilityForce within six (6) months after the date on which this Agreement expires or is otherwise terminated.

(b) In no event shall either FacilityForce or CUSTOMER be liable to the other for any punitive, exemplary, special, indirect, incidental or consequential damages (including, but not limited to, lost profits, lost business opportunities, loss of use or equipment down time, and loss of or corruption to data) arising out of or relating to this Agreement, regardless of the legal theory under which such damages are sought, and even if the parties have been advised of the possibility of such damages or loss and notwithstanding any failure of essential purpose of any limited remedy.

14. Notices

All notices under this Agreement will be in writing and will be delivered by personal service, facsimile, e-mail or certified mail, postage prepaid, or overnight courier to such person and address as may be designated from time to time by the relevant party, which initially shall be the address set forth below:

FacilityForce, Inc.
13359 North Highway 183 #406-797
Austin, Texas 78750
Attn: Leeann Grindlinger

Attn: _____

15. Non-Waiver of Rights

The failure of either party to insist upon performance of any provision of this Agreement, or to exercise any right, remedy or option provided herein, shall not be construed as a waiver of the right to assert any of the same at any time thereafter.

16. Rights and Remedies Not Exclusive

Unless otherwise expressly provided herein, no right or remedy of a party expressed herein shall be deemed exclusive, but shall be cumulative with, and not in substitution for, any other right or remedy of that party.

17. Severability

If any provision of the Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any manner.

18. Assignment

Neither party may sell, assign, transfer, or otherwise convey any of its rights or delegate any of its duties under this Agreement without the prior written consent of the other party. Notwithstanding the foregoing, FacilityForce may without violation of this paragraph engage the services of independent contractors to assist in the performance of its duties hereunder.

19. Governing Law; Venue

This Agreement shall be governed by and construed under the laws of the State of Texas, without regard to its laws relating to conflict or choice of laws.

20. Interpretation

The captions and headings used in this Agreement are solely for the convenience of the parties, and shall not be used in the interpretation of the text of this Agreement. Each party has read and agreed to the specific language of this Agreement; therefore no conflict, ambiguity, or doubtful interpretation shall be construed against the drafter.

21. Disputes

The parties will seek a fair and prompt negotiated resolution within ten (10) days of the initial notice of the dispute ("Dispute"). If the Dispute has not been resolved after such time, the parties will escalate the issue to more senior levels. If the parties are unable to resolve any Dispute at the senior management level, then a party may commence a legal action to resolve any controversy, claim or Dispute arising out of or relating to this Agreement.

22. Multiple Copies or Counterparts of Agreement

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement shall not be effective until the execution and delivery between each of the parties of at least one set of the counterparts.

23. Force Majeure

Neither party shall be liable for any failure of or delay in performance of its obligations (except for payment obligations) under this Agreement to the extent such failure or delay is due to acts of God, acts of a public enemy, fires, floods, power outages, wars, civil disturbances, epidemics, pandemics, sabotage, terrorism, accidents, insurrections, blockades, embargoes, storms, explosions, labor disputes (whether or not the employees' demands are reasonable and/or within the party's power to satisfy), failure of common carriers, Internet Service Providers, or other communication devices, acts of cyber criminals, terrorists or other criminals, acts of any governmental body (whether civil or military, foreign or domestic), failure or delay of third parties or governmental bodies from whom a party is obtaining or must obtain approvals, authorizations, licenses, franchises or permits, inability to obtain labor, materials, power, equipment, or transportation, or other circumstances beyond its reasonable control (collectively referred to herein as "Force Majeure Occurrences"). Any such delays shall not be a breach of or failure to perform this Agreement or any part thereof and the date on which the obligations hereunder are due to be fulfilled shall be extended for a period equal to the time lost as a result of such delays. Neither party shall be liable to the other for any liability claims, damages or other loss caused by or resulting from a Force Majeure Occurrence.

24. Relationship of Parties

FacilityForce is an independent contractor in all respects with regard to this Agreement. Nothing contained in this Agreement shall be deemed or construed to create a partnership, joint venture, agency, or other relationship other than that of contractor and customer.

25. Third Party Beneficiaries

This Agreement does not create, and shall not be construed as creating, any rights or interests enforceable by any person not a party to this Agreement.

26. Modification

No provision of the Agreement may be waived or modified unless in writing specifically referencing this Agreement and signed by representatives of both parties against whom enforcement of the

purported modification or waiver is sought. Waiver of default of any provision of the Agreement shall not operate or be construed as a waiver of any subsequent default of such provision, nor shall a waiver of any one provision of the Agreement be deemed to be a waiver of any other provision.

27. Entire Agreement; Conflicting Provisions

The Agreement and any schedules and exhibits thereto contain the entire agreement and understanding of the parties with respect to the subject matter hereof, and supersedes and replaces any and all prior or contemporaneous proposals, discussions, agreements, CUSTOMER issued purchase order or document of like intent or purpose, understandings, commitments, representations of any kind, whether oral or written, relating to the subject matter hereof or the Services to be provided hereunder. In the event that any provision in any attachment conflicts with any provision of this Agreement, then this Agreement shall be deemed to control, and such conflicting provision to the extent it conflicts shall be deemed removed and replaced with the governing provision herein.

28. Authorization

Each of the parties represents and warrants that the Agreement is a valid and binding obligation enforceable against it and that the representative executing the Agreement is duly authorized and empowered to sign the Agreement.

29. Survival

All provisions of this Agreement, which by their nature should survive termination of this Agreement, will so survive.

IN WITNESS WHEREOF, the parties have executed this Agreement through their duly authorized representatives effective this **Insert Date Here**.

AGREED BY:
FacilityForce

By: _____
Name: _____
Title: _____
Date: _____

CUSTOMER

By: _____
Name: _____
Title: _____
Date: _____

Exhibit A

Scope of Services

Description of Services: **SOW TO BE ATTACHED**

Deliverables: **SOW TO BE ATTACHED**

Exhibit B

Price and Payment

Price:

Insert Fee Here

Payment for services will be made on a monthly basis as invoiced by FacilityForce for reimbursement of actual labor and expenses.

HOSTING AGREEMENT

This Hosting Services Agreement (“Agreement”) is effective as of **Insert Date** (“Effective Date”), by and between FacilityForce, Inc. (“FacilityForce”), with offices located at 13359 North Highway 183 Suite 406-797 Austin, TX 78750 and **Insert Name** (“Customer”), with offices at **Insert Address** on the following terms and conditions:

AGREEMENT OVERVIEW

FacilityForce uses data centers, including Amazon Web Services Data Centers (“Data Center”), to provide hosting services and related support to customers that wish to outsource the operation and Support of computer applications listed in the Scope of Services as referenced in Attachment 1. This Agreement describes the services to be provided by FacilityForce the respective responsibilities of the parties, and the service levels. This Agreement incorporates the following Attachments that shall be considered an integral part of this Agreement:

- Attachment 1 Scope of Services
- Attachment 2 Service Level
- Attachment 3 Fee Schedule

SERVICES

FacilityForce will perform the services as described in the Scope of Services (“Services”), set forth in Attachment 1.

The general scope of services addressed by this Agreement includes the operation and support of the:

- Database software for the Applications hosted under this Agreement
- Database security
- Data Center

The Services specifically excludes operation and Support of the following:

- Customer hardware, including Customer’s servers, printers, network hardware (including routers and switches) and other Customer site computing equipment;
- Customer application software other than noted in the Scope of Services; and
- Customer Local Area Networks (“LAN”)
- Customer network infrastructure for connecting to the Internet and to the Data Center.

TERM

The Term of the Agreement shall commence as of the Effective Date and shall continue for three (3) years (“Initial Term”) unless terminated earlier as set forth below. At the end of the Initial Term, the Agreement shall automatically renew for successive one-year terms unless or until either party provides the other party with written notice of non-renewal at least ninety (90) days prior to the end of the then current term.

FEES AND PAYMENT

Customer shall pay FacilityForce the applicable fees as set forth in the Fee Schedule, Attachment 3.

FacilityForce shall invoice Customer annually, in advance, and all invoiced fees shall be due and payable within 30 days of the date of an invoice. Annual invoices shall include charges defined in Attachment 3. All payments shall be made in United States Dollars without deduction for any taxes or withholding or other offset.

Any amounts not paid when due will be subject to interest accrued at twelve percent (12%) per annum compounded quarterly, which interest will be immediately due and payable from the due date for payment until the date of actual receipt of the amount in cleared funds by FacilityForce. Interest payments that are accrued during billing disputes should be credited back to the Customer if said dispute is found to be through no fault of the Customer.

A Customer will be considered delinquent if payment in full is not received forty-five (45) days from the date of the invoice. FacilityForce reserves the right to suspend or terminate this Agreement and Customer access to the Service if the Customer account becomes delinquent and is not cured within ten (10) days of written notice from FacilityForce. Customer will continue to be charged and hereby agrees to pay for Service during any period of suspension. Customer's failure to pay any invoice after this ten (10) day period shall constitute a material default hereunder and shall entitle FacilityForce to exercise any and all rights and remedies provided herein or at law including a suspension of Services under the Agreement. If Customer or FacilityForce initiate termination under any provision of the Agreement, Customer will be obligated to pay the Service Termination Fees set forth in the Fee Schedule in Attachment 3. In the event of a dispute between the parties that does not result in a termination of the Agreement, Customer agrees to make all Annual Service Fee payments due under the Agreement and FacilityForce provide the Services pending the resolution of the dispute.

CUSTOMER RESPONSIBILITIES

The Customer is responsible for:

- Assigning a primary and alternate Customer representative to coordinate all communications and activities related to FacilityForce services.
- Providing user identification data and determining the appropriate security profile for each user. Customer will control security at the Application level.
- All printing. No print job will print at the Data Center and all physical printing requirements will be handled by the Customer.
- The purchase and installation of printers at Customer's sites for the Application being utilized as defined in the Scope of Services.
- Installation, operation and Support of all workstation software (and Customer's LAN, existing data communications configuration, hardware, or software required at the Customer's site except as otherwise stipulated in the Scope of Services. FacilityForce network and network responsibility extends from the Data Center routers at Data Center to all connected equipment at Data Center.
- Testing updates and fixes applied by FacilityForce to Applications used by Customer. With the exception of emergency fixes, Customer will test updates and fixes prior to their introduction to the Production environment within a mutually agreed upon time frame.
- Testing upgrades. Upgrades will be moved to production by the FacilityForce at the end of the Customer testing period unless specific problems are documented in writing to FacilityForce.
- Diligent analysis of suspected problems to determine their specific nature and possible causes before calling the FacilityForce for assistance. Notwithstanding this diligence requirement, Customer is responsible for informing FacilityForce of any problems encountered in a timely manner.

OWNERSHIP OF SOFTWARE AND DATA

Customer shall not obtain any ownership rights, title or interest in the software, hardware or systems developed or employed by FacilityForce in providing Services under the Agreement. FacilityForce shall

not obtain any ownership rights, title or interest to Customer's data files. Upon expiration or termination of the Agreement for any reason, FacilityForce agrees to provide Customer with a copy of Customer's data files, as they exist at the date of expiration or termination. Nothing contained herein is intended to modify the Customer's rights under any separate license agreement between Customer and FacilityForce.

WARRANTY DISCLAIMER/LIMITATION OF LIABILITY

Except as expressly set forth herein, FacilityForce disclaims all warranties relating to the services or deliverables provided hereunder, including but not limited to any warranty of fitness for a particular purpose or merchantability. FacilityForce shall not be liable for any punitive, indirect, incidental, special or consequential damages, including but not limited to lost data or lost revenues or profits, however arising, even if provider has been advised of the possibility of such damages. FacilityForce' liability for any and all damages (including attorneys' fees) under this Agreement (whether in contract or tort) shall in no event exceed fees paid to FacilityForce during the previous 12-month period. The parties acknowledge and agree to the foregoing liability risk allocation. Any claim by Customer against FacilityForce relating to this agreement must be made in writing and presented to FacilityForce within six (6) months after the date on which this Agreement expires or is otherwise terminated.

TERMINATION FOR DEFAULT

A default shall occur if: (1) a party fails to perform any of its material obligations under the Agreement and such failure remains uncured for 30 days after receipt of written notice thereof; or (2) a party ceases to conduct business, becomes or is declared insolvent or bankrupt, is the subject of any proceeding relating to its liquidation or insolvency which is not dismissed within 90 days or makes an assignment for the benefit of creditors.

If default occurs, the non-defaulting party, in addition to any other rights available to it under law or equity, may withhold its performance hereunder or may terminate the Agreement by written notice to the defaulting party. Unless otherwise provided in the Agreement, remedies shall be cumulative and there shall be no obligation to exercise a particular remedy.

GOVERNING LAW; VENUE

The Agreement shall be governed and construed in accordance with the laws of the State of Texas without regard to choice of law principles. Subject to Section 20 below, the parties agree that the sole jurisdiction and venue for actions related to the subject matter hereof shall be the state and U.S. Federal courts in the State of Texas. Both parties consent to the jurisdiction of such courts and waive any objections regarding venue in such courts.

ASSIGNMENT

Neither the Agreement nor any duties or obligations hereunder shall be assigned or transferred by Customer without the prior written approval of FacilityForce, which approval may be withheld in the reasonable judgment of the FacilityForce. Customer agrees that FacilityForce may assign its obligations to a third party subject to Customer's written approval of such change, but FacilityForce shall remain responsible for performance under the Agreement. All fees will remain intact as outlined in Attachment 3.

SEVERABILITY

If any provision of the Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any manner.

ENTIRE AGREEMENT

The Agreement and any schedules and exhibits thereto contain the entire agreement and understanding of the parties with respect to the subject matter hereof (hosting services), and supersedes and replaces any and all prior or contemporaneous proposals, discussions, agreements, understandings, commitments, representations of any kind, whether oral or written, relating to the subject matter hereof or the Services to be provided hereunder.

FORCE MAJEURE

Neither party shall be liable for any failure of or delay in performance of its obligations (except for payment obligations) under this Agreement to the extent such failure or delay is due to acts of God, acts of a public enemy, fires, floods, power outages, wars, civil disturbances, sabotage, terrorism, accidents, insurrections, blockades, embargoes, storms, explosions, labor disputes (whether or not the employees' demands are reasonable and/or within the party's power to satisfy), failure of common carriers, Internet Service Providers, or other communication devices, acts of cyber criminals, terrorists or other criminals, acts of any governmental body (whether civil or military, foreign or domestic), failure or delay of third parties or governmental bodies from whom a party is obtaining or must obtain approvals, authorizations, licenses, franchises or permits, inability to obtain labor, materials, power, equipment, or transportation, or other circumstances beyond its reasonable control (collectively referred to herein as "Force Majeure Occurrences"). Any such delays shall not be a breach of or failure to perform this Agreement or any part thereof and the date on which the obligations hereunder are due to be fulfilled shall be extended for a period equal to the time lost as a result of such delays. Neither party shall be liable to the other for any liability claims, damages or other loss caused by or resulting from a Force Majeure Occurrence.

WAIVER

No provision of the Agreement may be waived unless in writing, signed by both of the parties hereto. Waiver of default of any provision of the Agreement shall not operate or be construed as a waiver of any subsequent default of such provision, nor shall a waiver of any one provision of the Agreement be deemed to be a waiver of any other provision.

AMENDMENTS, SUPPLEMENTS

The Agreement may be amended or supplemented only by the mutual written consent of the parties' authorized representative(s).

BINDING EFFECT, BENEFITS

The Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. Notwithstanding anything contained in the Agreement to the contrary, nothing in the Agreement, expressed or implied, is intended to confer on any person other than the parties hereto or their respective successors and assigns, any rights, remedies, obligations or liabilities under or by reason of the Agreement.

NOTICES

All notices under the Agreement will be in writing and will be delivered by personal service, certified mail, postage prepaid, or overnight courier to such address as may be designated from time to time by the relevant party, which initially shall be the addresses set forth on the signature page to the Agreement. Any notice sent by certified mail will be deemed to have been given five (5) days after the date on which it is mailed.

HEADINGS

The Section headings in the Agreement are inserted only as a matter of convenience, and in no way define, limit, or extend or interpret the scope of the Agreement or of any particular Article or Section.

AUTHORIZATION

Each of the parties represents and warrants that the Agreement is a valid and binding obligation enforceable against it and that the representative executing the Agreement is duly authorized and empowered to sign the Agreement.

DISPUTE RESOLUTION

The parties will seek a fair and prompt negotiated resolution within ten (10) days of the initial notice of the dispute (Dispute). If the dispute has not been resolved after such time, the parties will escalate the issue to more senior levels. If the parties are unable to resolve any dispute at the senior management level, then any controversy, claim or Dispute arising out of or relating to this Agreement shall be resolved by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration

Association then in effect. Before commencing any such arbitration, the parties agree to enter into negotiations to resolve the Dispute. If the parties are unable to resolve the Dispute by good faith negotiation, either party may refer the matter to arbitration. The arbitration shall take place in the State of Texas. The arbitrator(s) shall be bound to follow the provisions of this Agreement in resolving the dispute, and may not award any damages, which are excluded by this Agreement. The decision of the arbitrator(s) shall be final and binding on the parties, and any award of the arbitrator(s) may be entered or enforced in any court of competent jurisdiction. Any request for arbitration of a claim by either party against the other relating to this Agreement must be filed no later than six (6) months after the date on which FacilityForce concludes performance under this Agreement.

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The relationship of the parties shall at all times be one of independent contractors. Nothing contained herein shall be construed as creating any agency, partnership or other form of joint enterprise between the parties.

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This Agreement and all of the exhibits, schedules, and documents attached hereto are intended to be read and construed in harmony with each other, but in the event any provision in any attachment conflicts with any provision of this Agreement, then this Agreement shall be deemed to control, and such conflicting provision to the extent it conflicts shall be deemed removed and replaced with the governing provision herein

COUNTERPARTS

The Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

COUNSEL

By execution of this Agreement, each of the Parties acknowledges and agrees that it has had an opportunity to consult with legal counsel and that it knowingly and voluntarily waives any right to a trial by jury of any dispute pertaining to or relating in any way to the transactions contemplated by the Agreement, the provisions of any federal, state or local law, regulation or ordinance notwithstanding.

SIGNATURES

IN WITNESS WHEREOF, the parties have executed this Agreement through their duly authorized representative(s).

FacilityForce, Inc.

Customer

Name: _____

Name: _____

Title: _____

Title: _____

Sign: _____

Sign: _____

Date: _____

Date: _____

Address:

Address:

13359 North Highway 183
Suite 406-797
Austin, TX 78750

INSERT ADDRESS

Telephone (512) xxx-xxxx

Telephone: **INSERT PHONE**

Fax (512) 249-7443

FAX: **INSERT FAX**

ATTACHMENT 1 – SCOPE OF SERVICES

All of the services, functions, processes, and activities described below will be collectively described as the “Services” for purposes of this Agreement. All Services will be provided by FacilityForce to and for the Customer’s benefit in a manner that will meet the objectives outlined in Attachment 2.

Application

Application refers to the Customer’s software licensed from FacilityForce pursuant to a separate license agreement which software may include 3rd Party Software. The Application is hosted by FacilityForce pursuant to this Agreement.

Support Software

Support Software includes the operating system, utilities, database software, and all necessary licenses required to operate the Application and provided by FacilityForce as part of the Services.

Infrastructure

All infrastructure; e.g., servers, is physically located in the United States. Sufficient resources; e.g., bandwidth, disk space, CPU, VPN tunnels, for typical production and non-production deployments are included. In the event additional resources are required the following rates apply:

- FacilityForce provides 1TB of Bandwidth (outgoing/month)
 - Customer agrees to pay \$100/month for every additional 300 GB of data transfer(out) in excess of the amount included in the monthly recurring fee for bandwidth contracted under above pricing model.
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FacilityForce will maintain a single Production Database instance. This Production Database will provide the daily, real-time transaction data to the Application users.

In addition to the Production Database, FacilityForce will maintain one additional, non-production Database (Test). Upon request by Customer, FacilityForce will populate these additional Databases with Customer’s Production data up to 4 times throughout the calendar year at no additional cost. If purchased in this agreement, Analyze IQ will be configured to communicate with a single instance, Production or Test, per the customer’s choice.

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Full database and incremental file system backups are taken each night and stored at an offsite facility. Backup data is retained for 10 days.

Hours of System Operations

The Application will be accessible and available to the Customer and capable of any and all normal operating functions 24 hours a day, seven days a week except for periods of Scheduled Support and

previously approved outages. FacilityForce will not be held responsible for inaccessibility arising from communications problems occurring anywhere beyond the Amazon Web Services side of the router resident at the Data Center, nor will these hours of unavailability be counted as unavailable. Standard Support hours are M-F, 7am – 7pm Central, excluding holidays. After-hours support is only available for connectivity or system inaccessibility issues and can be reached at (800) 659-9001 Option: 4

Support in Data Center

Customer agrees to be responsible for maintaining and updating the Authorized Contact list with FacilityForce (Customer Care). FacilityForce will not be held responsible for Support notifications missed due to out-of-date Authorized Contact information.

Planned

FacilityForce will complete routine Support on the Application on a monthly basis. The Support schedule will be published and provided to the Customer's Authorized Contact. FacilityForce will provide at least 14 days notice to any changes in the published Support schedule.

Unplanned

If FacilityForce is required to perform additional Support outside of the scheduled Support window, FacilityForce will use reasonable efforts to provide Customer with prior (written) notice of said "unplanned Support" (except for emergency Support) and Customer agrees to use reasonable efforts to comply with any Support requirements requested by FacilityForce. With written notification of "unplanned Support" and agreement from Customer, SLAs will not apply during unplanned Support.

Emergency Support

FacilityForce reserves the right to perform emergency Support as needed outside the scheduled Support. In such event, FacilityForce will make a reasonable effort to notify the Customer, if feasible, under the circumstances. Any such Support will be considered an "Emergency Support". SLAs will apply during Emergency Support.

Application Support. In addition to FacilityForce Support in the Data Center, Customer is entitled to additional Support as set forth in a separate agreement between the parties.

ATTACHMENT 2 – SERVICE LEVEL

This Service Level Agreement (“SLA”) is intended to provide an understanding of the level of service to be delivered by the FacilityForce for the Services specified in Attachment 1. The service levels set forth below apply to the Services provided by FacilityForce under the Agreement.

AVAILABILITY

FacilityForce will use commercially reasonable efforts to provide Services with an average of 95% Availability (as such term is hereinafter defined) for each quarter during the Term. For purposes of the Agreement, “Availability” during any quarter refers to an Authorized User’s ability to log into the Application during such quarter, and will be calculated in accordance with the following formula:

$$x = (y - z) / y * 100$$

Where,

- “x” is the Availability of the Application during the quarter;
- “y” is the total number of hours in such quarter minus the number of hours during such quarter that the Customer is unable to log into the Application because of (a) regularly scheduled Support windows for the Application and for times in which Customer has been notified in writing (including e-mail) by FacilityForce in advance thereof; (b) a Force Majeure Event; (c) non-performance of hardware, software, ISP connections, and other equipment that is not provided by FacilityForce or certified by FacilityForce for use in conjunction with the Services (except as such non-performance is directly or indirectly caused by FacilityForce).
- “z” is the number of hours in such month during which the Customer is unable to log into the Application (other than for reasons set forth in the definition of “y” above); provided that FacilityForce has been notified or is otherwise aware (or reasonably should be aware) of Customer’s inability to utilize the Application.

FEE ADJUSTMENT

In the event that FacilityForce does not meet the Availability levels set forth below, the amount of fees payable by Customer will be reduced as follows:

In the event the average Availability for the Application is less than ninety five percent (95%) during any two consecutive quarters, Customer will receive a credit to its account with FacilityForce of five percent (5%) of the amount of a quarter’s aggregate Services Fees paid or payable by Customer to FacilityForce. Custom reports, scripts, action codes, web services or other interfacing programs causing the inability to log into the application will not be considered downtime for the purpose of the availability calculation.

FacilityForce’ obligation to provide Customer with fee adjustments as set forth above is conditioned on Customer providing detailed written notice to FacilityForce of its contention that FacilityForce was unable to meet the applicable Availability levels. Upon receipt of such notice, FacilityForce shall have thirty (30) calendar days to investigate the contention. If, at the end of the thirty (30) calendar day period it is determined that FacilityForce did in fact fail to meet the applicable Availability levels, Customer will receive the appropriate credit to its account during the next invoice cycle.

The remedies set forth in this Section of this Attachment shall be Customer’s sole remedy and FacilityForce’ entire liability in the event of a breach of this Agreement, including the failure of any Availability measurements to meet the thresholds set forth above.

ATTACHMENT 3 – FEE SCHEDULE

This section provides the fees payable to FacilityForce. License fees are governed by a separate Software License Agreement between the parties.

Professional Services one-time Start-Up Fee

The Professional Services one-time start-up fees are as follows:

- **Insert Fee (Operate)**
- **Insert Fee (Engage Request)**
- **Insert Fee (SSO)**

Service Fees Structure

FacilityForce will invoice Customer in advance on an annual basis. The annual service fee will begin on the effective date of this Agreement. Annual fee for Services described on Attachment 1.

Insert Fee Breakout:

Fee Adjustments

For additional Customer database instances requested beyond the existing Production and Test instances, a one-time fee will be charged for creation and an annual fee will be charged as long as the instance exists at the Data Center.

Additional Non-Production Instance Creation Fee: **\$7,500.00**

Annual Service Fee for Additional Non-Production Instance: **\$9,500.00**

Professional Services Fees

Work requested by Customer beyond that described in Attachment 1, will be charged at the following rates. Before any work is done which would incur charges billed as Professional Services Fees, FacilityForce will supply a proposal describing the work and providing an estimate of hours, cost, and completion date. Customer approval will be required before work can begin.

\$231.00 per hour.

Service Termination Fee

If Customer terminates this Agreement other than pursuant to the Termination for Default section of the Agreement, a Service Termination Fee equal to 100% of the current Annual Service Fee will be billed annually until the end of the then current Term of this Agreement.

Travel Expenses

In addition to the fees set forth above, Customer shall reimburse FacilityForce for airfare, meals, ground transportation, and other reasonable travel and living expenses incurred by FacilityForce in support of the Agreement during provision of support services at the Customer site. FacilityForce will adhere to the Customer's Travel Policies to the extent possible.

Adjustment of Fees

The fees set forth above shall remain in effect during the first year of the Agreement beginning on the Effective Date. Thereafter, FacilityForce shall have the right to adjust its fees upon 60 days prior written notice to Customer. FacilityForce shall not adjust its fees more often than once per year.

HOSTING AGREEMENT

This Hosting Services Agreement (“Agreement”) is effective as of **Insert Date** (“Effective Date”), by and between FacilityForce, Inc. (“FacilityForce”), with offices located at 13359 North Highway 183 Suite 406-797 Austin, TX 78750 and **Insert Name** (“Customer”), with offices at **Insert Address** on the following terms and conditions:

AGREEMENT OVERVIEW

FacilityForce uses data centers, including Amazon Web Services Data Centers (“Data Center”), to provide hosting services and related support to customers that wish to outsource the operation and Support of computer applications listed in the Scope of Services as referenced in Attachment 1. This Agreement describes the services to be provided by FacilityForce the respective responsibilities of the parties, and the service levels. This Agreement incorporates the following Attachments that shall be considered an integral part of this Agreement:

- Attachment 1 Scope of Services
- Attachment 2 Service Level
- Attachment 3 Fee Schedule

SERVICES

FacilityForce will perform the services as described in the Scope of Services (“Services”), set forth in Attachment 1.

The general scope of services addressed by this Agreement includes the operation and support of the:

- Database software for the Applications hosted under this Agreement
- Database security
- Data Center

The Services specifically excludes operation and Support of the following:

- Customer hardware, including Customer’s servers, printers, network hardware (including routers and switches) and other Customer site computing equipment;
- Customer application software other than noted in the Scope of Services; and
- Customer Local Area Networks (“LAN”)
- Customer network infrastructure for connecting to the Internet and to the Data Center.

TERM

The Term of the Agreement shall commence as of the Effective Date and shall continue for three (3) years (“Initial Term”) unless terminated earlier as set forth below. At the end of the Initial Term, the Agreement shall automatically renew for successive one-year terms unless or until either party provides the other party with written notice of non-renewal at least ninety (90) days prior to the end of the then current term.

FEES AND PAYMENT

Customer shall pay FacilityForce the applicable fees as set forth in the Fee Schedule, Attachment 3.

FacilityForce shall invoice Customer annually, in advance, and all invoiced fees shall be due and payable within 30 days of the date of an invoice. Annual invoices shall include charges defined in Attachment 3. All payments shall be made in United States Dollars without deduction for any taxes or withholding or other offset.

Any amounts not paid when due will be subject to interest accrued at twelve percent (12%) per annum compounded quarterly, which interest will be immediately due and payable from the due date for payment until the date of actual receipt of the amount in cleared funds by FacilityForce. Interest payments that are accrued during billing disputes should be credited back to the Customer if said dispute is found to be through no fault of the Customer.

A Customer will be considered delinquent if payment in full is not received forty-five (45) days from the date of the invoice. FacilityForce reserves the right to suspend or terminate this Agreement and Customer access to the Service if the Customer account becomes delinquent and is not cured within ten (10) days of written notice from FacilityForce. Customer will continue to be charged and hereby agrees to pay for Service during any period of suspension. Customer's failure to pay any invoice after this ten (10) day period shall constitute a material default hereunder and shall entitle FacilityForce to exercise any and all rights and remedies provided herein or at law including a suspension of Services under the Agreement. If Customer or FacilityForce initiate termination under any provision of the Agreement, Customer will be obligated to pay the Service Termination Fees set forth in the Fee Schedule in Attachment 3. In the event of a dispute between the parties that does not result in a termination of the Agreement, Customer agrees to make all Annual Service Fee payments due under the Agreement and FacilityForce provide the Services pending the resolution of the dispute.

CUSTOMER RESPONSIBILITIES

The Customer is responsible for:

- Assigning a primary and alternate Customer representative to coordinate all communications and activities related to FacilityForce services.
- Providing user identification data and determining the appropriate security profile for each user. Customer will control security at the Application level.
- All printing. No print job will print at the Data Center and all physical printing requirements will be handled by the Customer.
- The purchase and installation of printers at Customer's sites for the Application being utilized as defined in the Scope of Services.
- Installation, operation and Support of all workstation software (and Customer's LAN, existing data communications configuration, hardware, or software required at the Customer's site except as otherwise stipulated in the Scope of Services. FacilityForce network and network responsibility extends from the Data Center routers at Data Center to all connected equipment at Data Center.
- Testing updates and fixes applied by FacilityForce to Applications used by Customer. With the exception of emergency fixes, Customer will test updates and fixes prior to their introduction to the Production environment within a mutually agreed upon time frame.
- Testing upgrades. Upgrades will be moved to production by the FacilityForce at the end of the Customer testing period unless specific problems are documented in writing to FacilityForce.
- Diligent analysis of suspected problems to determine their specific nature and possible causes before calling the FacilityForce for assistance. Notwithstanding this diligence requirement, Customer is responsible for informing FacilityForce of any problems encountered in a timely manner.

OWNERSHIP OF SOFTWARE AND DATA

Customer shall not obtain any ownership rights, title or interest in the software, hardware or systems developed or employed by FacilityForce in providing Services under the Agreement. FacilityForce shall

not obtain any ownership rights, title or interest to Customer's data files. Upon expiration or termination of the Agreement for any reason, FacilityForce agrees to provide Customer with a copy of Customer's data files, as they exist at the date of expiration or termination. Nothing contained herein is intended to modify the Customer's rights under any separate license agreement between Customer and FacilityForce.

WARRANTY DISCLAIMER/LIMITATION OF LIABILITY

Except as expressly set forth herein, FacilityForce disclaims all warranties relating to the services or deliverables provided hereunder, including but not limited to any warranty of fitness for a particular purpose or merchantability. FacilityForce shall not be liable for any punitive, indirect, incidental, special or consequential damages, including but not limited to lost data or lost revenues or profits, however arising, even if provider has been advised of the possibility of such damages. FacilityForce' liability for any and all damages (including attorneys' fees) under this Agreement (whether in contract or tort) shall in no event exceed fees paid to FacilityForce during the previous 12-month period. The parties acknowledge and agree to the foregoing liability risk allocation. Any claim by Customer against FacilityForce relating to this agreement must be made in writing and presented to FacilityForce within six (6) months after the date on which this Agreement expires or is otherwise terminated.

TERMINATION FOR DEFAULT

A default shall occur if: (1) a party fails to perform any of its material obligations under the Agreement and such failure remains uncured for 30 days after receipt of written notice thereof; or (2) a party ceases to conduct business, becomes or is declared insolvent or bankrupt, is the subject of any proceeding relating to its liquidation or insolvency which is not dismissed within 90 days or makes an assignment for the benefit of creditors.

If default occurs, the non-defaulting party, in addition to any other rights available to it under law or equity, may withhold its performance hereunder or may terminate the Agreement by written notice to the defaulting party. Unless otherwise provided in the Agreement, remedies shall be cumulative and there shall be no obligation to exercise a particular remedy.

GOVERNING LAW; VENUE

The Agreement shall be governed and construed in accordance with the laws of the State of Texas without regard to choice of law principles. Subject to Section 20 below, the parties agree that the sole jurisdiction and venue for actions related to the subject matter hereof shall be the state and U.S. Federal courts in the State of Texas. Both parties consent to the jurisdiction of such courts and waive any objections regarding venue in such courts.

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Association then in effect. Before commencing any such arbitration, the parties agree to enter into negotiations to resolve the Dispute. If the parties are unable to resolve the Dispute by good faith negotiation, either party may refer the matter to arbitration. The arbitration shall take place in the State of Texas. The arbitrator(s) shall be bound to follow the provisions of this Agreement in resolving the dispute, and may not award any damages, which are excluded by this Agreement. The decision of the arbitrator(s) shall be final and binding on the parties, and any award of the arbitrator(s) may be entered or enforced in any court of competent jurisdiction. Any request for arbitration of a claim by either party against the other relating to this Agreement must be filed no later than six (6) months after the date on which FacilityForce concludes performance under this Agreement.

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SIGNATURES

IN WITNESS WHEREOF, the parties have executed this Agreement through their duly authorized representative(s).

FacilityForce, Inc.

Customer

Name: _____

Name: _____

Title: _____

Title: _____

Sign: _____

Sign: _____

Date: _____

Date: _____

Address:

Address:

13359 North Highway 183
Suite 406-797
Austin, TX 78750

INSERT ADDRESS

Telephone (512) xxx-xxxx

Telephone: **INSERT PHONE**

Fax (512) 249-7443

FAX: **INSERT FAX**

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Planned

FacilityForce will complete routine Support on the Application on a monthly basis. The Support schedule will be published and provided to the Customer's Authorized Contact. FacilityForce will provide at least 14 days notice to any changes in the published Support schedule.

Unplanned

If FacilityForce is required to perform additional Support outside of the scheduled Support window, FacilityForce will use reasonable efforts to provide Customer with prior (written) notice of said "unplanned Support" (except for emergency Support) and Customer agrees to use reasonable efforts to comply with any Support requirements requested by FacilityForce. With written notification of "unplanned Support" and agreement from Customer, SLAs will not apply during unplanned Support.

Emergency Support

FacilityForce reserves the right to perform emergency Support as needed outside the scheduled Support. In such event, FacilityForce will make a reasonable effort to notify the Customer, if feasible, under the circumstances. Any such Support will be considered an "Emergency Support". SLAs will apply during Emergency Support.

Application Support. In addition to FacilityForce Support in the Data Center, Customer is entitled to additional Support as set forth in a separate agreement between the parties.

ATTACHMENT 2 – SERVICE LEVEL

This Service Level Agreement (“SLA”) is intended to provide an understanding of the level of service to be delivered by the FacilityForce for the Services specified in Attachment 1. The service levels set forth below apply to the Services provided by FacilityForce under the Agreement.

AVAILABILITY

FacilityForce will use commercially reasonable efforts to provide Services with an average of 95% Availability (as such term is hereinafter defined) for each quarter during the Term. For purposes of the Agreement, “Availability” during any quarter refers to an Authorized User’s ability to log into the Application during such quarter, and will be calculated in accordance with the following formula:

$$x = (y - z) / y * 100$$

Where,

- “x” is the Availability of the Application during the quarter;
- “y” is the total number of hours in such quarter minus the number of hours during such quarter that the Customer is unable to log into the Application because of (a) regularly scheduled Support windows for the Application and for times in which Customer has been notified in writing (including e-mail) by FacilityForce in advance thereof; (b) a Force Majeure Event; (c) non-performance of hardware, software, ISP connections, and other equipment that is not provided by FacilityForce or certified by FacilityForce for use in conjunction with the Services (except as such non-performance is directly or indirectly caused by FacilityForce).
- “z” is the number of hours in such month during which the Customer is unable to log into the Application (other than for reasons set forth in the definition of “y” above); provided that FacilityForce has been notified or is otherwise aware (or reasonably should be aware) of Customer’s inability to utilize the Application.

FEE ADJUSTMENT

In the event that FacilityForce does not meet the Availability levels set forth below, the amount of fees payable by Customer will be reduced as follows:

In the event the average Availability for the Application is less than ninety five percent (95%) during any two consecutive quarters, Customer will receive a credit to its account with FacilityForce of five percent (5%) of the amount of a quarter’s aggregate Services Fees paid or payable by Customer to FacilityForce. Custom reports, scripts, action codes, web services or other interfacing programs causing the inability to log into the application will not be considered downtime for the purpose of the availability calculation.

FacilityForce’ obligation to provide Customer with fee adjustments as set forth above is conditioned on Customer providing detailed written notice to FacilityForce of its contention that FacilityForce was unable to meet the applicable Availability levels. Upon receipt of such notice, FacilityForce shall have thirty (30) calendar days to investigate the contention. If, at the end of the thirty (30) calendar day period it is determined that FacilityForce did in fact fail to meet the applicable Availability levels, Customer will receive the appropriate credit to its account during the next invoice cycle.

The remedies set forth in this Section of this Attachment shall be Customer’s sole remedy and FacilityForce’ entire liability in the event of a breach of this Agreement, including the failure of any Availability measurements to meet the thresholds set forth above.

ATTACHMENT 3 – FEE SCHEDULE

This section provides the fees payable to FacilityForce. License fees are governed by a separate Software License Agreement between the parties.

Professional Services one-time Start-Up Fee

The Professional Services one-time start-up fees are as follows:

- **Insert Fee (Operate)**
- **Insert Fee (Engage Request)**
- **Insert Fee (SSO)**

Service Fees Structure

FacilityForce will invoice Customer in advance on an annual basis. The annual service fee will begin on the effective date of this Agreement. Annual fee for Services described on Attachment 1.

Insert Fee Breakout:

Fee Adjustments

For additional Customer database instances requested beyond the existing Production and Test instances, a one-time fee will be charged for creation and an annual fee will be charged as long as the instance exists at the Data Center.

Additional Non-Production Instance Creation Fee: **\$7,500.00**

Annual Service Fee for Additional Non-Production Instance: **\$9,500.00**

Professional Services Fees

Work requested by Customer beyond that described in Attachment 1, will be charged at the following rates. Before any work is done which would incur charges billed as Professional Services Fees, FacilityForce will supply a proposal describing the work and providing an estimate of hours, cost, and completion date. Customer approval will be required before work can begin.

\$231.00 per hour.

Service Termination Fee

If Customer terminates this Agreement other than pursuant to the Termination for Default section of the Agreement, a Service Termination Fee equal to 100% of the current Annual Service Fee will be billed annually until the end of the then current Term of this Agreement.

Travel Expenses

In addition to the fees set forth above, Customer shall reimburse FacilityForce for airfare, meals, ground transportation, and other reasonable travel and living expenses incurred by FacilityForce in support of the Agreement during provision of support services at the Customer site. FacilityForce will adhere to the Customer's Travel Policies to the extent possible.

Adjustment of Fees

The fees set forth above shall remain in effect during the first year of the Agreement beginning on the Effective Date. Thereafter, FacilityForce shall have the right to adjust its fees upon 60 days prior written notice to Customer. FacilityForce shall not adjust its fees more often than once per year.

In Witness Whereof, the parties hereto, each acting under due and proper authority, have signed this Agreement.