

**ARLINGTON COUNTY, VIRGINIA  
OFFICE OF THE PURCHASING AGENT  
2100 CLARENDON BOULEVARD, SUITE 500  
ARLINGTON, VA 22201  
AGREEMENT NO. 17-020-SS**

THIS AGREEMENT is made, on the date of execution by the County, between 3-GIS, LLC, ("Contractor") an Alabama Limited Liability Company authorized to do business in the Commonwealth of Virginia, and the County Board of Arlington County, Virginia. The County and the Contractor, for the consideration hereinafter specified, agree as follows:

**1. CONTRACT DOCUMENTS**

The "Contract Documents" consist of:

- This Agreement
- Exhibit A – Scope of Work
- Exhibit B – Pricing Schedule
- Exhibit C – County Nondisclosure and Data Security Agreement
- Exhibit D – Licensed Software Terms and Conditions
- Exhibit E – Base Maintenance Terms and Conditions
- Exhibit F – Services Terms and Conditions

Where the terms and provisions of this Agreement vary from the terms and provisions of the other Contract Documents, the terms and provisions of this Agreement will prevail over the other Contract Documents, and the remaining Contract Documents will be complementary to each other. If there are any conflicts, the most stringent terms or provisions will prevail.

The Contract Documents set forth the entire agreement between the County and the Contractor. The County and the Contractor agree that no representative or agent of either party has made any representation or promise with respect to the parties' agreement that is not contained in the Contract Documents. The Contract Documents may be referred to below as the "Contract" or the "Agreement".

**2. SCOPE OF WORK**

The Contractor agrees to perform the services described in the Contract Documents (the "Work"). As detailed in the "Scope of Work" (Exhibit A), the primary purpose of the Work is to provide a fiber management software solution, including maintenance and support, of the County's fiber optic cable network, ConnectArlington. It will be the Contractor's responsibility, at its sole cost, to provide the specific services set forth in the Contract Documents and sufficient services to fulfill the purposes of the Work. Nothing in the Contract Documents limits the Contractor's responsibility to manage the details and execution of the Work.

**3. PROJECT OFFICER**

The performance of the Contractor is subject to the review and approval of the County Project Officer, who will be appointed by the Director of the Arlington County department or agency requesting the Work under this Contract.

**4. CONTRACT TERM**

Time is of the essence. The Work will commence on the date of the execution of the Agreement by the County and must be completed no later than one year later ("Initial Contract Term"), subject to any modifications provided in the Contract Documents. Upon satisfactory performance by the Contractor the County may, through issuance of a unilateral Notice of Award, authorize continuation of the Agreement under the same contract prices for not more than four (4) additional 12-month periods (each a "Subsequent

Contract Term"). The Initial Contract Term and any Subsequent Contract Term(s) are together the "Contract Term".

**5. CONTRACT AMOUNT**

The County will pay the Contractor in accordance with the terms of the Payment section below and of Exhibit B for the Contractor's completion of the Work as required by the Contract Documents. The Contractor will complete the Work for the total amount specified in this section ("Contract Amount").

The County will not compensate the Contractor for any goods or services beyond those included in Attachment A unless those additional goods or services are covered by a fully executed amendment to this Contract. Additional services will be billed at the rates set forth in Exhibit B unless otherwise agreed by the parties in writing.

**6. PAYMENT**

The Contractor must submit invoices to the County's Project Officer, who will either approve the invoice or require corrections. The County will pay the Contractor within 30 days after receipt of an invoice for completed work that is reasonable and allocable to the Contract and that has been performed to the satisfaction of the Project Officer. The number of the County Purchase Order pursuant to which goods or services have been delivered or performed must appear on all invoices.

**7. REIMBURSABLE EXPENSES**

The County will not reimburse the Contractor for any expenses under this Contract. The amount in Attachment B includes all costs and expenses of providing the services described in this Contract.

**8. PAYMENT OF SUBCONTRACTORS**

The Contractor is obligated to take one of the two following actions within seven days after receipt of payment by the County for work performed by any subcontractor under this Contract:

- a. Pay the subcontractor for the proportionate share of the total payment received from the County attributable to the work performed by the subcontractor under this Contract; or
- b. Notify the County and the subcontractor, in writing, of the Contractor's intention to withhold all or a part of the subcontractor's payment, with the reason for nonpayment.

The Contractor is obligated to pay interest to the subcontractor on all amounts owed by the Contractor to the subcontractor that remain unpaid after seven days following receipt by the Contractor of payment from the County for work performed by the subcontractor under this Contract, except for amounts withheld as allowed in subsection b., above. Unless otherwise provided under the terms of this Contract, interest will accrue at the rate of 1% per month.

The Contractor must include in each of its subcontracts, if any are permitted, a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.

The Contractor's obligation to pay an interest charge to a subcontractor pursuant to this section may not be construed to be an obligation of the County. A Contract modification may not be made for the purpose of providing reimbursement for such interest charge. A cost reimbursement claim may not include any amount for reimbursement for such interest charge.

**9. NO WAIVER OF RIGHTS**

The County's approval or acceptance of or payment for any goods or services under this Contract will not waive any rights or causes of action arising out of the Contract.

**10. NON-APPROPRIATION**

All payments by the County to the Contractor pursuant to this Contract are subject to the availability of an annual appropriation for this purpose by the County Board of Arlington County, Virginia ("Board"). In the event that the Board does not appropriate funds for the goods or services provided under this Contract, the County will terminate the Contract, without termination charge or other liability to the County, on the last day of the fiscal year or when the previous appropriation has been spent, whichever event occurs first.

**11. ESTIMATED QUANTITIES/NON-EXCLUSIVITY OF CONTRACTOR**

This Contract does not obligate the County to purchase a specific quantity of items or services during the Contract Term. Any quantities that are included in the Contract Documents are the present expectations of the County for the period of the Contract; and the County is under no obligation to buy that or any amount as a result of having provided this estimate or of having had any normal or otherwise measurable requirement in the past. The County may require more goods and/or services than the estimated annual quantities, and any such additional quantities will not give rise to any claim for compensation other than at the unit prices and/or rates in the Contract.

The County does not guarantee that the Contractor will be the exclusive provider of the goods or services covered by this Contract. The items or services covered by this Contract may be or become available under other County contract(s), and the County may determine that it is in its best interest to procure the items or services through those contract(s).

**12. COUNTY PURCHASE ORDER REQUIREMENT**

County purchases are authorized only if the County issues a Purchase Order in advance of the transaction, indicating that the ordering County agency has sufficient funds available to pay for the purchase. If the Contractor provides goods or services without a signed County Purchase Order, it does so at its own risk and expense. The County will not be liable for payment for any purchases made by its employees that are not authorized by the County Purchasing Agent.

**13. REPLACEMENT OF PERSONNEL AND SUBCONTRACTORS**

The County has the right reasonably to reject staff or subcontractors whom the Contractor assigns to the project. The Contractor must then provide replacement staff or subcontractors satisfactory to the County in a timely manner and at no additional cost to the County. The day-to-day supervision and control of the Contractor's and its subcontractors' employees is the sole responsibility of the Contractor.

The Contractor may not replace key personnel or subcontractors identified in its proposal, including the approved Project Manager, without the County's written approval. The Contractor must submit any request to remove or replace key personnel or subcontractors to the County Project Officer at least 15 calendar days in advance of the proposed action. The request must contain a detailed justification, including identification of the proposed replacement and his or her qualifications.

If the approved Project Manager must be absent for an extended period, the Contractor must provide an interim Project Manager, subject to the County's written approval.

If the approved Project Manager resigns or is terminated by the Contractor, the Contractor will replace the Project Manager with an individual with similar qualifications and experience, subject to the County's written approval.

**14. EMPLOYMENT DISCRIMINATION BY CONTRACTOR PROHIBITED**

During the performance of its work pursuant to this Contract:

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age or disability or on any other basis prohibited by state law. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

- B. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation will be deemed sufficient for meeting the requirements of this section.
- C. The Contractor will state in all solicitations or advertisements for employees that it places or causes to be placed that such Contractor is an Equal Opportunity Employer.
- D. The Contractor will comply with the provisions of the Americans with Disabilities Act of 1990 ("ADA"), which prohibits discrimination against individuals with disabilities in employment and mandates that disabled individuals be provided access to publicly and privately provided services and activities.
- E. The Contractor must include the provisions of the foregoing paragraphs in every subcontract or purchase order of more than \$10,000.00 relating to this Contract so that the provisions will be binding upon each subcontractor or vendor.

**15. EMPLOYMENT OF UNAUTHORIZED ALIENS PROHIBITED**

In accordance with §2.2-4311.1 of the Code of Virginia, as amended, the Contractor must not during the performance of this Contract knowingly employ an unauthorized alien, as that term is defined in the federal Immigration Reform and Control Act of 1986.

**16. DRUG-FREE WORKPLACE TO BE MAINTAINED BY CONTRACTOR**

During the performance of this Contract, the Contractor must: (i) provide a drug-free workplace for its employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violating such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of more than \$10,000.00 relating to this Contract so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "workplace" means the site(s) for the performance of the work required by this Contract.

**17. TERMINATION**

The County may terminate this Contract at any time as follows: (1) for cause, if, as determined by the County, the Contractor is in breach or default or has failed to perform the Work satisfactorily; or (2) for the convenience of the County.

Upon receipt of a notice of termination, the Contractor must not place any further orders or subcontracts for materials, services or facilities; must terminate all vendors and subcontracts, except as are necessary for the completion of any portion of the Work that the County did not terminate; and must immediately deliver all documents related to the terminated Work to the County.

Any purchases that the Contractor makes after the notice of termination will be the sole responsibility of the Contractor, unless the County has approved the purchases in writing as necessary for completion of any portion of the Work that the County did not terminate.

If any court of competent jurisdiction finds a termination for cause by the County to be improper, then the termination will be deemed a termination for convenience.

A. TERMINATION FOR CAUSE, INCLUDING BREACH AND DEFAULT; CURE

1. Termination for Unsatisfactory Performance. If the County determines that the Contractor has failed to perform satisfactorily, then the County will give the Contractor written notice of such failure(s) and the opportunity to cure them within 15 days or any other period specified by the County ("Cure Period"). If the Contractor fails to cure within the Cure Period, the County may terminate the Contract for failure to provide satisfactory performance by providing written notice with a termination date. Upon such termination, the Contractor may apply for compensation for Contract services that the County previously accepted ("Termination Costs"), unless payment is otherwise barred by the Contract. The Contractor must submit any request for Termination Costs, with all supporting documentation, to the County Project Officer within 30 days after the expiration of the Cure Period. The County may accept or reject the request for Termination Costs, in whole or in part, and may notify the Contractor of its decision within a reasonable time.

In the event of termination by the County for failure to perform satisfactorily, the Contractor must continue to provide its services as previously scheduled through the termination date, and the County must continue to pay all fees and charges incurred through the termination date.

2. Termination for Breach or Default. If the County terminates the Contract for default or breach of any Contract provision or condition, then the termination will be immediate after notice of termination to the Contractor (unless the County provides for an opportunity to cure), and the Contractor will not be permitted to seek Termination Costs.

Upon any termination pursuant to this section, the Contractor will be liable to the County for costs that the County must expend to complete the Work, including costs resulting from any related delays and from unsatisfactory or non-compliant work performed by the Contractor or its subcontractors. The County will deduct such costs from any amount due to the Contractor; or if the County does not owe the Contractor, the Contractor must promptly pay the costs within 15 days of a demand by the County. This section does not limit the County's recovery of any other damages to which it is entitled by law.

Except as otherwise directed by the County, the Contractor must stop work on the date of receipt the notice of the termination.

B. TERMINATION FOR THE CONVENIENCE OF THE COUNTY

The County may terminate this Contract in whole or in part whenever the Purchasing Agent determines that termination is in the County's best interest. The County will give the Contractor at least 15 days' notice in writing. The notice must specify the extent to which the Contract is terminated and the effective termination date. The Contractor will be entitled to Termination Costs, as defined above, plus any other reasonable amounts that the parties might negotiate; but no amount will be allowed for anticipatory profits.

Except as otherwise directed by the County, the Contractor must stop work on the date of receipt of the notice of the termination.

**18. INDEMNIFICATION (Note: Virginia law does not permit the County to indemnify others; cross indemnity provisions are not acceptable to the County)**

The Contractor covenants for itself, its employees and its subcontractors to save, defend, hold harmless and indemnify the County and all of its elected and appointed officials, officers, current and former employees, agents, departments, agencies, boards and commissions (collectively the "County Indemnitees") from and against any and all claims made by third parties for any and all losses, damages, injuries, fines, penalties, costs (including court costs and attorneys' fees), charges, liability, demands or exposure resulting from,

arising out of or in any way connected with the Contractor's acts or omissions, including the acts or omissions of its employees and/or subcontractors, in performance or nonperformance of the Contract. This duty to save, defend, hold harmless and indemnify will survive the termination of this Contract. If the Contractor fails or refuses to fulfill its obligations contained in this section, the Contractor must reimburse the County for any and all resulting payments and expenses, including reasonable attorneys' fees. The Contractor must pay such expenses upon demand by the County, and failure to do so may result in the County withholding such amounts from any payments to the Contractor under this Contract.

#### **19. INTELLECTUAL PROPERTY INDEMNIFICATION**

The Contractor warrants and guarantees that in providing services under this Contract neither the Contractor nor any subcontractor is infringing on the intellectual property rights (including, but not limited to, copyright, patent, mask and trademark) of third parties.

If the Contractor or any of its employees or subcontractors uses any design, device, work or material that is covered by patent or copyright, it is understood that the Contract Amount includes all royalties, licensing fees, and any other costs arising from such use in connection with the Work under this Contract.

The Contractor covenants for itself, its employees and its subcontractors to save, defend, hold harmless, and indemnify the County Indemnitees, as defined above, from and against any and all claims, losses, damages, injuries, fines, penalties, costs (including court costs and attorneys' fees), charges, liability or exposure for infringement of or on account of any trademark, copyright, patented or unpatented invention, process or article manufactured or used in the performance of this Contract. This duty to save, defend, hold harmless and indemnify will survive the termination of this Contract. If the Contractor fails or refuses to fulfill its obligations contained in this section, the Contractor must reimburse the County for any and all resulting payments and expenses, including reasonable attorneys' fees. The Contractor must pay such expenses upon demand by the County, and failure to do so may result in the County withholding such amounts from any payments to the Contractor under this Contract.

#### **20. COPYRIGHT**

By this Contract, the Contractor irrevocably transfers, assigns, sets over and conveys to the County all rights, title and interest, including the sole exclusive and complete copyright interest, in any and all copyrightable works created pursuant to this Contract. The Contractor will execute any documents that the County requests to formalize such transfer or assignment.

The rights granted to the County by this section are irrevocable and may not be rescinded or modified, including in connection with or as a result of the termination of or a dispute concerning this Contract.

The Contractor may not use subcontractors or third parties to develop or provide input into any copyrightable materials produced pursuant to this Contract without the County's advance written approval and unless the Contractor includes this Copyright provision in any contract or agreement with such subcontractors or third parties related to this Contract.

#### **21. OWNERSHIP AND RETURN OF RECORDS**

This Contract does not confer on the Contractor any ownership rights or rights to use or disclose the County's data or inputs.

All drawings, specifications, blueprints, data, information, findings, memoranda, correspondence, documents or records of any type, whether written, oral or electronic, and all documents generated by the Contractor or its subcontractors as a result of this Contract (collectively "Records") are the exclusive property of the County and must be provided or returned to the County upon completion, termination, or cancellation of this Contract. The Contractor will not use or willingly cause or allow such materials to be used for any purpose other than performance of this Contract without the written consent of the County.

The Records are confidential, and the Contractor will neither release the Records nor share their contents. The Contractor will refer all inquiries regarding the status of any Record to the Project Officer or to his or her designee. At the County's request, the Contractor will deliver all Records, including hard copies of electronic records, to the Project Officer and will destroy all electronic Records.

The Contractor agrees to include the provisions of this section as part of any contract or agreement related to this Contract into which it enters with subcontractors or other third parties.

The provisions of this section will survive any termination or cancellation of this Contract.

## **22. DATA SECURITY AND PROTECTION**

The Contractor will hold County Information, as defined below, in the strictest confidence and will comply with all applicable County security and network resources policies, as well as all local, state and federal laws and regulatory requirements concerning data privacy and security. The Contractor must develop, implement, maintain, continually monitor and use appropriate administrative, technical and physical security measures to control access to and to preserve the confidentiality, privacy, integrity and availability of all electronically maintained or transmitted information received from or created or maintained on behalf of the County. For purposes of this provision, and as more fully described in this Contract and in the County's Non-Disclosure and Data Security Agreement (NDA), "County Information" includes, but is not limited to, electronic information; documents; data; images; financial records; personally identifiable information; personal health information (PHI); personnel, educational, voting, registration, tax and assessment records; information related to public safety; County networked resources; and County databases, software and security measures that are created, maintained, transmitted or accessed to perform the Work under this Contract.

- (a) **County's Non-Disclosure and Data Security Agreement.** The Contractor and its Designees (Contractor Designees shall include, but shall not be limited to, all Contractor-controlled agents or subcontractors working on-site at County facilities or otherwise performing any work under this Contract) must sign the NDA (Attachment C) before performing any work or obtaining or permitting access to County networked resources, application systems or databases. The Contractor will make copies of the signed NDAs available to the County Project Officer upon request.
- (b) **Use of Data.** The Contractor will ensure against any unauthorized use, distribution or disclosure of or access to County Information and County networked resources by itself or its Designees. Use of County Information other than as specifically outlined in the Contract Documents is strictly prohibited. The Contractor will be solely responsible for any unauthorized use, reuse, distribution, transmission, manipulation, copying, modification, access to or disclosure of County Information and for any non-compliance with this provision by itself or by its Designees.
- (c) **Data Protection.** The Contractor will protect the County's Information according to standards established by the National Institute of Standards and Technology, including 201 CMR 17.00, Standards for the Protection of Personal Information of Residents of the Commonwealth and the Payment Card Industry Data Security Standard (PCI DSS), as applicable, and no less rigorously than it protects its own data and proprietary or confidential information. The Contractor must provide to the County a copy of its data security policy and procedures for securing County Information and a copy of its disaster recovery plan(s). If requested by the County, the Contractor must also provide annually the results of an internal Information Security Risk Assessment provided by an outside firm.
- (d) **Security Requirements.** The Contractor must maintain the most up-to-date anti-virus programs, industry-accepted firewalls and other protections on its systems and networking

equipment. The Contractor certifies that all systems and networking equipment that support, interact with or store County Information meet the above standards and industry best practices for physical, network and system security requirements. Printers, copiers or fax machines that store County Data into hard drives must provide data-at-rest encryption. The County's Chief Information Security Officer or designee must approve any deviation from these standards. The downloading of County information onto laptops, other portable storage media or services such as personal e-mail, Dropbox etc. is prohibited without the written authorization of the County's Chief Information Security Officer or designee.

- (e) **Conclusion of Contract.** Within 30 days after the termination, cancellation, expiration or other conclusion of the Contract, the Contractor must, at no cost to the County, return all County Information to the County in a format defined by the County Project Officer. The County may request that the Information be destroyed. The Contractor is responsible for ensuring the return and/or destruction of all Information that is in the possession of its subcontractors or agents. The Contractor must certify completion of this task in writing to the County Project Officer.
- (f) **Notification of Security Incidents.** The Contractor must notify the County Chief Information Officer and County Project Officer within 24 hours of the discovery of any unintended access to or use or disclosure of County Information.
- (g) **Subcontractors.** If subcontractors are permitted under this Contract, the requirements of this entire section must be incorporated into any agreement between the Contractor and the subcontractor. If the subcontractor will have access to County Information, each subcontractor must provide to the Contractor a copy of its data security policy and procedures for securing County Information and a copy of its disaster recovery plan(s).

### **23. ETHICS IN PUBLIC CONTRACTING**

This Contract incorporates by reference Article 9 of the Arlington County Purchasing Resolution, as well as all state and federal laws related to ethics, conflicts of interest or bribery, including the State and Local Government Conflict of Interests Act (Code of Virginia § 2.2-3100 et seq.), the Virginia Governmental Frauds Act (Code of Virginia § 18.2-498.1 et seq.) and Articles 2 and 3 of Chapter 10 of Title 18.2 of the Code of Virginia, as amended (§ 18.2-438 et seq.). The Contractor certifies that its proposal was made without collusion or fraud; that it has not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer or subcontractor; and that it has not conferred on any public employee having official responsibility for this procurement any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

### **24. COUNTY EMPLOYEES**

No Arlington County employee may share in any part of this Contract or receive any benefit from the Contract that is not available to the general public.

### **25. FORCE MAJEURE**

Neither party will be held responsible for failure to perform the duties and responsibilities imposed by this Contract if such failure is due to a fire, riot, rebellion, natural disaster, war, act of terrorism or act of God that is beyond the control of the party and that makes performance impossible or illegal, unless otherwise specified in the Contract.

### **26. AUTHORITY TO TRANSACT BUSINESS**

The Contractor must, pursuant to Code of Virginia § 2.2-4311.2, be and remain authorized to transact business in the Commonwealth of Virginia during the entire term of this Contract. Otherwise, the Contract is voidable at the sole option of and with no expense to the County.



**27. RELATION TO COUNTY**

The Contractor is an independent contractor, and neither the Contractor nor its employees or subcontractors will be considered employees, servants or agents of the County. The County will not be responsible for any negligence or other wrongdoing by the Contractor or its employees, servants or agents. The County will not withhold payments to the Contractor for any federal or state unemployment taxes, federal or state income taxes or Social Security tax or for any other benefits. The County will not provide to the Contractor any insurance coverage or other benefits, including workers' compensation.

**28. ANTITRUST**

The Contractor conveys, sells, assigns and transfers to the County all rights, title and interest in and to all causes of action under state or federal antitrust laws that the Contractor may have relating to this Contract.

**29. REPORT STANDARDS**

The Contractor must submit all written reports required by this Contract for advance review in a format approved by the Project Officer. Reports must be accurate and grammatically correct and should not contain spelling errors. The Contractor will bear the cost of correcting grammatical or spelling errors and inaccurate report data and of other revisions that are required to bring the report(s) into compliance with this section.

Whenever possible, proposals must comply with the following guidelines:

- printed double-sided on at least 30% recycled-content and/or tree-free paper
- recyclable and/or easily removable covers or binders made from recycled materials (proposals with glued bindings that meet all other requirements are acceptable)
- avoid use of plastic covers or dividers
- avoid unnecessary attachments or documents or superfluous use of paper (e.g. separate title sheets or chapter dividers)

**30. AUDIT**

The Contractor must retain all books, records and other documents related to this Contract for at least five years after the final payment and must allow the County or its authorized agents to examine the documents during this period and during the Contract Term. The Contractor must provide any requested documents to the County for examination within 15 days of the request, at the Contractor's expense. Should the County's examination reveal any overcharging by the Contractor, the Contractor must, within 30 days of County's request, reimburse the County for the overcharges and for the reasonable costs of the County's examination, including, but not limited to, the services of external audit firm and attorney's fees; or the County may deduct the overcharges and examination costs from any amount that the County owes to the Contractor. If the Contractor wishes to destroy or dispose of any records related to this Contract (including confidential records to which the County does not have ready access) within five years after the final payment, the Contractor must give the County at least 30 days' notice and must not dispose of the documents if the County objects.

**31. ASSIGNMENT**

The Contractor may not assign, transfer, convey or otherwise dispose of any award or any of its rights, obligations or interests under this Contract without the prior written consent of the County.

**32. AMENDMENTS**

This Contract may not be modified except by written amendment executed by persons duly authorized to bind the Contractor and the County.

**33. ARLINGTON COUNTY PURCHASING RESOLUTION AND COUNTY POLICIES**

Nothing in this Contract waives any provision of the Arlington County Purchasing Resolution, which is incorporated herein by reference, or any applicable County policy.

**34. DISPUTE RESOLUTION**

All disputes arising under this Agreement or concerning its interpretation, whether involving law or fact and including but not limited to claims for additional work, compensation or time, and all claims for alleged breach of contract must be submitted in writing to the Project Officer as soon as the basis for the claim arises. In accordance with the Arlington County Purchasing Resolution, claims denied by the Project Officer may be submitted to the County Manager in writing no later than 60 days after the final payment. The time limit for a final written decision by the County Manager is 30 days. Procedures concerning contractual claims, disputes, administrative appeals and protests are contained in the Arlington County Purchasing Resolution. The Contractor must continue to work as scheduled pending a decision of the Project Officer, County Manager, County Board or a court of law.

**35. APPLICABLE LAW, FORUM, VENUE AND JURISDICTION**

This Contract is governed in all respects by the laws of the Commonwealth of Virginia; and the jurisdiction, forum and venue for any litigation concerning the Contract or the Work is in the Circuit Court for Arlington County, Virginia, and in no other court.

**36. ARBITRATION**

No claim arising under or related to this Contract may be subject to arbitration.

**37. NONEXCLUSIVITY OF REMEDIES**

All remedies available to the County under this Contract are cumulative, and no remedy will be exclusive of any other at law or in equity.

**38. NO WAIVER**

The failure to exercise a right provided for in this Contract will not be a subsequent waiver of the same right or of any other right.

**39. SEVERABILITY**

The sections, paragraphs, clauses, sentences, and phrases of this Contract are severable; and if any section, paragraph, clause, sentence or phrase of this Contract is declared invalid by a court of competent jurisdiction, the rest of the Contract will remain in effect.

**40. ATTORNEY'S FEES**

The County is entitled to attorney's fees and costs that it incurs to enforce any provision of this Contract.

**41. SURVIVAL OF TERMS**

In addition to any statement that a specific term or paragraph survives the expiration or termination of this Contract, the following sections also survive: INDEMNIFICATION; INTELLECTUAL PROPERTY INDEMNIFICATION; RELATION TO COUNTY; OWNERSHIP AND RETURN OF RECORDS; AUDIT; COPYRIGHT; DISPUTE RESOLUTION; APPLICABLE LAW AND JURISDICTION; ATTORNEY'S FEES, AND DATA SECURITY AND PROTECTION.

**42. HEADINGS**

The section headings in this Contract are inserted only for convenience and do not affect the substance of the Contract or limit the sections' scope.

**43. AMBIGUITIES**

The parties and their counsel have participated fully in the drafting of this Agreement; and any rule that ambiguities are to be resolved against the drafting party does not apply. The language in this Agreement is to be interpreted as to its plain meaning and not strictly for or against any party.

**44. NOTICES**

Unless otherwise provided in writing, all legal notices and other communications required by this Contract are deemed to have been given when either (a) delivered in person; (b) delivered by an agent,

such as a delivery service; or (c) deposited in the United States mail, postage prepaid, certified or registered and addressed as follows:

**TO THE CONTRACTOR:**

Tom Counts, CEO  
350 Market St. NE  
Decatur, AL 35601

**TO THE COUNTY:**

Nathaniel Wentland, Project Officer  
2100 Clarendon Blvd., Suite 600  
Arlington County, VA 22201

AND

Michael E. Bevis, Purchasing Agent  
Arlington County, Virginia  
2100 Clarendon Boulevard, Suite 500  
Arlington, Virginia 22201

**45. NON-DISCRIMINATION NOTICE**

Arlington County does not discriminate against faith-based organizations.

**46. INSURANCE REQUIREMENTS**

Before beginning work under the Contract or any extension, the Contractor must provide to the County Purchasing Agent a Certificate of Insurance indicating that the Contractor has in force at a minimum the coverage below. The Contractor must maintain this coverage until the completion of the Contract or as otherwise stated in the Contract Documents. All required insurance coverage must be acquired from insurers that are authorized to do business in the Commonwealth of Virginia, with a rating of "A-" or better and a financial size of "Class VII" or better in the latest edition of the A.M. Best Co. Guides.

- a. Workers Compensation - Virginia statutory workers compensation (W/C) coverage, including Virginia benefits and employer's liability with limits of \$100,000/100,000/500,000. The County will not accept W/C coverage issued by the Injured Worker's Insurance Fund, Towson, MD.
- b. Commercial General Liability - \$1,000,000 per occurrence, with \$2,000,000 annual aggregate covering all premises and operations and including personal injury, completed operations, contractual liability, independent contractors, and products liability. The general aggregate limit must apply to this Contract. Evidence of contractual liability coverage must be typed on the certificate.
- c. Business Automobile Liability - \$1,000,000 combined single-limit (owned, non-owned and hired).
- d. Additional Insured - The County and its officers, elected and appointed officials, employees and agents must be named as additional insureds on all policies except workers compensation and automotive and professional liability; and the additional insured endorsement must be typed on the certificate.
- e. Cancellation - If there is a material change or reduction in or cancellation of any of the above coverages during the Contract Term, the Contractor must notify the Purchasing Agent immediately and must, with no lapse in coverage, obtain replacement coverage that is consistent with the terms

of this Contract. Not having the required insurance throughout the Contract Term is grounds for termination of the Contract.

f. Claims-Made Coverage - Any "claims made" policy must remain in force, or the Contractor must obtain an extended reporting endorsement, until the applicable statute of limitations for any claims has expired.

g. Contract Identification - All insurance certificates must state this Contract's number and title.

The Contractor must disclose to the County the amount of any deductible or self-insurance component of any of the required policies. With the County's approval, the Contractor may satisfy its obligations under this section by self-insurance for all or any part of the insurance required, provided that the Contractor can demonstrate sufficient financial capacity. In order to do so, the Contractor must provide the County with its most recent actuarial report and a copy of its self-insurance resolution.

The County may request additional information to determine if the Contractor has the financial capacity to meet its obligations under a deductible and may require a lower deductible; that funds equal to the deductible be placed in escrow; a certificate of self-insurance; collateral; or another mechanism to guarantee the amount of the deductible and ensure protection for the County.


The County's acceptance or approval of any insurance will not relieve the Contractor from any liability or obligation imposed by the Contract Documents.


The Contractor is responsible for the Work and for all materials, tools, equipment, appliances and property used in connection with the Work. The Contractor assumes all risks for direct and indirect damage or injury to the property used or persons employed in connection with the Work and for of all damage or injury to any person or property, wherever located, resulting from any action, omission, commission or operation under the Contract or in connection in any way whatsoever with the Work. The Contractor's insurance shall be the primary non-contributory insurance for any work performed under this Contract.

The Contractor is as fully responsible to the County for the acts and omissions of its subcontractors and of persons employed by them as it is for acts and omissions of persons whom the Contractor employs directly.

WITNESS these signatures:

THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA      3-GIS, LLC

AUTHORIZED SIGNATURE:   
NAME: MICHAEL E. BEVIS  
TITLE: PURCHASING AGENT  
DATE: 08/26/16

AUTHORIZED SIGNATURE:   
NAME AND TITLE: President  
DATE: 8/25/16

## EXHIBIT A: SCOPE OF WORK

Arlington County ("County") is seeking to procure 3-GIS Fiber Management Solution, 3-GIS Live, for the purpose of managing the County's fiber network. The purpose of this Scope will be to procure Licensing, Maintenance, and Setup Services for 3-GIS Live.

### **1. Licenses:**

3-GIS shall provide the following licenses as described in Exhibit D Licensed Software Terms and Conditions:

- 15 Named Licenses that include five full editor Web, five read only Web, and 5 Mobile

### **2. Maintenance:**

3-GIS shall provide Software Warranty for ninety (90) days upon the delivery of said software. Warranty terms are described in Exhibit E Maintenance Terms and Conditions.

3-GIS shall provide Base Maintenance for one (1) year as part of the Live License for each annual renewed term. Base Maintenance terms are described in Exhibit E Maintenance Terms and Conditions.

### **3. Setup Services:**

3-GIS shall provide the following configuration services that includes configuration, data conversion, and training:

#### **3.1 Configuration Services**

Setup Services shall include the installation and configuration of the 3-GIS Live in a hosted environment. 3-GIS shall configure 10 Named 3-GIS Live users which include 5 editors and 5 read only. 3-GIS shall configure 5 3-GIS Mobile users.

1. 3-GIS shall utilize the 3-GIS Standard Data Model for Telecommunications
2. 3-GIS shall configure 3-GIS Live to include up to:
  - a. 1 Map Service
  - b. 3 User Groups
  - c. 2 Plotting Templates
  - d. 5 Custom Searches
3. 3-GIS shall configure the 3-GIS Live to include:
  - a. 1 map cache
  - b. Splice report
  - c. Connection notes
  - d. County Published data layers in preconfigured layers
4. Bill of Materials (BOM), Assemblies Definition, and Configuration - Installation of the 3-GIS BOM rules templates. This does not include rules development specific to the County.
5. QA/QC Tool Rules Definition and Configuration - Installation of the 3-GIS QA/QC rules templates. This does not include rules development specific to the County.

#### **Items Not Included in Setup and Configuration Services:**

1. *Custom* Bill of Materials Assemblies Rules Development
2. *Custom* QA Tool Rules Development
3. Network Layout Installation and Configuration

4. Work Order Configuration
5. Schematics
6. Customizations Not Procured in the Final Contract.

***3-GIS Deliverables:***

- Provide up to forty (40) hours of setup services over a period of five (5) business days, as described above.

***County Responsibilities:***

- Provide all user names for setup
- Determine which mobile platform will be used (Windows or Android)
- Provide necessary points of contact for 3-GIS communication

**3.2 Data Conversion Services**

3-GIS shall convert the existing County fiber optic network data into the 3-GIS data model. These services are based on data that has previously been sent by the County to 3-GIS. 3-GIS shall perform the following as part of the data conversion process:

1. 3-GIS shall take the County's existing fiber optic network data from Google Earth File (KMZ) and convert it to the 3-GIS data model.
2. 3-GIS shall make geometric correction to the conduit where possible so the conduits can be used in reporting and network operations. These corrections include:
  - a. Extend conduits lines to meet structures
  - b. Snap conduits to structures
3. 3-GIS shall use automated means to create additional conduit from the KMZ file. A line in the KMZ file representing conduit can represent one or more conduits at that location and the line properties "style, color" indicate the number and size of the conduits at that location. Since the line in the KMZ file only contains one line representing 1 or more conduits, 3-GIS shall use the table provided by the County to duplicate conduits where the line "style, color" indicates there should be more than one conduit and automation feature creation tools. 3-GIS shall assign the size of the each conduit from the table for each "style, color".
4. The lines represented in the KMZ file do not include fiber cables. 3-GIS shall use automated GIS routines to create a fiber cable for every conduit that exists. 3-GIS shall dissolve segments between splice closures creating one cable run between splice closure locations. 3-GIS shall make geometric corrections to the fiber network so the network can be connected properly. These corrections include:
  - a. Split cables where splice closures and intersecting conduit features exist
  - b. Snap cables to splice closures
5. 3-GIS shall maintain all attribute information and geometry of the network contained in the existing KMZ data set provided by the County.
  - a. The County's KMZ data file does not include attribute information for conduit size. 3-GIS shall assign the size from a table provided by the County with the correlating line property "style, color".
  - b. The County's KMZ data file does not include fiber count attributes assigned to fiber cables. 3-GIS shall automatically assign fiber counts to the 3-GIS created cables based on a table provided by the County.
6. 3-GIS shall use automated and manual tools to snap splice closures, splitters, equipment, cables and poles together where possible.

7. 3-GIS shall use automated and manual tools to connect fiber segments. The automated connections that will be made are:
  - a. Where two cables meet and only two cables meet with the same size, the through connections will be made at these splice closures.
  - b. Where cables meet but only two of the cables at that location are the same size, the through connections will be made at these splice closures.
  - c. The data conversion method will not provide all the data converted as they exist in the network with correct connections. Previous experience has determined that as many as 75% of the overall connections can fall within this category. This method will require the County to perform some corrects to the data using 3-GIS Live.
8. 3-GIS shall project this data into the WGS\_1984\_Web\_Mercator\_Auxiliary\_Sphere projection which is the most commonly used projection by external map services available online that are served from ESRI's ArcGISonline, Google Maps, Bing Maps and OpenStreetMaps.
9. 3-GIS shall load the converted fiber network data into the 3-GIS Live system for the County.

***3-GIS Deliverables:***

- Provide up to fifty-six (56) hours of data conversion services over a period of seven (7) business days, as described above.

***County Responsibilities:***

- The County will provide 3-GIS with the most current KMZ data sets.
- The County will provide 3-GIS with the most current table indicating the number of conduit and size of conduit for each KMZ line "style, color". If the County has assigned the cable type (backbone, access fiber, etc.) as part of the "style, color," additional field in the table will need to be provided indicating that information.
- The County will provide 3-GIS with the most current table indicating the fiber cable count for each conduit "style, color".
- The County will provide a knowledgeable Point of Contact that would be available for any questions that might arise during the data conversion.

**3.3 Training**

3-GIS shall provide training for new application including:

1. 3-GIS Live – 2 days (16 hours) of remote training for up to 8 users per class.
2. 3-GIS Mobile – 1/2 day (4 hours) of remote training for up to 8 users.

***3-GIS Deliverables:***

- Provide twenty (20) hours of remote training services for 8 user per class.
- 3-GIS Training Video Library.
- 3-GIS Live and Mobile training power point.
- 3-GIS Live and Mobile training materials.

- Access and connection to 3-GIS Training website.



## EXHIBIT B: CONTRACT PRICING

### Licenses and Maintenance

3-GIS Live (Includes Licenses Fees, Software, Warranty, and Maintenance)	Number of Users	Annual Cost	5 Year Total
Web Named Users (editors)	5	\$28,800	\$144,000
Web Named Users (read only)	5	\$14,400	\$72,000
Mobile Named User	5	\$4,860	\$24,300
<b>Total</b>	<b>15</b>	<b>\$48,060</b>	<b>\$240,300</b>

Annual costs will be invoiced at completion of conversion, configuration and training for the first year. Each following year will be made at the beginning of the annual contract term.

### Setup Services

Service	Description	Cost
Data Conversion	56 hours of data conversion services.	\$6,000
Configuration	40 hours of configuration services.	\$9,000
Training	20 hours of training.	
<b>Total</b>		<b>\$15,000</b>

### 4.3 Optional Services:

Additional configuration, customization, and training: \$125.00/hour over the course of five years.

**AGREEMENT NO. 17-020-SS  
EXHIBIT C**

NONDISCLOSURE AND DATA SECURITY AGREEMENT (CONTRACTOR)

The undersigned, an authorized agent of the Contractor and on behalf of 3-GIS, LLC (Contractor) hereby agree that the Contractor will hold County provided information, documents, data, images, records and the like (hereafter "information") confidential and secure and to protect it against loss, misuse, alteration, destruction or disclosure. This includes but is not limited to the information of the County, its employees, contractors, residents, clients, patients, taxpayers and property as well as information that the County shares with Contractor for testing, support, conversion or other services provided under Arlington County Agreement No. 17-020-SS (the "Project" or "County Agreement" as applicable) or which may be accessed through other County owned or controlled databases (all of the above collectively referred to herein as "information" or "County information").

In addition to the DATA SECURITY obligations set in the County Agreement, the Contractor agrees that it will maintain the privacy and security of the County information, control and limit internal access and authorization for access to such information and not divulge or allow or facilitate access to County information for any purpose or by anyone unless expressly authorized. This includes but is not limited to information that in any manner describes, locates or indexes anything about an individual including, but not limited to, his/her (hereinafter "his") Personal Health Information, treatment, disability, services eligibility, services provided, investigations, real or personal property holdings, and his education, financial transactions, medical history, ancestry, religion, political ideology, criminal or employment record, social security number, tax status or payments, date of birth, address, phone number or that affords a basis of inferring personal characteristics, such as finger and voice prints, photographs, or things done by or to such individual, and the record of his presence, registration, or membership in an organization or activity, or admission to an institution (also collectively referred to herein as "information" or "County information"). Contractor also agree that it will not directly or indirectly use or facilitate the use or dissemination of information (whether intentionally or by inadvertence, negligence or omission verbally, electronically, through paper transmission or otherwise) for any purpose other than that directly associated with its work under the Project. Contractor acknowledges that any unauthorized use, dissemination or disclosure of information is prohibited and may also constitute a violation of Virginia or federal laws, subjecting it or its employees to civil and/or criminal penalties.

The Contractor agrees that it will not divulge or otherwise facilitate the disclosure, dissemination or access to or by any unauthorized person, for any purpose, of any information obtained directly, or indirectly, as a result of its work on the Project. Contractor shall coordinate closely with the County Project Officer to ensure that its authorization to its employees or approved subcontractors is appropriate, tightly controlled and that such person/s also maintain the security and privacy of information and the integrity of County networked resources.

Contractor agrees to take strict security measures to ensure that information is kept secure, properly stored, that if stored that it is encrypted as appropriate, stored in accordance with industry best practices and otherwise protected from retrieval or access by unauthorized persons or unauthorized purpose. Any device or media on which information is stored, even temporarily, will have strict security and access control. Any


information that is accessible will not leave the Contractor's work site or the County's physical facility, if working onsite, without written authorization of the County Project Officer. If remote access or other media storage is authorized. Contractor is responsible for the security of such storage device or paper files.

Contractor will ensure that any laptops, PDAs, netbooks, tablets, thumb drives or other media storage devices, as approved by the County, and connected to the County network are secure and free of all computer viruses, or running the latest version of an industry standard virus protection program. Contractor will ensure that all passwords used by its employees or subcontractors are robust, protected and not shared. No information may be downloaded except as agreed to by the parties and then only onto a County approved device. Downloading onto a personally owned device is prohibited. Contractor agrees that it will notify the County Project Officer immediately upon discovery, becoming aware or suspicious of any unauthorized disclosure of information, security breach, hacking or other breach of this Agreement, the County Contract, County policy, Contractor's security policies, or any other breach of Project protocols. The Contractor will fully cooperate with the County to regain possession of any information and to prevent its further disclosure, use or dissemination. The Contractor also agrees, if requested, to promptly notify others of a suspected or actual breach.

Contractor agrees that all duties and obligations enumerated in this agreement also extend to its employees, agents or subcontractors who are given access to County information. Breach of any of the above conditions by Contractor's employees, agents or subcontractors shall be treated as a breach by Contractor. Contractor agrees that it shall take all reasonable measures to ensure its employees, agents and subcontractors are aware of and abide by the terms and conditions of this Agreement and related data security provisions in the County Agreement.

It is the intent of this *NonDisclosure and Data Security Agreement* to ensure that the Contractor has the highest level of administrative safeguards, disaster recovery and best practices are in place to ensure confidentiality, protection, privacy and security of County information and County networked resources and to ensure compliance with all applicable local, state and federal law or regulatory requirements. Therefore, to the extent that this *NonDisclosure and Data Security Agreement* conflicts with the County Agreement or with any applicable local, state, or federal law, regulation or provision, the more stringent County Contract requirement, law, regulation or provision shall control.

At the conclusion of the Project, Contractor agrees to return all County information to the County Project Officer. These obligations remain in full force and effect throughout the Project and shall survive any termination of the County Agreement.

Authorized Signature:   
Printed Name and Title: TOM COUNTS, President  
Date: 8/25/16

**EXHIBIT D**  
**LICENSED SOFTWARE TERMS AND CONDITIONS**

**HOSTED SOFTWARE END-USER LICENSE AGREEMENT**

3-GIS, LLC ("LICENSOR") SOFTWARE IS COPYRIGHTED AND LICENSED (NOT SOLD). LICENSOR DOES NOT SELL OR TRANSFER TITLE TO THE LICENSED SOFTWARE TO YOU ("LICENSEE"). YOUR LICENSE OF THE LICENSED SOFTWARE WILL NOT COMMENCE UNTIL YOU HAVE ACCEPTED THE TERMS BY SIGNING YOUR ASSENT AT THE END OF THE LICENSE AGREEMENT (THIS "AGREEMENT") AND INITIALING THE ATTACHED EXHIBITS.

**1. License.** In consideration of the payment of the license fees set forth herein, Licensor grants you nonexclusive use of Express Solution™ software ("Licensed Software") and data in machine-readable form and related materials subject to the following terms and conditions.

**2. Scope of Rights.** You, as the individual or entity executing this License Agreement ("Hosted Master User" or "Licensee") may:

- i. Access the Licensed Software on your computer for the business location(s) specified in your agreement;
- ii. Access the Licensed Software with specific logon usernames for all persons whom you designate with permission to create, modify or delete data within the number of Licensed Software connects;
- iii. Use and execute the Licensed Software for purposes of serving the internal needs of your business, including, without limitation, using the Licensed Software for the benefit of your customers; and
- iv. In support of your authorized use of the Licensed Software, store the Licensed Software's machine-readable instructions or data in, transmit it through, and display it on machines associated with the user licensing options in this Agreement.

**3. Support.** Licensor shall support the Licensed Software. As a server based program, Licensor may enhance or improve the software performance and appearance from time to time and provide customer support for those changes for all active accounts.

**4. Your Responsibilities.** You are responsible for selecting an administrator who is qualified to operate the Licensed Software and is familiar with the information, calculations, and reports that serve as input and output of the Licensed Software. Licensor reserves the right to refuse assistance or to charge additional fees if an administrator seeks assistance with respect to such basic background information or any other matters not directly relating to the operation of the Licensed Software.

You are also responsible for ensuring a proper environment and proper utilities for the computer system on which the Licensed Software will operate, including a network connection.

Except as agreed otherwise in writing, Licensor assumes no responsibility under this Agreement for converting your data files for use with the Licensed Software.

**5. Proprietary Protection and Restrictions.** Licensor shall have sole and exclusive ownership of all right, title, and interest in and to the Licensed Software and all modifications and enhancements thereof (including ownership of all trade secrets and copyrights pertaining thereto), subject only to the rights and privileges expressly granted to you herein by Licensor. This Agreement does not provide you with title or ownership of the Licensed Software, but only a right of limited use. You must keep the Licensed Software free and clear of all claims, liens, and encumbrances.

You may not use, copy, modify, or distribute the Licensed Software (electronically or otherwise), or any copy, adaptation, transcription, or merged portion thereof, except as expressly authorized by Licensor. You may not reverse assemble, reverse compile, or otherwise translate the Licensed Software. Your rights may not be transferred, leased, assigned, or sublicensed except for a transfer of the Licensed Software in its entirety to (1) a successor in interest of your entire business who assumes the obligations of this Agreement or (2) any other party who is reasonably acceptable to Licensor, enters into a substitute version of this Agreement, and pays an administrative fee intended to cover attendant costs. No service bureau work, multiple-user license, or time-sharing arrangement is permitted, except as expressly authorized by Licensor.

You acknowledge that, in the event of your breach of any of the foregoing provisions, Licensor will not have an adequate remedy in money or damages. Licensor shall therefore be entitled to seek an injunction against such breach from any court of competent jurisdiction

immediately upon request. Licensor's right to seek injunctive relief shall not limit its right to seek further remedies.

If a third party claims that the Licensed Software infringes its patent, copyright, or trade secret, or any similar intellectual property right. Licensor will defend you against that claim at Licensor's expense and pay all damages that a court finally awards, provided that you promptly notify Licensor in writing of the claim, and allow Licensor to control, and cooperate with Licensor in, the defense or any related settlement negotiations. If such a claim is made or appears possible, you agree to permit Licensor to enable you to continue to use the Licensed Software, or to modify or replace them. Licensor has no obligation for any claim based on your modification of the Licensed Software or its combination, operation, or use with any product, data, or apparatus not specified in writing or provided by Licensor, provided that such claim solely and necessarily is based on such combination, operation, or use and such claim would be avoided by combination, operation, or use with products, data, or apparatus specified or provided by Licensor. THIS PARAGRAPH STATES LICENSOR'S ENTIRE OBLIGATION TO YOU WITH RESPECT TO ANY CLAIM OF INFRINGEMENT.

**6. Limited Warranty and Limitation of Liability.** For so long as the Licensee is an active account, Licensor warrants the performance of the Licensed Software to conform in all material respects to the specifications for the current version of the Licensed Software. This warranty is expressly conditioned on your observance of the operating, security, and data-control procedures set forth in the User's Manual included with the Licensed Software.

Licensor is not responsible for obsolescence of the Licensed Software that may result from changes in your requirements. The foregoing warranty shall apply only to the most current version of the Licensed Software issued by Licensor as delivered from the client server. Licensor is responsible to make available the most recent version of the Licensed Software accessible and resident on the client server.

As your exclusive remedy for any material defect in the Licensed Software for which Licensor is responsible, Licensor shall attempt through reasonable effort to correct or cure any reproducible defect by issuing corrected instructions, a restriction, or a bypass. In the event Licensor does not correct or cure such nonconformity or defect after it has had a reasonable opportunity to do so,

your exclusive remedy shall be the refund of the amount paid as the license fee for the defective or nonconforming module of the Licensed Software. Licensor shall not be obligated to correct, cure, or otherwise remedy any nonconformity or defect in the Licensed Software if you have made any changes whatsoever to the Licensed Software, if the Licensed Software has been misused or damaged in any respect, or if you have not reported to Licensor the existence and nature of such nonconformity or defect promptly upon discovery thereof.

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, LICENSOR DISCLAIMS ANY AND ALL PROMISES, REPRESENTATIONS, AND WARRANTIES WITH RESPECT TO THE LICENSED SOFTWARE, INCLUDING ITS CONDITION, ITS CONFORMITY TO ANY REPRESENTATION OR DESCRIPTION, THE EXISTENCE OF ANY LATENT OR PATENT DEFECTS, ANY NEGLIGENCE, AND ITS MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE.

The cumulative liability of Licensor to you for all claims relating to the Licensed Software and this Agreement, including any cause of action sounding in contract, tort, or strict liability, shall not exceed the total amount of all license fees paid to Licensor hereunder. This limitation of liability is intended to apply without regard to whether other provisions of this Agreement have been breached or have proven ineffective. This limitation of liability shall not apply to the indemnification provided in Section 6 hereof.

In no event shall Licensor be liable for any loss of profits; any incidental, special, exemplary, or consequential damages; or any claims or demands brought against you, even if Licensor has been advised of the possibility of such claims or demands. This limitation upon damages and claims is intended to apply without regard to whether other provisions of this Agreement have been breached or have proven ineffective.

You may have additional rights under certain laws (e.g., consumer laws) that do not allow the exclusion of implied warranties, or the exclusion or limitation of certain damages. If such laws apply, our exclusions or limitations do not apply to you.

**END OF SOFTWARE LICENSING TERMS AND  
CONDITIONS**

**EXHIBIT E**  
**BASE MAINTENANCE TERMS AND CONDITIONS**

The following are 3-GIS's additional terms and conditions for Base Maintenance. Customer purchases the Base Maintenance outlined here for the fee specified on the Order Form. Base Maintenance is defined as and limited to the following services: (1) correction of material Defects in accordance with this Exhibit E, and (2) providing Base Maintenance Releases. Under Base Maintenance, and strictly with regard to the Licensed Software, Customer is entitled to the services set forth hereunder.

3-GIS's call center support services are available for logging calls on a 24x7 basis; Licensor's holidays are excepted. Problems may be reported by phone (256-560-0744), Email ([support@3-GIS.com](mailto:support@3-GIS.com)), or Fax (256-560-0746). Severity 1 Problems shall be reported via phone only. All Base Maintenance-related communications will be conducted in English.

**1. DEFINITIONS**

1.1 "*Acknowledgment*" or "*Acknowledge*" means a response to Customer by an employee of Licensor that he or she is gathering Problem Determination information in response to a Problem reported by Customer.

1.2 "*Base Maintenance Period*" means a period beginning at the conclusion of the Warranty Period, or the conclusion of the previous Base Maintenance Period for Base Maintenance renewals, and continuing for the period set forth on the Order Form of this Agreement or, if no period is set forth, for one calendar year.

1.3 "*Base Maintenance Releases*" means new or supplemental releases of the Licensed Software that are provided at no additional charge to purchasers of Base Maintenance and which include only limited additional functionality and or contain corrections to the License Software provided as part of Base Maintenance. Base Maintenance Releases are not Enhancement Releases. 3-GIS and its licensors have sole discretion in determining whether a Release is an Enhancement Release or a Base Maintenance Release, and the schedule for and content of any such release.

1.4 "*Defect*" means a condition in the Licensed Software that causes the Licensed Software to substantially fail to conform to Documentation in effect on the date of delivery of the Licensed Software. An error in the Documentation is not a Defect of the License Software. If the Documentation is determined to be in error, it will be corrected and provided to the Customer

1.5 "*Documentation*" shall have the meaning set forth in Exhibit D, "Licensed Software Terms and Conditions."

1.6 "*Enhancement Release*" means a release of the Licensed Software that includes new features or functionality beyond that provided in the release of the Express Suite product initially purchased under this Agreement. 3-GIS and its licensors have sole discretion in determining whether a release is an Enhancement Release or a Base Maintenance Release. Enhancement Releases and maintenance for such Enhancement Releases are not included in Base Maintenance but may be licensed separately for an additional fee.

1.7 "*Problem*" means a condition reported by Customer to 3-GIS or identified by 3-GIS in which the Licensed Software appears to not be functioning in substantial conformance with the Documentation.

1.8 "*Problem Determination*" means 3-GIS's isolation of a Problem as either (a) a Defect or (b) a problem of another nature which has adversely affected the performance of the Licensed Software, e.g., Customer operational, database, hardware/firmware, interfacing product, software, including Runtime Software, other than the Licensed Software, improper use of the Licensed Software by Customer, etc.).

1.9 "*Severity 1 Problem*" means the Licensed Software is completely inoperable.

1.10 "*Severity 2 Problem*" means the Licensed Software is useable, but an essential component of the Licensed Software is inoperable or malfunctioning.

1.11 "*Severity 3 Problem*" means the Licensed Software is usable but a nonessential component is inoperable or malfunctioning.

**2. PROBLEM REPORTING INFORMATION.** Customer shall provide the following when reporting all Problems:

2.1 *Hotline Information.* Customer is responsible for calling all Problems into the hotline, (or emailing or faxing them as stated above) and providing the following information when calling the hotline to report a Problem:

- caller's name, location, company
- call-back telephone number (with voice mail, if available)
- Licensed Software name and release level
- processor location and type
- nature of the situation
- assessment of Severity level as described above
- description/history of Problem and Customer's efforts to resolve it (if any)
- Software access and diagnostic reports (if applicable)
- any other information reasonably required by 3-GIS to diagnose the Problem.

2.2 *Problem Identification.* Prior to call in, Customer shall:

- a) identify the Problem and the part(s) of the Licensed Software believed to be the source of the Problem
- b) determine that all known corrections or workarounds provided through Customer Services Bulletins or contained in prior Base Maintenance Releases which pertain to the Problem have been applied; and

c) collect necessary and available supporting documentation for use by 3-GIS in diagnosing the Problem.

**2.3 Problem Diagnosis Support.** If Customer reports a Problem, Customer will be responsible for providing necessary materials (e.g., remote dial-in access, database access, printouts) required by 3-GIS to diagnose the Problem in an efficient manner.

**2.4 Acknowledgement of Severity Level.** Licensor will call the call-back telephone number provided by the Customer to Acknowledge the severity level of Problem within the time frames set forth below. (After investigation, Licensor may change the severity level for that Problem.) If no answer is received, Licensor will Acknowledge via voice mail, if provided by Customer. If no voice mail is available, Licensor will put forth commercially reasonable efforts to provide Acknowledgement within a reasonable time. After Acknowledgement, Licensor will then make a Problem Determination. If Licensor determines that the Problem is not a Defect, Licensor will inform Customer that the Problem is outside the scope of Base Maintenance. Licensor will then inform Customer that any further services related to the Problem, if offered and provided by Licensor, shall be charged at Licensor's then current rates for time and materials services.

**2.5 Severity 1 Problem**

a) Licensor will Acknowledge this level Problem within one (1) business day (Monday through Friday, 8:00 a.m. to 5:00 p.m., CST), on average.

b) If Licensor makes a Problem Determination that the Severity 1 Problem is due to a Defect, Licensor will use commercially reasonable efforts to electronically or telephonically provide or communicate a correction or workaround for the Defect within ten (10) business days on average of such Problem Determination, or provide Customer with written notice within that time that the effort will require further research, resources, or analyses. Customer must have knowledgeable staff available to aid in the investigation and must apply the Licensed Software correction or workaround as soon as it is provided by 3-GIS.

**2.6 Severity 2 Problem**

a) Licensor will Acknowledge this level Problem within two (2) business days (Monday through Friday, 8:00 a.m. to 5:00 p.m., CST), on average.

b) If Licensor makes a Problem Determination that the Severity 2 Problem is due to a Defect, Licensor will use commercially reasonable efforts to electronically provide a correction or workaround for the Defect within twenty-one (21) business days on average of such Problem Determination or provide Customer with written notice within that time, should the effort require further research, resources, or analyses. Customer must have knowledgeable staff available to aid in the investigation and must apply an agreed upon Licensed Software correction or workaround as soon as it is provided by 3-GIS.

**2.7 Severity 3 Problem**

a) Licensor will Acknowledge this level Problem within three (3) business days (Monday through Friday, 8:00 a.m. to 5:00 p.m., CST) on average.

b) If Licensor makes a Problem Determination that the Severity 3 Problem is due to a Defect, Licensor will evaluate the Defect for possible inclusion of a correction or workaround into a future Base Maintenance Release.

### **3. THIRD PARTY SOFTWARE MAINTENANCE**

**3.1 Runtime Software Problems.** The Severity Level response times for reported Problems do not apply to Runtime software.

**3.2 No Third Party Maintenance Obligation.** In the event that 3-GIS determines that a Problem is caused by the Runtime Software or other bundled or embedded third party software, as Customer's sole and exclusive remedy, 3-GIS shall report such Problem to the licensor of such Runtime Software or third party software and supply Customer with any corrections or workarounds that such licensor provides to 3-GIS. Notwithstanding anything else in the Agreement, if a licensor of 3-GIS does not provide support to Licensor for the Runtime Software or other third party software, for any reason, Licensor shall have the option to terminate Base Maintenance. In such event, 3-GIS shall refund Customer an amount representing the value of the unused portion of the Base Maintenance. Such value shall be a pro rata portion of the Base Maintenance fees actually paid by Customer to 3-GIS under this Base Maintenance Agreement, and shall be determined by depreciating such fees on a monthly basis over the Base Maintenance Period.

**4. INSTALLATION AND SUPPORT OF BASE MAINTENANCE RELEASES.** Customer must implement all Base Maintenance Releases within three (3) months of the issuance date of such release of the Licensed Software. 3-GIS shall discontinue support for prior Base Maintenance Releases three (3) months after the issuance date of the current Base Maintenance Release.

**5. MODIFICATION OF LICENSED SOFTWARE.** If Customer modifies the Licensed Software outside the prescribed methods outlined in the Documentation, Licensor will not continue to provide Base Maintenance for the Licensed Software.

## **END OF BASE MAINTENANCE TERMS AND CONDITIONS**

## EXHIBIT F

### SERVICES TERMS AND CONDITIONS

#### 1. DESCRIPTION OF SERVICES

*1.1. Installation Services.* 3-GIS shall provide Installation Services as described on the Order Form.

*1.2. Training Services.* 3-GIS shall conduct Training Services as set forth on the Order Form. Specialized classes developed to fit Customer's requirements, if any, will be as identified on the Order Form as Custom Training Classes

- a) Off-site classes will be conducted at 3-GIS's facility in Decatur, Alabama and will accommodate up to eight (8) students. On-site classes will be conducted at the Customer's facility or location designated on the Order Form and will also accommodate up to eight (8) students. An additional day will be required for set up for on-site classes.
- b) Title and full ownership rights to the intellectual property in the training materials remains in 3-GIS.

*1.3. Other Services.* 3-GIS shall provide Other Services as described in the Order Form.

#### 2. CUSTOMER RESPONSIBILITIES. For 3-GIS to perform the Services, 3-GIS requires that Customer during the term of this Agreement will, as reasonably required by and at no cost to 3-GIS:

- a) provide 3-GIS with full and free access to Customer's hardware and software system(s) as required by 3-GIS to perform the Services, subject to Customer's reasonable security requirements;
- b) provide 3-GIS with access to and the use of any machines, documentation, or software which 3-GIS deems necessary to perform the Services;
- c) provide 3-GIS with onsite office space and telephones for 3-GIS personnel;
- d) provide meeting room facilities including a noise-free room, hardware, project software, whiteboards, and projection equipment;
- e) review and provide timely feedback to 3-GIS on all Deliverables;
- f) provide qualified technical personnel to support 3-GIS as needed during performance of the Services; and
- g) provide the required Technical Operating Environment hardware and software, if any, as specified by 3-GIS. Customer is responsible (and 3-GIS shall have no responsibility) for licensing and/or procuring, having installed or making the TOE available prior to the delivery of each Deliverable or performance of Services, as required by 3-GIS, and thereafter maintaining the full functionality of such TOE.

#### 3. ALLOCATION OF INTELLECTUAL PROPERTY AND GRANT OF LICENSES.

*3.1 License to Use the Deliverables.* Subject to the restrictions set forth below, 3-GIS grants to Customer a personal, nontransferable, nonexclusive license to use and copy the Deliverables produced as a result of the Services performed hereunder solely for Customer's internal business purposes. This license shall include a license to use any 3-GIS newly-created Invention, Work of Authorship or other intellectual property to the extent necessary for Customer to meet the purposes set forth in this Agreement. This license shall further include the right to provide copies of the Deliverables to consultants, contractors or suppliers who are hired to carry out recommendations within the Deliverables as long as such consultant, contractor or supplier is subject to an agreement requiring confidentiality of the Deliverables, and which limits the use of the Deliverables by the consultant, contractor or supplier to providing services to Customer. Customer shall include a 3-GIS copyright notice on all copies of Deliverables. The Services and any resulting Deliverables are not "work for hire."

*3.2 Ownership of Newly-Created Intellectual Property.* Any patentable or unpatentable discoveries, ideas, including methods, techniques, know-how, concepts, or products ("Invention"); or any works fixed in any medium of expression, including copyright and mask work rights ("Works of Authorship"); or any other intellectual property created by 3-GIS during the course of the Services shall be the sole and exclusive property of 3-GIS.

*3.3 No Rights By Implication.* Except as set forth above, no direct or indirect ownership interest or license rights in Inventions, Works of Authorship or other intellectual property including software or patents are granted or created by implication in this Agreement. Any grant of an ownership interest or license rights in an Invention, Work of Authorship or other intellectual property including software or patents must be negotiated in a separate agreement. 3-GIS shall use reasonable efforts to inform Customer of any 3-GIS owned Inventions, Works of Authorship or other intellectual property that 3-GIS believes may be necessary for Customer to use the Deliverables or to meet the purposes set forth in this Agreement.

*3.4 Similar Work for Other Customers.* 3-GIS may perform the same or similar services for others, including providing the same or similar conclusions and recommendations provided that Customer Confidential Information is not disclosed.

#### 4. SERVICES WARRANTY.

*4.1 Warranty for Services.* 3-GIS warrants that all Services will be performed in a good and workmanlike manner. Any claim that Services do not conform to this warranty must be made in writing to 3-GIS within thirty (30) days from the date of performance of the nonconforming Services.

*4.2 Disclaimer of Warranties.* EXCEPT FOR THE WARRANTY SET FORTH IN SECTION 4.1 ABOVE, THE SERVICES AND DELIVERABLES ARE PROVIDED WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT



NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY WARRANTY AGAINST INFRINGEMENT OF PATENTS OR OTHER INTELLECTUAL PROPERTY RIGHTS.

**END OF SERVICES TERMS AND CONDITIONS**

**END OF DOCUMENT**