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APPENDIX –D to DIR-SDD-974

**SOFTWARE LICENSE, MAINTENANCE, AND SERVICES AGREEMENT
FOR NC4'S E TEAM® SELF HOSTED SYSTEMS
(Not for use with E Team® SaaS or NC4's ESA Services)**

This Software License, Maintenance, and Services Agreement (“Agreement”) is entered into as of the Effective Date, by and between NC4 Public Sector LLC, a Delaware limited liability company, with an office located at 28202 Cabot Road, Suite 300, Laguna Niguel, CA 92677 USA (“NC4”), and

Licensee Name: Collin County Homeland Sec (Customer or Licensee)
Address: 4300 Community Ave.
McKinney, Texas 75071

This Agreement applies to NC4's E Team® Self Hosted Systems procured under DIR Contract number DIR-SDD-974 between NC4 Public Sector LLC and the Texas Department of Information Resources (“DIR Contract number DIR-SDD-974”). In accordance with the terms of DIR Contract number DIR-SDD-974, Customers acquiring the subject NC4 software licenses shall hold, use and operate such software in compliance with this Agreement. Any Purchase Order issued to NC4 by Customer under DIR Contract number DIR-SDD-974 for NC4's E Team® software shall be subject to the terms and conditions of this Agreement.

RECITALS

- A. NC4 is the owner of certain computer software programs, including NC4's E Team® incident management software applications known as E Team® Standard and E Team Enterprise (“Software”), and also provides services related to emergency management and other functions related to such Software.
- B. NC4 desires to provide, and Customer desires to obtain, a license to use the Software and/or NC4's Services set forth on Schedule A attached hereto, on the terms and conditions set forth in DIR Contract number DIR-SDD-974 and this Agreement.

NOW, THEREFORE, based on the foregoing premises and the promises set forth below, the parties agree as follows:

AGREEMENT**1. Definitions.**

1.1 “Authorized User(s)” means any employee, agent or representative of Customer authorized to use the Software, or any emergency staff or agency, including any police, fire, paramedic or other emergency personnel or entity, necessary to use the Software for emergency management purposes only.

1.2 “Backup Purposes” means a reasonable and ordinary backup or archival copy of the Software for primary use for a limited period not to exceed thirty (30) days if the Software on the primary system is not available or for disaster recovery purposes only.

1.3 “CPU” means a central processing unit (processor) in any computer or computer system used by Customer to store, process, or retrieve data or perform other functions using operating systems and applications software.

1.4 "Documentation" means the NC4 user's manuals and other materials in any form or medium customarily provided by NC4 to the users of the Software.

1.5 "Effective Date" shall be the date of the last signature, as set forth at the signature page of this Agreement.

1.6 "Fees" means, collectively, the license fees for the Software, the maintenance and support fees, and any other fees, annual or otherwise, payable by Customer to NC4 pursuant to the DIR Contract number DIR-SDD-974 and this Agreement.

1.7 "Purchase Order" means a purchase order issued by Customer to NC4 under the DIR Contract number DIR-SDD-974.

1.8 "SaaS Redundancy" means using NC4's optional web-hosted services for Backup Purposes, as defined in Section 4.

1.9 "Services" means work performed by NC4 for Customer pursuant to this Agreement, a Statement of Work, and/or a Purchase Order or an alternative ordering document acceptable to NC4 and agreed to by the parties in writing. The schedule for Services will be agreed upon by the parties, subject to the availability of NC4 personnel.

1.10 "Software" means the E Team® Standard or E Team® Enterprise software programs and/or applications procured by Customer in object code form only.

1.11 "Specifications" means the functional specifications described in the Documentation delivered by NC4 to Customer.

1.12 "Statement of Work" means a document provided to Customer by NC4, and signed by both parties, that specifies the Services to be provided by NC4 and the applicable fees for the Services. NC4's standard installation and training services do not require a Statement of Work. Each Statement of Work shall be governed by the this Agreement.

1.13 "Support" shall have the meaning set forth in Section 3.1.

1.14 "Training Courseware" means the design and layout of NC4's training materials.

2. Software License.

2.1 License Grant. Subject to the terms and conditions of this Agreement, NC4 hereby grants to Customer a perpetual (unless noted otherwise on a particular Purchase Order), non-exclusive, non-transferable, non-assignable license, without the right to grant sublicenses, to use the object code only of the Software. The license is limited to use on the type of server/number of CPUs set forth at Schedule A. If additional CPUs are added, Customer shall pay to NC4 the corresponding additional Fees. The license granted in this Section 2.1 shall also include modifications to the Software that NC4 may make pursuant to Services that Customer purchases from NC4. Until such time that Customer has fully paid all license and other Fees due NC4, the term of the license shall be temporary and subject to termination by NC4 in accordance with Section 12 of this Agreement.

2.2 Use Restrictions. Customer shall not, and shall not permit others to:

(a) install the Software on any server or at any site other than those designated by Customer to NC4;

(b) exceed the number of CPUs permitted above.

subject to the terms of DIR Contract number DIR-SDD-974 , Section 4, G, at Licensee approved rates, will apply on a time and material basis.

3.2 Customer Support. NC4 will provide Customer with 24 x 7 technical support for the Software. Telephone support shall be available to not more than three (3) named callers. Support shall not include installation of upgrades or modification or customization of upgrades, problems not attributable to the Software, or problems arising from Customer's actions to cause an error in the Software, which shall be billed at NC4's then-current professional services rates, plus any travel expenses incurred. Onsite installation of upgrades or modification or customization of upgrades is available by special arrangement, and will be billed at NC4's then-current rates, plus allowable and reimbursable travel expenses in compliance with State of Texas travel regulations. Customer agrees to provide remote access to NC4 as needed to enable NC4 to provide telephone support services. To the extent practical, NC4 shall provide Customer 24 hours notice if remote access is required. If Customer requests on site support services, Customer agrees to grant NC4 access to its facilities and personnel to provide such support services, and reimburse NC4 for travel and related expenses in accordance with DIR Contract number DIR-SDD-974, Section 4, G. .

3.3 Maintenance and Support Fees. Customer shall pay NC4 for the initial annual maintenance and support Fees set forth in Schedule A in accordance with Section 7 below, upon delivery and installation of the Software. Thereafter, Customer shall pay the annual maintenance and support Fee during the normal billing period nearest the anniversary of the delivery date. Unless prepaid by Customer, maintenance and support Fees quoted beyond the current year, shall be used for budget purposes only. NC4 reserves the right to change the maintenance and support Fee for any renewal period, upon thirty (30) days prior notice to Customer (which may be sent by email).

3.4 Map Data Renewal Fees and Other Fees Not Included in NC4 Maintenance and Support.

3.4.1 Other Software Annual Maintenance and Support Fee. Renewals or maintenance and support for certain third party software are not included in NC4's annual maintenance and support Fee. Any renewals or third party software for which Customer is obligated will be noted in the NC4 quote to Customer.

3.4.2 Map Data and Other Software Subject to Annual Renewal Fees. Customer's right to use the map data provided by NC4 hereunder and certain other products noted in Schedule A as being subject to annual renewal fees, are subject to the annual renewal Fees set forth in Schedule A. These annual renewal Fees are not included in, and are in addition to, NC4's annual maintenance and support Fee. If Customer fails to pay the annual renewal Fees for the map data or other products subject to such annual renewal Fee, Customer's right to use the map data and/or such products shall automatically terminate and Customer agrees to immediately discontinue use of the map data and/or such product and provide written confirmation to NC4 that it has done so.

4. SaaS Redundancy (Optional Service). If Customer has procured NC4's Web-hosted SaaS Redundancy Services for Backup Purposes, and subject to Customer's prompt payment of the corresponding annual SaaS Redundancy Fees, NC4 will provide Customer such Services in accordance with the following:

4.1 NC4 Web-hosted SaaS Redundancy Services. NC4's web-hosted SaaS Redundancy Services are for Backup Purposes only. Subject to the terms and conditions of this Agreement, NC4 grants to Customer a limited, non-transferable, non-exclusive, non-assignable license for the term of this Agreement to access over the Internet and use NC4's SaaS Redundancy Services solely as a backup to Customer's use of the Software in the normal course of business.

4.2 SaaS Redundancy Fee. Customer agrees to pay NC4 for the initial SaaS Redundancy set up and use Fees as well as the annual SaaS Redundancy Fee as set forth in Schedule A. Annual renewals of SaaS Redundancy Fees are billed during the normal billing period nearest the anniversary of the installation date of the Software. Unless prepaid by Customer, SaaS Redundancy Fee renewals are quoted for budget purposes only. NC4 reserves the right to change renewals of the SaaS Redundancy Fees upon thirty (30) days prior notice to Customer (which may be sent by email).

4.3 Restrictions on Use. Customer shall not, directly or indirectly, (i) license, sell, lease or otherwise transfer the SaaS Redundancy Services, (ii) alter, modify, translate or create derivative works based on the Software, or permit a third party to do any of the foregoing; (iii) process or permit to be processed the data of any third party; (iv) use or permit the use of the SaaS Redundancy Services in the operation of a service bureau, timesharing arrangement or otherwise for the benefit of a third party; or (v) disassemble, decompile, reverse engineer or otherwise attempt to derive source code or other trade secrets from the SaaS Redundancy Services.

4.4 Use of Data. Customer shall be solely responsible for collecting, inputting and updating all Data related to Customer's use of the SaaS Redundancy Services. Customer shall ensure that the Data does not include anything that actually or potentially infringes or misappropriates the copyright, trade secret, trademark or other intellectual property right of any third party; contains anything that is obscene, defamatory, harassing, offensive, malicious or which constitutes child pornography; or otherwise violates any other right of any third party.

4.5 Termination. Either party may terminate the SaaS Redundancy Services in accordance with Section 12. Upon termination, NC4 shall cease all SaaS Redundancy Services, and Customer shall pay NC4 for SaaS Redundancy Services performed prior to the date of termination.

5. Additional Services.

5.1 Statements of Work. By entering into a Statement of Work with NC4, Customer may retain NC4 to modify, customize or enhance the Software or to provide implementation, training, and other services relating to the Software. Customer shall issue NC4 a Purchase Order or alternative ordering document acceptable to NC4, requesting the Services before commencement of Services under a mutually agreed upon Statement of Work, which shall include the hours to perform the Services and rates to be paid NC4 for performance of the Services. Standard NC4 installation, configuration or training services do not require a Statement of Work.

5.2 Payment for Services. Unless otherwise expressly specified in the applicable Statement of Work, NC4 shall provide the Services to Customer on a "time and materials basis" at NC4's then-current technical services rates. For the purposes of this Agreement, "time and materials basis" means that Customer shall pay NC4 for time spent performing the Services, and shall reimburse NC4 for expenses as set forth in Section 7.2.

5.3 Effect of Termination During Services. Upon termination of this Agreement, NC4 shall cease all Services, the Statement(s) of Work for all Services shall terminate, and Customer shall pay NC4 for Services performed prior to the date of termination.

5.4 Termination of Statement of Work. Either party may terminate only the Statement of Work if the other party is in breach of the terms contained in the Statement of Work and has not cured the breach within thirty (30) days of written notice specifying the breach. Consent to extend the cure period for breaches other than for nonpayment of fees shall not be unreasonably withheld, so long as the breaching party has commenced cure during the thirty (30) day notice period and pursues cure of the breach in good faith.

5.5 Change Requests. Customer may request changes to a Statement of Work including but not limited to requests for changes in project plans, scope, specifications, schedule, designs, or requirements. Any such request must be in writing. NC4 shall not be obligated to perform tasks described in Customer's request unless and until both parties agree in writing to the proposed changes.

6. Cooperation. Customer acknowledges and agrees that its cooperation with NC4 is essential to NC4's performance hereunder. Among other things, Customer shall cooperate with NC4 by providing timely access to office accommodations, facilities, equipment, assistance, cooperation, complete and accurate information and data from its officers, agents, and employees, and suitable configured computer products. NC4 shall not be liable for any deficiency in performance resulting from Customer's failure to do so.

7. Fees and Payment Terms.

7.1 Payment of Fees. Fees due NC4 are stated in the Purchase Order. Customer shall pay to NC4 any Fees payable hereunder according to the payment provisions of DIR Contract number DIR-SDD-974, Appendix A, Section 7. . NC4 may apply any Fee paid by Customer to any other unpaid license fees, or other Fees or expenses if such Fees and expenses remain unpaid after thirty (30) days of the invoice date. Unless otherwise instructed by Customer in writing, NC4 shall send all invoices to the address specified on the Purchase Order. Customer will send payments to the "Remit To" address noted on NC4's invoice.

7.2 Expenses. Customer shall reimburse NC4 for reasonable travel incurred while performing Services hereunder in accordance with DIR Contract number DIR-SDD-974, Section 4, G for reimbursement of travel costs. NC4's pricing under DIR Contract number DIR-SDD-974 is exclusive of travel and related costs. All Purchase Orders shall include a line item for travel and related costs. NC4 will invoice for travel and related costs per current State Travel Regulations.

7.3 Tax Exempt/Taxes/Worker's Compensation/Unemployment Insurance.

7.3.1 All NC4 Fees and charges set forth herein and on any corresponding Purchase Order issued under DIR Contract number DIR-SDD-974 are exclusive of any sales, use, excise, or similar taxes. In accordance with Section 151.309, Texas Tax Code, all Customers under DIR Contract number DIR-SDD-974 are exempt from the assessment of State sales, use and excise taxes. Further, Customers under DIR Contract number DIR-SDD-974 are exempt from Federal Excise Taxes, 26 United States Code Sections 4253(i) and (j).

7.3.2 NC4 agrees and acknowledges that during the existence of the DIR Contract number DIR-SDD-974, and any Purchase Order issued by Customer thereunder, NC4 shall be responsible for the liability and payment of NC4's and its employees' taxes of whatever kind arising out of the performances in DIR Contract number DIR-SDD-974. NC4 agrees to comply with all state and federal laws applicable to any such persons, including laws regarding wages, taxes, insurance, and workers' compensation. NC4 agrees and acknowledges that its employees, representatives, agents or subcontractors shall not be entitled to any State or Customer benefit. Customer and/or the State shall not be liable to NC4, its employees, agents or others for the payment of taxes or the provision of unemployment insurance and/or workers' compensation or any benefit available to a State or Customer employee.

7.3.3 NC4 agrees to indemnify and hold harmless Customer, the State of Texas and/or their employees, agents, representatives, contractors, assignees, and/or designees from any and all liability, actions, claims, demands, or suits, and all related costs, attorneys' fees and expenses relating to tax liability, unemployment insurance and/or workers' compensation or expectations of benefit by NC4, its employees, representatives, agents or subcontractors in its performance under DIR Contract number DIR-SDD-974. NC4 shall be liable to pay all costs of defense including attorneys' fees.

8. Confidential Business Information and Nondisclosure; Publicity.

8.1 Confidential Information of Customer. To the extent that NC4 comes into possession of any non-public data or records or any proprietary or confidential information of Customer or any third party (collectively, "Customer Confidential Information"), NC4 will not use any such information for any purpose other than performance of this Agreement and will not disclose any such information to any third party without the Customer's consent, except: (a) as may be required by law, regulation, judicial or administrative process; or (b) as required in litigation pertaining to this Agreement, provided Customer is given advance notice of such intended disclosure in order to permit Customer the opportunity to seek a protective order. Customer Confidential Information does not include information that (i) becomes public other than as a result of a disclosure by NC4 in breach hereof, (ii) becomes available to NC4 on a non-confidential basis from a source other than the Customer, which is not prohibited from disclosing such information to NC4 by obligation to the Customer, (iii) is known by Customer prior to its receipt from the Customer without any obligation of confidentiality with respect thereto, or (iv) is developed by NC4 independently of any disclosures made by the Customer to NC4 of such information. NC4 shall ensure that all individuals assigned to perform services hereunder shall abide by the terms of this Section 8.1(A).

8.2 Confidential Information of NC4. The following provisions regarding confidentiality of information are subject to the terms of DIR Contract number DIR-SDD-974, Appendix A, Section 9.H.

(A) Customer acknowledges that in connection with the performance of the parties' obligations under this Agreement, Customer and its employees and representatives will receive or have access to or otherwise be provided certain confidential and proprietary information of NC4 ("NC4 Trade Secret Information"), including, without limitation, software, documentation, training courseware and materials, release notes, database layouts, algorithms, techniques, processes, and systems designs relating to the Software or NC4 Services, plans for products or services, marketing plans, and financial documents or data, whether or not marked as confidential information.

(B) To the extent permitted by State law and except as expressly permitted under this Agreement, Customer will treat NC4 Trade Secret Information as confidential information of NC4, will not use the NC4 Trade Secret Information for any purpose other than the use, maintenance and support of the Software in the normal course of business, and will not disclose the NC4 Trade Secret Information to any third party other than its own employees and such contractors who are not competitors of NC4, as Customer may engage to assist the Customer with the acquisition, implementation and ongoing extension, maintenance and support of information systems (a "Contractor"). NC4 Trade Secret Information does not include: (i) any information which was known to or readily ascertainable by proper means by Customer or a Contractor before being disclosed to Customer by NC4; (ii) any information which is or becomes available to the general public without fault or action of Customer or a Contractor in violation of this Agreement; (iii) any information which is disclosed to Customer or a Contractor by a third party which is not prohibited from disclosing such information to Customer or a Contractor by obligation to NC4; (iv) any information which is developed independently by Customer or a Contractor. Subject only to the foregoing exceptions, Customer will not disclose NC4 Trade Secret Information to any contractors, subcontractors, or other third parties employed by Customer who do not first execute a NC4 Confidentiality Agreement, the form of which is to be provided by NC4, or comparable Customer Confidentiality Agreement containing provisions no less restrictive than those contained in the NC4 Confidentiality Agreement.

8.3 Obligations of Confidentiality and Nondisclosure. For purposes of this Section 8.3, "Confidential Information" shall include Customer Confidential Information and NC4 Trade Secret Information. Each party shall use the Confidential Information of the other party solely in the performance of its obligations under this Agreement, treat as confidential all Confidential Information of the other party, and not disclose such Confidential Information, except to authorized employees of the receiving party or its affiliates, its legal counsel and accountants (provided that the receiving party contractually obligates them to a duty of confidentiality no less restrictive than the duty imposed by this Section 8 and that the receiving party shall remain jointly and severally liable for any breach of confidentiality by such parties). Without limiting the foregoing, each of the parties shall treat the other party's Confidential Information with at least the same degree of care it uses to prevent the disclosure of its own Confidential Information, but in no event less than reasonable care. Each party shall promptly notify the other party of any actual or suspected misuse or unauthorized disclosure of the other party's Confidential Information. Upon expiration or termination of this Agreement, each party shall return all tangible copies of any Confidential Information received from the other party.

8.4 Publicity and Use of Marks. Neither party may publish or distribute any material bearing the name, logo(s) or trademark(s) of the other party without prior written consent of that party. Each party's use of the other's name, logo(s) and trademarks must comply with the other party's policies in effect at the time of use, including, without limitation, trademark use, quality control and cooperative advertising policies, if any. Each party will include appropriate trademark notices in all written and electronic materials bearing the other party's marks.

9. Limited Warranty. All of the following provisions regarding warranty are subject to the terms of DIR Contract number DIR-SDD-974, Appendix A, Section 6, C.

9.1 Software Warranties

(a) NC4 warrants for a term of ninety (90) days from the date of shipment or download of Software ("Software Warranty Period") that the Software will materially conform to the functional specifications described in NC4's published Documentation ("Specifications"). Customer must report any defects in the Software to NC4 in writing within the Software Warranty Period for that particular Purchase Order or Statement of Work in order to receive the warranty remedy set forth in this Section 9.1.

(b) NC4's sole obligation under this Software warranty shall be, at NC4's discretion, to provide a work around or correction for, or replace, any defective Software so as to enable the Software to materially conform to the Specifications. If NC4 is unable to provide a work around or correction for, or replace, the Software so that it materially conforms to the Specifications, then NC4 will, upon Customer's written request for cancellation of the Purchase Order, refund the license fee that was paid by Customer to NC4 for the Purchase Order.

(c) NC4 shall have no obligation under this warranty if the Software has been (i) used other than in accordance with this Agreement or the Specifications and Documentation; (ii) modified by a party other than NC4, or (iii) combined with hardware or software not identified in the Specifications as being compatible with the Software.

(d) THE REMEDIES SET FORTH IN THIS SECTION 9.1 ARE THE SOLE AND EXCLUSIVE REMEDIES FOR BREACH OF THE WARRANTIES GIVEN BY NC4 UNDER THIS SECTION 9.1.

(e) NC4 AND ITS SUPPLIERS MAKE NO WARRANTIES TO ANY PERSON OR ENTITY WITH RESPECT TO THE SOFTWARE (OTHER THAN THOSE SET FORTH IN THIS SECTION 9.1) OR ANY DERIVATIVES THEREOF AND DISCLAIM ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, INFORMATIONAL CONTENT, SYSTEM INTEGRATION, ENJOYMENT AND NON-INFRINGEMENT.

9.2 Services Warranties.

(a) NC4 warrants to Customer that the Services for a particular Statement of Work will be performed in manner consistent with generally accepted industry practices. Customer must report any deficiencies in the Services to NC4 in writing within ninety (90) days of completion of the Services for that particular Purchase Order or Statement of Work in order to receive the warranty remedy set forth in this Section 9.2.

(b) If the Services are not performed in a manner consistent with generally accepted industry practices, then NC4's sole obligation under this service warranty shall be to re-perform the defective Services. For any breach of the Services Warranty set forth in this Section 9.2, Customer's exclusive remedy, and NC4's entire liability, shall be the re-performance of the Services, and if NC4 fails to re-perform the Services as warranted, Customer shall be entitled to a refund of the Fees paid by Customer to NC4 for the deficient Services.

(c) NC4 AND ITS SUBCONTRACTORS MAKE NO WARRANTIES TO ANY PERSON OR ENTITY WITH RESPECT TO THE SERVICES (OTHER THAN THOSE SET FORTH IN THIS SECTION 9.2) AND DISCLAIM ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF WORKMANSHIP, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

10. Indemnification. Indemnification is subject to the terms of DIR Contract number DIR-SDD-974, Section 9, A.

11. Limitation of Liability.

FOR ANY CLAIM OR CAUSE OF ACTION ARISING UNDER OR RELATED TO DIR Contract number DIR-SDD-974 OR PURCHASE ORDERS ISSUED THEREUNDER, OR THIS AGREEMENT: (i) NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR LOSS OF DATA OR SYSTEM USE, DOWNTIME, GOODWILL, PROFITS OR OTHER BUSINESS LOSS, LOSS OR INACCURACY OF DATA, OR OTHER INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL, OR CONSEQUENTIAL DAMAGES, EVEN IF IT IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; AND (ii) NC4'S LIABILITY FOR DAMAGES OF ANY KIND TO CUSTOMER SHALL BE LIMITED TO THE TOTAL AMOUNT PAID TO NC4 BY CUSTOMER FOR THE PRODUCTS OR SERVICES WHICH ARE THE DIRECT CAUSE OF THE DAMAGES OR LIABILITY CLAIMED DURING THE TWELVE MONTHS IMMEDIATELY PRECEDING THE ACCRUAL OF THE CLAIM OR CAUSE OF ACTION. IN NO EVENT SHALL NC4 HAVE ANY LIABILITY FOR CUSTOMER'S USE, MISUSE OR FAILURE TO USE THE SOFTWARE OR SERVICES.

12. Term and Termination.

12.1 Term. So long as all license Fees due are timely paid to NC4, the licenses granted hereunder are perpetual in nature, unless otherwise stated in the Purchase Order or terminated in accordance with the following provisions. Until such time as all Fees are paid to NC4, the licenses granted hereunder are temporary in nature and subject to cancellation by NC4. The Initial Term of the Services procured hereunder, as well as the terms and conditions of this Agreement, shall commence as of the date of acceptance of Customer's Purchase Order by NC4 and shall continue for one year, unless a longer period is stated in the Purchase Order ("Initial Term"). Before the expiration of the Initial Term, this Agreement and the Services procured hereunder may be renewed each year with 60 days prior written notice to the Customer allowing thirty (30) days for them to respond. All extensions shall be agreed in writing.

12.2 Termination of Purchase Order by Customer for Non-Appropriation. Customer may terminate a Purchase Order if funds sufficient to pay its obligations are not appropriated by the governing body on behalf of local governments, or by the Texas legislature on behalf of state agencies. In the event of non-appropriation, NC4 will be provided at least ten (10) calendar days written notice of intent to terminate. Notwithstanding the foregoing, if Customer issues a Purchase Order and has accepted delivery of the product or services, Customer is obligated to pay for the product or services.

12.3 Termination of Purchase Order for Convenience. Customer may terminate a Purchase Order if it is determined by Customer that NC4 will not be able to deliver products or services in a timely manner to meet the business needs of Customer. Either party may terminate a Purchase Order for ASP Redundancy Services with thirty (30) days written notice to the other party.

12.4 Termination of Purchase Order for Cause. Customer or NC4 may terminate a Purchase Order upon the occurrence of a material breach of any term or condition: (i) of DIR Contract number DIR-SDD-974, (ii) of this Agreement, or (iii) included in the Purchase Order in accordance with DIR Contract number DIR-SDD-974. The non-defaulting party shall give the defaulting party thirty (30) calendar days from receipt of written notice to cure said default. If the defaulting party fails to cure the default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate the Purchase Order.

12.5 NC4 Rights Under Termination. In the event a Purchase Order is terminated or DIR Contract number DIR-SDD-974 expires or is terminated for any reason, Customer shall pay all amounts due to NC4 for products or services ordered and delivered prior to the effective date of termination.

12.6 Effect of Termination. Upon termination, and to the extent authorized by applicable records retention laws and policies, Customer shall deinstall the Software and, at NC4's sole discretion, either destroy or return all Software copies and documentation. Customer shall certify to NC4 in writing within five (5) business days of the termination notice that Customer has complied with this Subsection 12.5 and that no Software is being used or retained on any computer or storage device. Upon termination, NC4 shall have the right, at any time, to terminate the license and take immediate possession of the Software and all copies wherever located, without demand or notice.

12.7 Survival. The provisions of Sections 2.3, 2.4, 4.3, 4.4, 5.2, 5.3, 7, 8, 9, 10, 11, 12 and 13 shall survive the termination of this Agreement.

13. General

13.1 Audit Rights. During normal business hours and at any time the Software or Service is being used, NC4 or its authorized representative will have the right to audit and inspect Customer's use of the Software and Service or compliance with the terms of this Agreement. NC4 may audit Customer use of the Software and Service or compliance with the terms of this Agreement by remote access of Customer's Equipment with or without notice at any time. NC4 shall give Customer reasonable advance notice if it intends to conduct an on-site audit and inspection.

13.2 Assignment. Is controlled by DIR Contract number DIR-SDD-974, Appendix A, Section 4, D

13.3 Non-Solicitation of Employees. Each Party agrees that during the term of this Agreement and for a period of two years after its expiration or termination, neither party will solicit or encourage any employee or consultant to discontinue their employment or engagement with the other Party. This Section 13.3 shall not apply to employment opportunities of either party advertised to the general public (e.g., newspaper advertisement, internet advertisement or listing, etc.) to which an employee of either party may respond.

13.4 Force Majeure. Either party hereunder may be excused from performance under DIR Contract number DIR-SDD-974 and any Purchase Order issued thereunder for any period when performance is prevented as the result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the party experiencing the event of Force Majeure has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance and to shorten the duration of the event of Force Majeure. The party suffering an event of Force Majeure shall provide notice of the event to the other parties when commercially reasonable. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination. However, a Customer may terminate a Purchase Order if it is determined by the Customer that NC4 will not be able to deliver product or services in a timely manner to meet the business needs of the Customer.

13.5 Compliance With Regulations. Customer agrees to comply fully with all relevant export and import laws and regulations of the United States and the country or territory, to assure that neither the Software, nor any direct product thereof, are exported or imported, directly or indirectly, in violation of such laws.

13.6 Dispute Resolution. Disputes arising between NC4 and Customer shall first be elevated within the organization in an attempt to resolve such disputes. Any disputes not resolved in the normal course of business will be resolved in accordance with the dispute resolution process of the Customer, which shall not be inconsistent with the dispute resolution process provided for in Chapter 2260, Texas Government Code.

13.7 Third-Party Beneficiaries. Any person licensing a third-party software to NC4 or its subsidiaries is hereby specified as a third-party beneficiary of this Agreement. NC4 will be responsible for all third-party beneficiary reporting. Except as expressly set forth in this Section, there shall be no third-party beneficiaries under this Agreement.

13.8 Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of this Agreement.

13.9 Waiver and Modification. Waiver of any breach or failure to enforce any term of this Agreement shall not be deemed a waiver of any breach or right to enforce which may thereafter occur. Any waiver, amendment, supplementation or other modification or supplementation of any provision of this Agreement shall be effective only if in writing and signed by both parties.

13.10 Governing Law. This Agreement shall be governed by and construed in accordance with the substantive laws of the United States and the State of Texas, without regard to or application of Texas's conflicts of law principles. This Agreement shall not be governed by the United Nations Convention on the International Sale of Goods or the Uniform Computer Information Transactions Act, the application of which are expressly excluded. Nothing herein shall be construed to waive the sovereign immunity of the State of Texas.

13.11 Notices. All notices required or permitted under this Agreement shall be in writing, shall reference DIR Contract number DIR-SDD-974 and this Agreement and will be deemed given on: (i) the date of delivery if delivered by email, facsimile transmission, mailed by registered or certified mail, or hand delivered, or (ii) three business days after being mailed via United States Postal Service. All notices to Customer shall be sent to the representative provided by Customer at the time of issuing the Purchase Order to NC4, and if no representative is so noted on the Purchase Order, to the buyer or contracts representative issuing the Purchase Order. All notices to NC4 shall be sent to the contact information set forth below. Either party may change its notice contact and information by written notice to the other party pursuant to this Section 13.11:

To NC4: NC4 Public Sector LLC
28202 Cabot Road, Suite 300
Laguna Niguel, CA 92677
Attn: Contracts Department
Phone: 949-365-5790
Fax: 949-365-5791

With copy to: NC4 Public Sector LLC
Attn: Vicki L. Hamilton
100 N. Sepulveda Blvd., Suite 200
El Segundo, CA 90245
Phone: 760-471-9120
Fax: 310-606-4309
Email: vicki.hamilton@nc4.us

To Customer: Collin County Purchasing Agent
2300 Bloomdale Road, Suite 3160
McKinney, Texas 75071
Attn: Frank Ybarbo
Phone: 972-548-4117
Fax: 972-548-4694

13.12 Independent Contractor. NC4 agrees and acknowledges that during the existence of DIR Contract number DIR-SDD-974, and any Purchase Order issued thereunder by Customer, NC4 is furnishing services in the capacity of an independent contractor and that NC4 is not an employee of Customer.

13.13 Referenceability. NC4 shall not be entitled to: (i) publicly announce the signing of the software license agreement, (ii) include Customer's name as a customer on NC4's web site, collateral materials and/or presentations, and (iii) provide Customer's name as a reference for media, analysts, prospects or other groups without the prior written consent of the Customer.

13.14 Entire Agreement. This Agreement and DIR Contract number DIR-SDD-974 constitute the entire agreement between the parties with respect to the subject matter of this Agreement, and supersede and replace all prior or contemporaneous statements, understandings or agreements, written or oral, regarding such subject matter.

13.15 Order of Precedence; Governing Documents. The parties hereby agree that the terms and conditions of DIR Contract number DIR-SDD-974 and this Agreement shall govern and have precedence over any general terms and conditions of a Purchase Order issued under DIR Contract number DIR-SDD-974. If there is any conflict between the terms and conditions of this Agreement and any Purchase Order or similar document, the order of precedence shall be DIR Contract number DIR-SDD-974, this Agreement, and finally the purchase order.

13.16 Points of Contact. Schedule B attached hereto provides Customer's initial points of contact pertinent to NC4's fulfilling its delivery of the products and services procured hereunder. Schedule B may be updated from time to time as the parties deem appropriate to accommodate changes in personnel, etc.

13.17 Authority to Bind Licensee. The individual signing below on behalf of Licensee hereby certifies that he or she has such authority to sign this Agreement on behalf of Licensee and bind Licensee accordingly.

NC4 PUBLIC SECTOR LLC

BY 

NAME RANDY SMITH

TITLE CFO

DATE 11/16/09

CUSTOMER/LICENSEE

BY 

NAME Frank Ybarbo

TITLE Purchasing Agent

DATE 11/9/09

Court Order No. 2009-944-11-09

**SCHEDULE B
TO
NC4 SOFTWARE LICENSE, MAINTENANCE AND SERVICES AGREEMENT**

LICENSEE POINTS OF CONTACT

Operational Point of Contact for Project

Name: Jason Lane
Address: 4300 Community Ave.
McKinney, Texas 75071
Telephone: 972-548-4708
Email: jlane@co.collin.tx.us

Technical (IT) Point of Contact for Project

Name: Steve Wasserman
Address: 4300 Community Ave
McKinney, TX 75071
Telephone: 972-548-4394
Email: swasserman@co.collin.tx.us

Contracts Point of Contact for Project

Name: Leslie Harper
Address: 2300 Bloomdale Road, Suite 3160
McKinney, Texas 75071
Telephone: 972-548-4122
Email: lharper@co.collin.tx.us



NC4 Public Sector LLC
 Contracts Dept
 28202 Cabot Rd, Ste 300
 Laguna Niguel, CA 92677
 Ph: 949-365-5790

Product Quote

Prepared By :	Jason Bates
Phone Number:	(714) 269-3030
Email Address:	jason.bates@nc4.us

Date:	02/27/2009
Quote Valid Until:	03/23/2009
Quote ID:	Q-00034

Prepared For:	Jason Lane , (972) 548-4708
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Bill To	Collin County Office of Emergency Management 4300 Community Ave McKinney, Tx 75071 USA
Ship To	Collin County Office of Emergency Management 4300 Community Ave McKinney, Tx 75071 USA

Product Code	Product Name / Description	Unit Price	Qty	Totals (\$)	
<u>E Team Enterprise MS SQL</u>					
3490-EXP-R6	Reimbursable Expenses Actual Travel and Expenses	0.00	1	0.00	
			Category E Team Enterprise MS SQL Subtotal	0.00	
<u>E Team Enterprise Training</u>					
4551-TREU-R6	E Team Enterprise End User Training Operational End User focus, 10 users, 4 hours	2,500.00	10	25,000.00	
4552-TRTTT-R6	E Team Enterprise Train the Trainer Training Instruction for E Team Training for Client Trainer and delivery. 2 users for 3 Days.	7,500.00	6	45,000.00	
4553-TRPU-R6	E Team Enterprise Power User Training & Configuration Designed for key operational EOC personnel. 5 users for 3 days.	8,000.00	4	32,000.00	
			Category E Team Enterprise Training Subtotal	102,000.00	
<u>E Team Prof. Svcs.</u>					
4402-ETPS-CS	Consulting Services Hourly rate for Consulting Services	185.00	40	7,400.00	
4403-ETPS-CP	Concept of Operation Consulting Services Hourly rate for Concept of Operations Consulting services	200.00	16	3,200.00	
			Category E Team Prof. Svcs. Subtotal	10,600.00	
Special Instructions:				Product Total:	112,600.00
Reimbursed Expenses NTE \$2500/ Trip per Consultant. 14 Estimated Trips Total.				Sales Tax:	0.00
				Grand Total:	112,600.00
Payment Terms: Net 30					



NC4 Public Sector LLC
Contracts Dept
28202 Cabot Rd, Ste 300
Laguna Niguel, CA 92677
Ph: 949-365-5790

Product Quote

Terms and conditions

Please sign and return this quote to the above address, Attention Contracts Manager.

Please indicate below what your action will be:

We will pay from this Notice and Acknowledgment prior to the expiration date set forth above. No further action is required by NC4.

Please invoice us. No purchase order is required.

A purchase order is required in order to pay an NC4 invoice. We will promptly issue a purchase order to NC4 in order to allow processing of an invoice and payment prior to the expiration date above.

This document constitutes a binding commitment by the company/agency set forth above to renew the above services. The individual signing below hereby certifies that he or she has such authority to sign and bind company/agency accordingly.

Approved by:

Signature

Name

Title

Date