PROFESSIONAL SERVICES CONTRACT

RFP2022-09
RESOLUTION 22-389
PERMANENT ACOUSTICAL LEAK DETECTION EQUIPMENT AND DATA ANALYSIS SERVICES FOR A PERIOD OF ONE (1) YEAR FROM OCTOBER 7, 2022 TO OCTOBER 6, 2023 AWARDED TO ECHOLOGICS, LLC

THIS CONTRACT made this 6TH day of OCTOBER 2022 by and between the CITY OF TRENTON, 319 EAST STATE STREET, TRENTON, NEW JERSEY 08608 a Municipal Corporation of the State of New Jersey, ("City") and ECHOLOGICS, LLC, 1200 ABERNATHY ROAD, SUITE 1200, ATLANTA, GEORGIA 30328 (CONTRACTOR").

WHEREAS, the City has a need FOR PERMANENT ACOUSTICAL LEAK DETECTION EQUIPMENT AND DATA ANALYSIS SERVICES for the City of Trenton, Department of Water and Sewer.

WHEREAS, Contractor agrees to provide FOR PERMANENT ACOUSTICAL LEAK DETECTION EQUIPMENT AND DATA ANALYSIS SERVICES for the City of Trenton, Department of Water and Sewer accordance with the terms and conditions as set forth hereinafter, and the City being agreeable thereto;

NOW THEREFORE, the parties mutually agree as follows:

FOR PERMANENT ACOUSTICAL LEAK DETECTION EQUIPMENT AND DATA ANALYSIS SERVICES for the City agrees to retain ECHOLOGICS, LLC, 1200 ABERNATHY ROAD, SUITE 1200, ATLANTA, GEORGIA 30328 ("the request of and under the general supervision of the City of Trenton, Department of Water and Sewer.

1. SCOPE OF SERVICES

SEE ATTACHED SCOPE OF SERVICES

DURATION OF THE CONTRACT:
This contract shall remain in full force and effect for a period of one (1) year from October 7, 2022 to October 6, 2023 in an amount not to exceed $460,314.89.

2. STATUS OF CONTRACTOR: It is expressly understood by and between the parties hereto that the status of the Contractor retained to carry out the services set forth in this agreement is that of an Independent Contractor. It is further understood by and between the parties that is not intended, nor shall it be construed, that the contractor is an agent, employee, or officer of the City of Trenton.

3. NOTICES: Any notices required to be delivered to either party pursuant to this Contract shall be in writing to their respective addresses. The parties shall be responsible for notifying each other of any change of address.

4. INTEGRATION: Resolution #22-389 and this contract constitutes the entire agreement between the parties and any representation that may have been made prior to the execution of this Contract are nonbonding, void, and of no effect and neither party has relied on any such prior representations in entering into this Contract with the City of Trenton, Department of Water and Sewer.

5. ENFORCEABILITY: If any term or condition of this Contract or its application to any party or circumstances shall be deemed invalid or unenforceable, the remainder of the Contract and its application to other parties and circumstances shall not be affected.

6. GOVERNING LAW: This Contract shall be governed by the laws of the State of New Jersey.

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7. MISCELLANEOUS PROVISIONS:

a. Contractor will.not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, sex, gender identity or expression, affectional or sexual orientation, disability or nationality. Contractor will take affirmative action to ensure that such applicants are recruited and employed and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, sex, affectional, gender identity or expression, sexual orientation. Such action shall include, but is not limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause;

b. Contractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, sex, gender identity or expression, affectional or sexual orientation.

c. Contractor, where applicable, agrees to comply with the regulations promulgated by the Treasurer pursuant to P.L. 1975, c. 127, as amended and supplemented from time to time and the American with Disabilities Act.

d. Contractor, where applicable, agrees to attempt to schedule minority and female workers consistent with the applicable county employment goals prescribed by N.J.A.C. 17:27-5.2 promulgated by the Treasurer pursuant to P.L. 1975, c. 127, as amended and supplemented from time to time or in accordance with a binding determination of the applicable county employment goals determined by the Affirmative Action Office pursuant to N.J.A.C. 17:27-5.2, amended and supplemented from time to time.

e. Contractor, where applicable, agrees to inform in writing appropriate recruitment agencies in the area, including employment agencies, placement bureaus, colleges, universities, labor unions that it does not discriminate on the basis of age, creed, color, national origin, ancestry, marital status, sex, gender identity or expression, affectional, sexual orientation, disability or nationality and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

f. Contractor, where applicable, agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, race, creed, color, national origin, ancestry, marital status, sex, gender identity or expression, affectional, sexual orientation, disability or nationality. Contractor will conform these employment goals consistent with statutes and court decisions of the State of New Jersey, and applicable Federal law and Federal court decisions.

g. Contractor, where applicable, shall furnish such reports or other documents to the Affirmative Action Office as may be requested by the office from time to time in order to carry out the purposes of these regulations. Contractor shall furnish such information as may be requested by the Affirmative Action Office for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code (N.J.A.C. 17:27).

h. Contractor, shall submit along with the signed contract one of the following as evidence of compliance with N.J.A.C. 17-27:

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1. Appropriate evidence that the independent contractor is operating under an existing Federally approved or sanctioned affirmative action program.

2. A certificate of employee information report approval issued in accordance with N.J.A.C. 17:27-4.

3. An initial employee information report (Form AA#302) provided by the Affirmative Action Office and completed by the contract . accordance with N.J.A.C. 17:27-4

_____
ECHOLOGICS, LLC.
1200 ABERNATHY ROAD, SUITE 1200
ATLANTA, GEORGIA 30328

Feb 16, 2023
DATE

Seal: _____

Attest: _____
CONTRACT ADMINISTRATOR

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year above written.

ATTEST:

_____
MUNICIPAL CLERK

3/1/23
DATE

CITY OF TRENTON

_____
W. REED GUSCIORA, ESQ.
MAYOR

2·27·23
DATE

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RESOLUTION No. 22-389

Date of Adoption: OCT 6 2022

Approved as to Form and Legality

WESLEY BRIDGES, ESQ. DIRECTOR OF LAW

Factual content certified by

MARK LAVENBERG, DIRECTOR OF WATER AND SEWER

Councilman /woman _____ presents the following Resolution:

RESOLUTION AWARDING A CONTRACT THROUGH A FAIR AND OPEN PROCESS IN ACCORDANCE WITH N.J.S.A. 19:44 A-20.4 ET SEQ., TO ECHOLOGICS, LLC FOR PERMANENT ACOUSTICAL LEAK DETECTION EQUIPMENT AND DATA ANALYSIS SERVICES FOR A PERIOD OF ONE (1) YEAR FROM OCTOBER 7, 2022 TO OCTOBER 6, 2023 IN AN AMOUNT NOT TO EXCEED $460,314.89 RFP2022-09

WHEREAS, a Request for Proposal was advertised on Mach 14, 2022 by the Qualified Purchasing Agent and one (1) proposal was received on April 5, 2022 in the Division of Purchasing and said proposal was evaluated by a committee based on criteria that included experience, understanding of requirements and cost; and

WHEREAS, TWW's water allocation permit #5187 requires TWW to reduce its unaccounted-for-water to less than 15% by 3/31/27. Based on past estimates, TWW's UFW lies somewhere within the range of 25% to 45%. To reduce UFW below 15% prior to 3/31/27 deadline, TWW has initiated an unaccounted-for water program, which is a multi-faceted approach to addressing UFW which includes a phased system-wide meter replacement program to upgrade old and inefficient water meters in our system, a leak detection and repair program to reduce water loss, and an illegal water use control program; and

WHEREAS, as a component of TWW's unaccounted for water program, TWW has applied for and received a grant from the NJ New Jersey Board of Public Utilities ("BPU") for acoustic leak detection in the amount of $433,000.00 City Council has accepted this grant in February 2022 via Resolution Number #22-038. The grant will be used for the procurement, placement, programming, and monitoring of permanent acoustic leak detection at 360 hydrants within portions of Trenton and Hamilton. The acoustic devices must be installed before June 2023. This will provide the Department with the tools to proactively identify leaks within the water distribution system before they surface and cause damage to property and roads; and

WHEREAS, the City of Trenton, by and through the Department of Water and Sewer has a need for permanent acoustical leak detection equipment and data analysis services for a period of one (1) year from October 7, 2022 to October 6, 2023; and

WHEREAS, the sole proposal of Echologics, LLC, 1200 Abernathy Road, Suite 1200, Atlanta, Georgia 30328 was deemed to include the necessary qualifications and expertise for the performance of design services on a consulting basis at the rates listed in the proposal; and

WHEREAS, funds in an amount not to exceed $460,314.89 have been certified to be available in the following account number(s): C-06-22-55-050G-300 ($433,044.00), and 2-05- -55-500-899 ($27,270.89). This contract shall be awarded for a period of one (1) year from October 7, 2022 to October 6, 2023.

RESOLUTION

NOW, THEREFORE BE IT RESOLVED, by the City Council of the City of Trenton as follows:

1. The above recitals are incorporated by reference as if set forth at length herewith.

2. The mayor is hereby authorized to enter into a contract with Echologics, LLC, 1200 Abernathy Road, Suite 1200, Atlanta, Georgia 30328 for permanent acoustical leak detection equipment and data analysis services to the City of Trenton Department of Water and Sewer for a period of one (1) year from October 7, 2022 to October 6, 2023.

3. This contract is awarded pursuant to the authority set forth in the Local Public Contracts Law at N.J.S.A. 40A:11-5.

3. A notice of this action shall be printed once in the official newspaper for the City of Trenton and this Resolution, and the contract shall remain on file in the office of the City Clerk.

	Ayo	Nay	Abstain	Absent		Ayo	Nay	Abstain	Absent		Ayo	Nay	Abstain	Absent
CALDWELL WILSON	✓				VAUGHN	✓								
HARRISON	✓				WILKINS	✓								
MUSCHAL	✓				MCBRIDE	✓								

This Resolution was adopted at a Meeting of the City Council of the City of Trenton on _____ 10/6/22

Kathy McBride
President of Council
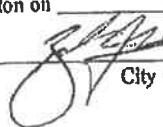
_____ City Clerk

I.   INTRODUCTION

A.   Purpose of the Request for Proposal (RFP)

The Trenton Water Works (TWW) is a Division within the City of Trenton's Department of Water and Sewer. TWW *is one of the oldest publicly owned water systems in the United States, supplying an average of 28 million gallons of water per day to approximately* 250,000 people via approximately 63,000 metered accounts *in a five-municipality service area in Mercer County, NJ: Trenton, Ewing Township, parts of Hamilton Township, Lawrence Township, and Hopewell Township. TWW operates a water-filtration plant rated at 60-million-gallon per day and water-distribution system that includes 658 miles of transmission and distribution water mains.* The distribution system includes a 78-Million-gallon finished water reservoir, two (2) 1.4-Million gallon above ground storage tanks, four (4) 1.0-Million gallon above ground elevated storage tanks, one (1) 600,000-gallon hydropillar, and one (1) 1.2-Million-gallon standpipe for system storage.

TWW is the recipient of a BPU grant for an Acoustical Testing Pilot Program to reduce non-revenue water. The Acoustic Leak Detection program aims to locate water leaks within the system that TWW will ultimately repair to reduce non-revenue water (NRW) and unaccounted for water (UAW). NRW estimates range from 25% to 45%, varying with the method of calculation. TWW is in the process of implementing several NRW reducing programs to achieve a total NRW below 15%. The comprehensive program that TWW proposed for the BPU grant includes the following:

This RFP is for qualified firms to provide design, deployment and monitoring of TWW's acoustic leak detection program in accordance with the project scope approved in the above referenced BPU grant. The work covered under this RFP includes the following:

1.   Procurement, deployment, and data analysis/monitoring of permanent acoustic leak detection equipment at 360 hydrants located within areas specified under the BPU grant.

2.   Assistance in developing quarterly reports documenting project implementation, progress, water savings (gallons, or % NRW or UAW), energy savings (kWh), and associated cost savings as required under the BPU grant.

Pinpointing and repair of leaks in response to acoustic leak detection data will be completed by TWW. Note that a Satellite Leak Detection Survey of the entire

system is also being completed by TWW through a separate contract. See Appendix A for a map of the TWW Franchise area for reference.

B. PROJECT OVERVIEW

Trenton Water Works (TWW) is seeking proposals for implementing real-time monitoring and analysis of the water distribution system, including active monitoring of pressure in the water system as well as water leaks. TWW seeks to locate and repair major water leaks within our distribution system to reduce nonrevenue water over the course of the 18 months of the grant period (July 2021 – January 2023) and beyond. TWW is investing in permanent acoustic leak detection equipment and smart technology that will allow real time monitoring of leak noise and pressure without changing current infrastructure and operating procedures.

TWW's leak detection program will utilize three different leak detection techniques: satellite leak detection for surveying the entire distribution system, permanent acoustic leak detection equipment mounted on hydrants approved under the BPU grant, and mobile crews that pinpoint leaks with handheld correlators. This combination of techniques will provide TWW with a robust leak detection program that will assist TWW in meeting its NRW Reduction Program goals.

TWW has a network of approximately 3,503 hydrants throughout the distribution system. The highest density of hydrants occurs in the City of Trenton, and the adjacent, more densely populated suburbs. The successful firm will deploy permanent acoustic leak detection equipment on hydrants within the distribution system, focusing on intersection of the neighborhoods outlined in the BPU grant proposal. Approximately 360 hydrants will be selected for the first year of the program in areas identified in the grant. Static pressure is also an indicator of a sudden leak, therefore the TWW program includes pressure monitoring as well as acoustical noise.

Pertinent specifications and requirements for the acoustic leak detection equipment are noted as follows:

1. Hydrants are all U.S. Pipe Metropolitan/M-94 Dry-Barrel with either 4 ½" or 5 1/4" valve sizes.

2. No excavation shall be necessary for the deployment of the equipment.

3. The permanent acoustical leak detection hardware shall fit into the hydrant without affecting its operability, appearance, or maintenance procedures. These devices shall use replaceable batteries to reduce

lifecycle cost.

4. Pressure Data shall be provided while the main valve is closed and without charging the hydrant. Leak monitoring shall be independent of any valve position. Pressure sensor shall have a range of 0 – 250 PSI

5. The successful firm shall provide third party lab testing data to demonstrate compliance with AWWA C502 flow loss requirements.

6. The pressure sensors shall be certified to ANSI.NSF 61 & 372.

7. The permanent acoustic leak detection equipment and pressure sensors shall be AWWA C502 compliant.

8. The hardware shall have the capability for smart communications to a central data platform. The platform shall have an intuitive, easy to use interface that provides important data to aid TWW in making operational and repair decisions. The data gathered by the software shall be displayed on a scalable, web-based platform. Data shall be always property of TWW and always accessible to TWW staff.

9. SMS notification to key personnel shall be provided for pressure events. Notification shall occur within two minutes of the event occurrence.

C. Anticipated Schedule

TWW is providing the schedule below and realizes that dates are approximate.

Award Contract to Selected Firm _____ 4/2022
Notice to Proceed_____ 5/2022
Complete installation hydrant mounted acoustic leak detection devices
_____9/2022
Training of TWW staff in data analysis _____ 10/2022
Evaluate first results_____ 10/2022
Continue evaluation of results, fine tune deployment11/2022-12/2023
Quarterly Reporting on progress_____ongoing – Jan 2023

II.   SCOPE OF WORK

The following details the scope of work to be performed by the successful firm:

Task 1: SYSTEM DESIGN.

1. Hydrants to be equipped with acoustic leak detection are to fall within the areas prescribed in the BPU Grant application (see Appendix A). This includes the City of Trenton and adjacent area in Hamilton Township.
2. Determine location of hydrants that will receive acoustic leak detection units. Determine hydrant locations that will receive pressure monitors. Hydrants to be approved by TWW staff.
3. Conduct one video meeting for TWW staff to introduce the leak detection system design and incorporate feedback into final design.
4. Site Inspection – in person visit to view field conditions in the areas of interest and confirm the acoustic leak detection system design. Assess Cellular signal strength for data transmission. This will include assessment of hydrants and the gathering of information with which to design the custom hardware.

Task 2: CREATE CUSTOM HARDWARE AND SOFTWARE FOR HYDRANTS AND

LEAK DETECTION WEBSITE

1. Analyze a sample hydrant pumper cap and design custom matching hardware.
2. Design and create custom caps for each hydrant, taking into consideration hydrant type and color.
3. Manufacture and install customized leak monitoring nodes.
4. Set up network communication between the leak monitoring nodes and the head end system and integrate with the web user interface.
5. Set up a customized website for TWW to monitor for leaks and other anomalies within the network of leak detection nodes.

Task 3: Hardware Installation and Activation

1. Return to the Distribution area and install and test acoustic leak detection devices and pressure sensors.
2. Confirm data transmission conditions.
3. Test and troubleshoot equipment in the field.
4. Train TWW staff in simple repairs/battery replacement SOPs and troubleshooting techniques.
5. Train TWW on the installation of any retrofit kits that may be necessary.
6. Once the leak detection equipment is set up and installed, provide a field representative to assist TWW with initial field investigation onsite for prioritizing data.
7. Install 360 leak detection devices in the areas shown in Appendix A.

Task 4: Train TWW staff on use and data interpretation

1. Provide a single point of contact project manager to conduct product hardware, software and service tool training for TWW.
2. Provide TWW staff with training on the software interface operation and system management needed to successfully operate the acoustic leak detection system. (One in person session, with video session follow up).
3. Provide a one day in-person training to TWW staff on the leak monitoring operations software interface, system management, and the use and interpretation of results.
4. Provide second training session for data interpretation refresher in a video meeting format.
5. Offer video meeting and phone call technical support for subsequent TWW staff questions. (User manuals may supplement but do not replace person-to-person assistance).
6. Provide daily reports of leaks, ranked in order of priority, for further investigation.
7. Provide training on alerts (email, text)
8. Conduct training on the installation of acoustic leak detection retrofits.
9. Deliverables include but are not limited to: ArcGIS layers reflecting the deployment of devices.

Task 5: Monthly Progress reports and project management meetings

1. Meet with TWW project manager and staff twice per month (vide meeting) to assess progress and address problems.
2. Submit (in word document form) a monthly report that summarizes

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PROPOSAL OPENING DATE – 3/30/2022 AT 11:00AM

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progress made and challenges encountered. Once per quarter assist TWW staff in the creation of a quarterly report to NJ BPU documenting what leaks were found, were repaired, and an estimate of how much water was saved (gal per day) that quarter.

Task 6 – update TWW ArcGIS system with device locations

1. Import all acoustic leak detection device and pressure sensor's locations into current TWW ArcGIS system online.
2. Meet with TWW ArcGIS staff and ArcGIS consultant to discuss data requirements.

Allowance for unforeseen tasks and circumstances of $30,000.

This allowance will be used for tasks that arise that were not anticipated, for instance: any changes based on field conditions or increased reporting requirements and requests for information from the NJ BPU. All expenditures under this category will require prior approval by TWW Project Manager.

III.   DELIVERABLES

All deliverables are the property of TWW and may be edited by TWW for future use. All deliverables are to be submitted in electronic, editable form, as well as in PDF. All data will belong to TWW during and after the project, in perpetuity. The winning firm will assist with TWW in any data review requests.

1. All drawings shall be provided to TWW in pdf and AutoCAD format.
2. All reports shall be provided in TWW in pdf and Word, or other editable format.
3. Distribution system layout and asset information shall be provided in ArcGIS (ESRI) format.
4. Monthly reports from the winning firm will be incorporated into quarterly reports for the BPU grant.

IV.   PROPOSAL FORMAT AND CONTENT

Firms shall submit their proposals in accordance with the following:

A.   *Technical Approach and Creativity.*

1. **Cover Letter.** Provide a brief cover letter summarizing the key points of the firm's proposal.
2. **Project Objectives.** Provide a general description of the firm's approach to providing the services required for each part of the work. Consultants shall identify creative approaches that may be implemented to improve leak detection capability and reliability.
3. **Equipment description.** Provide specifications and cut sheets for all acoustic leak detection devices and pressure sensors.
4. **Software description.** Provide illustrations of relevant dashboards and screens that demonstrate the software
5. **Project Work Program and Flow Chart.** Provide a detailed description and discussion of the firm's proposal for addressing the work in each part of the project including a discussion of any substantive or innovative ideas used by the firm on similar projects and any suggestions that the firm believes will result in lower costs and leak detection savings. The proposal shall specify any materials that the City will be expected to provide and any tasks the respondent believes that the City must carry out for the work to successfully take place.
6. **Implementation schedule.** Provide a schedule showing the amount of time allotted to complete the work required.

B.   *Relevant Corporate Experience.*

1. **Project Organization and Management.** Include the following:
   a. A brief narrative describing the proposed project management plan, including a description of the respective functions of all team members.
   b. An outline of the project staffing plan indicating the level of personnel to be involved in the project, their roles and the person designated as project manager.
   c. A statement specifying the involvement of key personnel included in the organization chart.
2. **Recent Experience and Credentials of the Firm.** Provide a discussion of recent relevant experience with similar projects including a brief description of company assignments of similar studies or projects.

C. *Qualifications of the Project Team.*

1. **Staffing Plan and Resumes.** Provide a discussion of the qualifications of all staff members who will work on the project and resumes for each staff member showing pertinent work experience.
2. **Reference list.** Provide a minimum of **three (3)** references where similar water distribution system improvements of similar size have been performed. Include the location, the years, the task, the size of water mains, contact person, contact telephone, and email address.

D. *Fee.*

1. **Fee Proposal.** All work shall be performed on a **Not-To-Exceed Basis.** Provide a proposal fee table that includes a breakdown of the costs by tasks/subtasks, specifies labor titles, estimated hours, hourly rates and direct expenses. Work proposed by the firm that is above and beyond the scope of work requested shall be clearly defined and estimated in the proposal and the proposal fee table.

2. For the construction phase services of the fee, the Base Fee Proposal shall be for the Entire Replacement of the Water Main. Alternate Fee Proposals shall be for the Entire Liner Installation of the Water Main and Combinations of Replacement/Liner Installation of Water Main.

CONTRACT AWARD

Upon opening proposals, pricing shall remain firm for a period of sixty (60) calendar days. In the event that the award is not made within sixty (60) calendar days, bidders may hold their bid consideration beyond sixty days or until the contract is awarded.

✓ Check here if willing to hold the pricing consideration beyond sixty days or until the contract is awarded.

Check here if not willing to hold the pricing consideration beyond sixty days or until the contract is awarded.

Paul Murray - Product Line General Manager 12/16/2022

AUTHORIZED SIGNATURE

SOFTWARE AS A SERVICE AGREEMENT

This Software as a Service Agreement (this **"Agreement"**), effective as of the date set forth below (the **"Effective Date"**), is by and between **ECHOLOGICS, LLC,** a Delaware limited liability company with offices located at 1200 Abernathy Rd, NE, Suite 1200, Atlanta, GA 30328 (**"Provider"**), and you, the customer, as further identified below, (**"Customer"**). Provider and Customer may be referred to herein collectively as the **"Parties"** or individually as a **"Party."**

> **WHEREAS,** Provider and its Affiliates provide advanced water network monitoring, measurement, and control systems through its Software Services platform;

> **WHEREAS,** Customer has entered into a separate agreement with Provider and/or its Affiliate(s) for products and/or services ("Prime Agreement"), which reference and incorporate this Agreement as if fully set forth therein; and

> **WHEREAS,** Customer desires to access the Software Services, and Provider desires to provide Customer access to the Software Services, subject to the terms and conditions of this Agreement.

> **NOW, THEREFORE,** in consideration of the mutual covenants, terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. <u>Definitions</u>.

(a) **"Affiliate(s)"** means any other entity that, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, a party.

(b) **"Affiliate Product(s)"** means Provider Affiliate product(s) which may work in combination with the Software Services.

(c) **"Aggregated Statistics"** means data and information related to Customer's use of the Software Services that is used by Provider in an aggregate and anonymized manner, including to compile statistical and performance information related to the provision and operation of the Software Services.

(d) **"Authorized User"** means Customer's employees, consultants, contractors, and agents (i) who are authorized by Customer to access and use the Software Services under the rights granted to Customer pursuant to this Agreement and (ii) for whom access to the Software Services has been purchased hereunder.

(e) **"Customer Data"** means, other than Aggregated Statistics, information, data, and other content, in any form or medium, that is submitted, posted, or otherwise transmitted by or on behalf of Customer or an Authorized User through the Software Services.

(f) **"Documentation"** means Provider's user manuals, handbooks, and guides relating to the Software Services provided to Customer upon its access to the Software Services.

(g) **"Provider IP"** means the Software Services, the Documentation, and any and all intellectual property provided to Customer or any Authorized User in connection with the foregoing. For the avoidance of doubt, Provider IP includes Aggregated Statistics and any information, data, or other content derived from Provider's monitoring of Customer's access to or use of the Software Services, but does not include Customer Data.

(h) **"Software Services"** means the online SENTRYX™ software-as-a-service offering for use and operation by Customer and its Authorized User(s). For avoidance of doubt, the Software Services do not include any Provider-managed services.

(i) **"Third-Party Products"** means third-party products which may work in combination with the Software Services.

2. <u>Access and Use</u>.

(a) <u>Provision of Access</u>. Subject to and conditioned on Customer's payment of Fees and compliance with all other terms and conditions of this Agreement, Provider hereby grants Customer a non-exclusive, non-transferable right to access and use the Software Services during the Term, solely for use by Authorized Users in accordance with the terms and conditions herein. Such use is limited to Customer's internal use. Provider shall provide to Customer the necessary passwords and network links, mobile device application download links, or connections to allow Customer to access the Software Services.

(b)   <u>Documentation License</u>. Subject to the terms and conditions contained in this Agreement, Provider hereby grants to Customer a non-exclusive, non-sublicensable, non-transferable license to use the Documentation during the Term solely for Customer's internal business purposes in connection with its use of the Software Services.

(c)   <u>Use Restrictions</u>. Customer shall not use the Software Services for any purposes beyond the scope of the access granted in this Agreement. Customer shall not at any time, directly or indirectly, and shall not permit any Authorized Users to: (i) copy, modify, or create derivative works of the Software Services or Documentation, in whole or in part; (ii) rent, lease, lend, sell, license, sublicense, assign, distribute, publish, transfer, or otherwise make available the Software Services or Documentation; (iii) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to any software component of the Software Services, in whole or in part; (iv) remove any proprietary notices from the Software Services or Documentation; or (v) use the Software Services or Documentation in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law.

(d)   <u>Reservation of Rights</u>. Provider reserves all rights not expressly granted to Customer in this Agreement. Except for the limited rights and licenses expressly granted under this Agreement, nothing in this Agreement grants, by implication, waiver, estoppel, or otherwise, to Customer or any third party any intellectual property rights or other right, title, or interest in or to the Provider IP.

(e)   <u>Suspension</u>. Notwithstanding anything to the contrary in this Agreement, Provider may temporarily suspend Customer's and any Authorized User's access to any portion or all of the Software Services if: (i) Provider reasonably determines that (A) there is a threat or attack on any of the Provider IP; (B) Customer's or any Authorized User's use of the Provider IP disrupts or poses a security risk to the Provider IP or to any other customer or vendor of Provider; (C) Customer, or any Authorized User, is using the Provider IP for fraudulent or illegal activities; (D) subject to applicable law, Customer has ceased to continue its business in the ordinary course, made an assignment for the benefit of creditors or similar disposition of its assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution, or similar proceeding; or (E) Provider's provision of the Software Services to Customer or any Authorized User is prohibited by applicable law; (ii) any vendor of Provider has suspended or terminated Provider's access to or use of any third-party services or products required to enable Customer to access the Software Services; or (iii) in accordance with Section 5(a)(iii) ("Fees") (any such suspension described in subclause (i), (ii), or (iii), a **"Service Suspension"**). Provider shall use commercially reasonable efforts to provide written notice of any Service Suspension to Customer and to provide updates regarding resumption of access to the Software Services following any Service Suspension. Provider shall use commercially reasonable efforts to resume providing access to the Software Services as soon as reasonably possible after the event giving rise to the Service Suspension is cured. Provider will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Customer or any Authorized User may incur as a result of a Service Suspension.

(f)   <u>Aggregated Statistics</u>. Notwithstanding anything to the contrary in this Agreement, Provider may monitor Customer's use of the Software Services and collect and compile Aggregated Statistics. As between Provider and Customer, all right, title, and interest in Aggregated Statistics, and all intellectual property rights therein, belong to and are retained solely by Provider. Customer acknowledges that Provider may compile Aggregated Statistics based on Customer Data input into the Software Services. Customer agrees that Provider may (i) make Aggregated Statistics publicly available in compliance with applicable law, and (ii) use Aggregated Statistics to the extent and in the manner permitted under applicable law; provided that such Aggregated Statistics do not identify Customer or Customer's Confidential Information unless otherwise approved in writing by Customer.

3.   <u>Customer Responsibilities</u>.

(a)   <u>General</u>. Customer is responsible and liable for all uses of the Software Services and Documentation resulting by Customer, directly or indirectly, whether such access or use is permitted by or in violation of this Agreement. Without limiting the generality of the foregoing, Customer is responsible for all acts and omissions of Authorized Users, and any act or omission by an Authorized User that would constitute a breach of this Agreement if taken by Customer will be deemed a breach of this Agreement by Customer. Customer shall use reasonable efforts to make all Authorized Users aware of this Agreement's provisions as applicable to such Authorized User's use of the Software Services, and shall cause Authorized Users to comply with such provisions.

(b)   <u>Customer Systems</u>. Customer is responsible for (i) the acquisition, set-up and maintenance of its own mobile device and/or desktop computer equipment, as applicable, and the competent operation thereof in accordance with the Documentation; (ii) providing Provider with such access to its computer systems as is necessary for Provider to provide the Software Services; and (iii) providing all cooperation and assistance as Provider may reasonably request to enable Provider to provide the Software Services in connection with this Agreement.

(c)   <u>Third-Party Products and Affiliate Products</u>. Provider may from time to time allow Third-Party Products or Affiliate Products to work in combination with or to be supported by the Software Services. For purposes of this Agreement, such Third-Party Products and/or Affiliate Products are subject to their own terms and conditions and must be procured by Customer separately from this Agreement.

4.   <u>Service Levels and Updates</u>.

(a)   <u>Service Levels</u>. Subject to the terms and conditions of this Agreement, Provider shall use commercially reasonable efforts to make the Software Services available in accordance with the service levels set forth below:

Provider shall ensure that, in each calendar month from the start date of the Software Services ("Availability Period"), each of the Software Services will have an average availability of 99.5% of the Availability Period as measured from within Provider's infrastructure environment (the "Availability Target"), as calculated in accordance with the following formula:

Software Services Availability = (System Time - Disregarded Downtime) * 100 / System Time

"System Time" means the number of hours in the relevant Availability Period. "Disregarded Downtime" means the number of hours of non-availability of the Software Services as measured from within Provider's infrastructure environment, excluding non-availability caused by:

    i.   Planned maintenance or outages for which Provider has provided the Customer at least five (5) days' prior notice;

    ii.   Any device failure including, without limitation, non-availability or reduced availability of mobile network cover;

    iii.   Any problem with the internet or the Customer's internet connection (including any Wi-Fi connection where one is being used);

    iv.   Any act or omission by the Customer, or any person acting on behalf of the Customer, which prevents or delays the availability of the hosted services; and/or

    v.   Any Force Majeure event, including any failure of the internet or an occurrence of another major circumstance or event outside of Provider's control.

Provider reserves the right to take the Software Services offline in order to carry out emergency maintenance, but shall use commercially reasonable efforts to provide the Customer with as much notice as is reasonably possible.

Provider cannot guarantee the availability of the mobile phone networks on which data communications depend.

(b)   <u>Updates</u>. Customer acknowledges that the Software Services may from time to time include updates, upgrades and other enhancements which Provider in its sole discretion will make available. All upgrades and testing of the Software Services will be performed at Provider's discretion. Customer will have no right hereunder to require specific customization of the Software Services, such as access to a prior version level or unique user interface.

5.   <u>Fees and Payment</u>.

(a)   <u>Fees</u>. Customer shall pay Provider the fees (**"Fees"**) according to the payment terms set forth in the Prime Agreement, without offset or deduction. The applicable purchase order, invoice, schedule, exhibit, attachment, task order or other ordering document (**"Order"**), issued pursuant to the Prime Agreement, will establish the original order date for the Software Services (**"Order Date"**). If Customer fails to make any payment when due, without limiting Provider's other rights and remedies: (i) Provider may charge interest on the past due amount at the rate of 1.5% per month calculated daily and compounded monthly or, if lower, the highest rate permitted under applicable law; (ii) Customer shall reimburse Provider for all costs incurred by Provider in collecting any late payments or interest, including attorneys' fees, court costs, and collection agency fees; and (iii) if such failure continues for 60 days or more, Provider may suspend Customer's and its Authorized Users' access to any portion or all of the Software Services until such amounts are paid in full.

(b)   <u>Fee Increase</u>. Provider's Fee for any Renewal Terms(s) (as defined below) shall escalate annually as of each annual anniversary of the Software Services original Order Date by the amount of the prior term's Fee plus the increase as

based upon the U. S. Bureau of Labor Statistics Producer Price Index for Data Processing and Related Services, Hosting, ASP and Other IT Infrastructure Provisioning Services, Series ID: PCU5182105182105, 12-month percent change.

(c)   Taxes. All Fees and other amounts payable by Customer for the Software Services under this Agreement are exclusive of taxes and similar assessments. Customer is responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental or regulatory authority on any amounts payable by Customer hereunder, other than any taxes imposed on Provider's income.

(d)   Auditing Rights and Required Records. During the Term and for up to two (2) years after the Agreement's termination or expiration, Provider may, at its own expense, on reasonable prior notice, periodically inspect and audit Customer's records with respect to matters covered by this Agreement, provided that if such inspection and audit reveals that Customer has underpaid Provider with respect to any amounts due and payable during the Term, Customer shall promptly pay the amounts necessary to rectify such underpayment, together with interest in accordance with Section 5(a).

6.   Confidential Information and Data Privacy.

(a)   From time to time during the Term, either Party may disclose or make available to the other Party non-public, proprietary information about its business affairs, products, services, confidential intellectual property, trade secrets, third-party confidential information, and other sensitive or proprietary information, whether orally or in written, electronic, or other tangible form, that is reasonably understood from the context of the disclosure, or is affirmatively marked, designated, or otherwise identified as "confidential" (collectively, **"Confidential Information"**). Confidential Information does not include information that, at the time of disclosure is: (a) in the public domain; (b) known to the receiving Party at the time of disclosure; (c) rightfully obtained by the receiving Party on a non-confidential basis from a third party; (d) independently developed by the receiving Party; or (e) disclosed under legal compulsion. The receiving Party shall use the Confidential Information solely for the performance of this Agreement and shall not disclose the disclosing Party's Confidential Information to any person or entity, except to the receiving Party's employees who have a need to know the Confidential Information for the receiving Party to exercise its rights or perform its obligations hereunder. Notwithstanding the foregoing, each Party may disclose Confidential Information to the limited extent required (i) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the Party making the disclosure pursuant to the order shall first have given written notice to the other Party and made a reasonable effort to obtain a protective order; or (ii) to establish a Party's rights under this Agreement, including to make required court filings. On the expiration or termination of the Agreement, the receiving Party shall promptly return to the disclosing Party all copies, whether in written, electronic, or other form or media, of the disclosing Party's Confidential Information, or destroy all such copies and certify in writing to the disclosing Party that such Confidential Information has been destroyed. Each Party's obligations of non-disclosure with regard to Confidential Information are effective as of the Effective Date and will expire five (5) years from the date first disclosed to the receiving Party; provided, however, with respect to any Confidential Information that constitutes a trade secret (as determined under applicable law), such obligations of non-disclosure will survive the termination or expiration of this Agreement for as long as such Confidential Information remains subject to trade secret protection under applicable law.

(b)   Data Privacy and Security.

    i.   By Provider. Without limiting Provider's obligation of confidentiality as further described herein, Provider will use commercially reasonable efforts to establish and maintain a data privacy and information security program, including physical, technical, administrative, and organizational safeguards, that is designed to: (a) ensure the security and confidentiality of the Customer Data; (b) protect against any anticipated threats or hazards to the security or integrity of the Customer Data; (c) protect against unauthorized disclosure, access to, or use of the Customer Data; (d) ensure the proper disposal of Customer Data; and, (e) ensure that all employees, agents, and subcontractors of Provider, if any, comply with all of the foregoing.

    ii.   Data Protection. Each Party shall comply with all laws and regulations applicable to the processing of personal data in connection with any transactions related to this Agreement which may be applicable, including any other legal requirements related to (a) privacy and data security, and (b) the use, collection, retention, storage, security, disclosure, transfer, disposal and other processing of personal data (**"Privacy Laws"**). Unless otherwise agreed in the Prime Agreement, Customer consents to the storage of Customer Data on a Provider server located in the United States or Ireland. Customer is responsible for obtaining any necessary authorizations and consents prior to disclosing Customer Data to Provider or to any third party. The terms "controller", "personal data" and "processing" used in this section shall have the meaning set out in the applicable Privacy Laws. Either Party may use personal data consisting of ordinary business contact

data (e.g., name, phone number, email address, etc.) in its capacity as a controller or processor strictly in accordance with applicable Privacy Laws in the normal course of business but only for the purpose of administration of the Party's business relationship and performance of their obligations under this Agreement.

7. Intellectual Property Ownership; Feedback.

(a) Provider IP. Customer acknowledges that, as between Customer and Provider, Provider owns all right, title, and interest, including all intellectual property rights, in and to the Provider IP, and with respect to Third-Party Products or Affiliate Products, the applicable third-party or Affiliate owns all right, title, and interest, including all intellectual property rights, in and to the Third-Party Products or Affiliate Products.

(b) Customer Data. Provider acknowledges that, as between Provider and Customer, Customer owns all right, title, and interest, including all intellectual property rights, in and to the Customer Data. Customer hereby grants to Provider a non-exclusive, royalty-free, worldwide license to reproduce, distribute, and otherwise use and display the Customer Data and perform all acts with respect to the Customer Data as may be necessary for Provider to provide the Software Services to Customer, and a non-exclusive, perpetual, irrevocable, royalty-free, worldwide license to reproduce, distribute, modify, and otherwise use and display Customer Data incorporated within the Aggregated Statistics.

(c) Feedback. If Customer or any of its employees or contractors sends or transmits any communications or materials to Provider by mail, email, telephone, or otherwise, suggesting or recommending changes to the Provider IP, including without limitation, new features or functionality relating thereto, or any comments, questions, suggestions, or the like (**"Feedback"**), Provider is free to use such Feedback irrespective of any other obligation or limitation between the Parties governing such Feedback. Customer hereby assigns to Provider on Customer's behalf, and on behalf of its employees, contractors and/or agents, all right, title, and interest in, and Provider is free to use, without any attribution or compensation to any party, any ideas, know-how, concepts, techniques, or other intellectual property rights contained in the Feedback, for any purpose whatsoever, although Provider is not required to use any Feedback.

8. Limited Warranty.

(a) Provider warrants that the Software Services will conform in all material respects to the service levels set forth in Section 4(a) when accessed and used in accordance with the Documentation. Provider does not make any representations or guarantees regarding uptime or availability of third party networks such as but not limited to datacenter hosting or cellular or other connectivity. Any failure by Provider to meet the Availability Period shall entitle Customer to a term extension of Software Services for the period of time the Availability Period was not achieved. The remedy set forth in in this Section 8(a) is Customer's sole remedy and Provider's sole liability, and no Provider failure to maintain the Availability Period at any time shall be deemed a breach of this Agreement. THE FOREGOING WARRANTY DOES NOT APPLY, AND PROVIDER STRICTLY DISCLAIMS ALL WARRANTIES, WITH RESPECT TO ANY THIRD-PARTY PRODUCTS OR AFFILIATE PRODUCTS.

(b) EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 8(a),THE SOFTWARE SERVICES ARE PROVIDED "AS IS" AND ON A "AS AVAILABLE" BASIS. TO THE MAXIMUM EXTENT PERMISSIBLY BY LAW, PROVIDER HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. PROVIDER SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, ACCURACY OF INFORMATIONAL CONTENT AND SYSTEM INTEGRATION, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 8(a), PROVIDER MAKES NO WARRANTY OF ANY KIND THAT THE PROVIDER IP, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM, OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE. CUSTOMER EXPRESSLY ACKNOWLEDGES AND AGREES THAT USE OF THE SOFTWARE SERVICES IS AT CUSTOMER'S RISK. PROVIDER DOES NOT WARRANT AND IS NOT RESPONSIBLE FOR ANY THIRD-PARTY PRODUCTS OR SERVICES OR AFFILIATE PRODUCTS OR SERVICES.

9. Indemnification.

(a) Provider Indemnification.

i. Provider shall indemnify, defend, and hold harmless Customer from and against any and all losses, damages, liabilities, costs (including reasonable attorneys' fees) (**"Losses"**) incurred by Customer resulting from any third-party claim, suit, action, or proceeding (**"Third-Party Claim"**) that the Software Services, or

any use of the Software Services in accordance with this Agreement, infringes or misappropriates such third party's intellectual property rights, patents, copyrights, or trade secrets, provided that Customer promptly notifies Provider in writing of the claim, cooperates with Provider, and allows Provider sole authority to control the defense and settlement of such claim.

ii.   If such a Third-Party Claim is made or appears possible, Customer agrees to permit Provider, at Provider's sole discretion, to (A) modify or replace the Software Services, or component or part thereof, to make it non-infringing, or (B) obtain the right for Customer to continue use. If Provider determines that neither alternative is reasonably available, Provider may terminate this Agreement, in its entirety or with respect to the affected component or part, effective immediately on written notice to Customer, and refund Customer any pre-paid Fees on a pro rata basis as of the time of termination.

iii.   This Section 9(a) will not apply to the extent that the alleged infringement arises from: (A) use of the Software Services in combination with data, software, hardware, equipment, or technology not provided by Provider or authorized by Provider in writing; (B) modifications to the Software Services not made by Provider; (C) Customer Data; or (D) Third-Party Products.

(b)   <u>Customer Indemnification</u>. Customer shall indemnify, hold harmless, and, at Provider's option, defend Provider from and against any Losses resulting from any Third-Party Claim that the Customer Data, or any use of the Customer Data in accordance with this Agreement, infringes or misappropriates such third party's intellectual property rights, and any Third-Party Claims based on Customer's or any Authorized User's (i) failure to obtain any necessary consents in accordance with the Privacy Laws; (ii) negligence or willful misconduct; (iii) use of the Software Services in a manner not authorized by this Agreement; (iv) use of the Software Services in combination with data, software, hardware, equipment, or technology not provided by Provider or authorized by Provider in writing; or (v) modifications to the Software Services not made by Provider, provided that Customer may not settle any Third-Party Claim against Provider unless Provider consents to such settlement, and further provided that Provider will have the right, at its option, to defend itself against any such Third-Party Claim or to participate in the defense thereof by counsel of its own choice.

(c)   <u>Sole Remedy</u>. THIS SECTION 9 SETS FORTH CUSTOMER'S SOLE REMEDIES AND PROVIDER'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE SOFTWARE SERVICES INFRINGE, MISAPPROPRIATE, OR OTHERWISE VIOLATE ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

10.   <u>Limitations of Liability</u>. IN NO EVENT WILL EITHER PARTY BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (i) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, LIQUIDATED, OR PUNITIVE DAMAGES; (ii) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES, OR PROFITS; (iii) LOSS OF GOODWILL OR REPUTATION; (iv) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY, OR RECOVERY OF ANY DATA, OR BREACH OF DATA OR SYSTEM SECURITY; OR (v) COST OF REPLACEMENT GOODS OR SERVICES, IN EACH CASE REGARDLESS OF WHETHER EITHER PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE. IN NO EVENT WILL PROVIDER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE EXCEED THE TOTAL AMOUNTS PAID TO PROVIDER UNDER THIS AGREEMENT IN THE TWELVE MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM OR CUSTOMER'S ACTUAL DAMAGES, WHICHEVER IS LESS.

11.   <u>Term and Termination</u>.

(a)   <u>Term</u>. The initial term of this Agreement begins on the Order Date and, unless terminated earlier pursuant to this Agreement's express provisions, will continue in effect until one (1) year from such date (the "**Initial Term**"). This Agreement will automatically renew for additional successive one (1) year terms unless earlier terminated pursuant to this Agreement's express provisions or either Party gives the other Party written notice of non-renewal at least 90 days prior to the expiration of the then-current term (each a "**Renewal Term**" and together with the Initial Term, the "**Term**").

(b)   <u>Termination</u>. In addition to any other express termination right set forth in this Agreement:

i.   Provider may terminate this Agreement, effective on written notice to Customer, if Customer: (A) fails to pay any amount when due hereunder, and such failure continues more than thirty (30) days after Provider's delivery of written notice thereof; or (B) breaches any of its obligations under Section 2(c) or Section 6;

ii.   either Party may terminate this Agreement, effective on written notice to the other Party, if the other Party materially breaches this Agreement, and such breach: (A) is incapable of cure; or (B) being capable of cure, remains uncured thirty (30) days after the non-breaching Party provides the breaching Party with written notice of such breach; or

iii.   either Party may terminate this Agreement, effective immediately upon written notice to the other Party, if the other Party: (A) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (B) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law; (C) makes or seeks to make a general assignment for the benefit of its creditors; or (D) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

(c)   Effect of Expiration or Termination. Upon expiration or earlier termination of this Agreement, Customer shall immediately discontinue use of the Provider IP and, without limiting Customer's obligations under Section 6, Customer shall delete, destroy, or return all copies of the Provider IP and certify in writing to the Provider that the Provider IP has been deleted or destroyed. No expiration or termination will affect Customer's obligation to pay all Fees that may have become due before such expiration or termination or entitle Customer to any refund.

(d)   Survival. This Section 11(d) and Sections 1, 5, 6, 7, 8(b), 9, 10, and 12 survive any termination or expiration of this Agreement. No other provisions of this Agreement survive the expiration or earlier termination of this Agreement.

12.   Miscellaneous.

(a)   Entire Agreement. This Agreement, together with any other documents incorporated herein by reference and all related Orders, constitutes the sole and entire agreement of the Parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, and representations and warranties, both written and oral, with respect to such subject matter.

(b)   Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a **"Notice"**) must be in writing and addressed to the Parties at the addresses set forth on the first and/or last page of this Agreement (or to such other address that may be designated by the Party giving Notice from time to time in accordance with this Section). All Notices must be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), or email (with confirmation of transmission), or certified or registered mail (in each case, return receipt requested, postage pre-paid). Except as otherwise provided in this Agreement, a Notice is effective only: (i) upon receipt by the receiving Party; and (ii) if the Party giving the Notice has complied with the requirements of this Section.

(c)   Force Majeure. In no event shall Provider be liable to Customer, or be deemed to have breached this Agreement, for any failure or delay in performing its obligations under this Agreement, if and to the extent such failure or delay is caused by any circumstances beyond Provider's reasonable control, including but not limited to acts of God, any natural disaster, epidemic, pandemic (including, but not limited to, COVID-19), explosion, war, terrorism, invasion, riot or other civil unrest, strikes, labor stoppages or slowdowns or other industrial disturbances such as but not limited to failures or fluctuations in electrical power, telecommunications equipment or hosting services, or passage of law, order, regulation or any action taken by a governmental or public authority, including imposing an embargo.

(d)   Amendment and Modification; Waiver. This Agreement may not be amended or modified orally but only through a written amendment that is signed by each Party. No waiver of any right or duty under this Agreement will be effective, and no course of dealing will be binding on either Party, unless set forth in writing and signed by both Parties.

(e)   Severability. If any provision of this Agreement is void or unenforceable: (i) the Parties agree to replace such void or unenforceable provision with a replacement provision that most nearly approximates the outcome intended by the void or unenforceable provision, and (ii) such invalidity or enforceability will not affect the validity or enforceability of any other provision hereof.

(f)   Governing Law; Submission to Jurisdiction. This Agreement is governed by and construed in accordance with the internal laws of the State of Delaware, United States, without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of Delaware. In the event of a dispute the Parties may mutually agree to resolve the dispute by direct negotiation, mediation, or non-binding arbitration. Any legal suit, action, or proceeding arising out of or related to this Agreement or the licenses granted hereunder will be instituted in the federal courts of the United States or the courts

of the State of Delaware, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding. The Parties agree that neither the United Nations Convention on Contracts for the International Sale of Goods, nor the Uniform Computer Information Transaction Act (UCITA) shall apply to this Agreement, regardless of where the Parties do business or are incorporated.

(g)   Assignment. Neither Party may assign any of its rights or delegate any of its obligations hereunder without the prior written consent of Provider provided, however, that each Party may assign its rights and obligations hereunder to an Affiliate. Any purported assignment or delegation in violation of this Section will be null and void. This Agreement is binding upon and inures to the benefit of the Parties and their respective permitted successors and assigns.

(h)   Compliance with Laws/Export Regulation. The Parties will comply with all applicable laws, regulations and codes, including procurement of permits and licenses, when needed, of their respective states, territories, provinces, and/or countries in the performance of this Agreement, provided such is not in violation of the U.S. Government's Export and Anti-boycott Rules and Regulations. The Software Services and related technical information, documents and materials are subject to export controls under the U.S. Export Administration Regulations and other applicable laws. Customer will (a) comply strictly with all legal requirements established under these controls; (b) cooperate fully with Provider in any audit or inspection that relates to these controls; and (c) not export, re-export, divert or transfer, directly or indirectly, any such item to any country or person who or which is embargoed by Executive Order or any applicable law, including any rules, regulations or policies promulgated thereunder.

(i)   US Government Rights. Each of the Documentation and the software components that constitute the Software Services is a "commercial product" as that term is defined at 48 C.F.R. § 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. § 12.212. Accordingly, if Customer is an agency of the US Government or any contractor thereof, Customer only receives those rights with respect to the Software Services and Documentation as are granted to all other end users, in accordance with (a) 48 C.F.R. § 227.7201 through 48 C.F.R. § 227.7204, with respect to the Department of Defense and their contractors, or (b) 48 C.F.R. § 12.212, with respect to all other US Government users and their contractors.

(j)   Equitable Relief. Each Party acknowledges and agrees that a breach or threatened breach by such Party of any of its obligations under Section 6 or, in the case of Customer, Section 2(c), would cause the other Party irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, the other Party will be entitled to equitable relief, including a restraining order, an injunction, specific performance, and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity, or otherwise.

(k)   Publicity. Neither Party may release any information to third parties, make any public statements about this Agreement or otherwise use the other Party's name, logo or trademarks without the other Party's express written consent.

(l)   Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date set forth below.

ECHOLOGICS, LLC

By: _(signature)_

Name: Eric Stacey

Title: VP & GM, Water Management Solutions

CUSTOMER

Customer Name: _City of Trenton_ TWW

Address: _317 East State St_
Trenton, 08608

By: _(signature)_

Name: _W. Reed Gusciora_

Title: _Mayor_

Date: _8-27-23_

CONTRACT AWARD

Upon opening proposals, pricing shall remain firm for a period of sixty (60) calendar days. In the event that the award is not made within sixty (60) calendar days, bidders may hold their bid consideration beyond sixty days or until the contract is awarded.

✓   Check here if willing to hold the pricing consideration beyond sixty days or until the contract is awarded.

Check here if not willing to hold the pricing consideration beyond sixty days or until the contract is awarded.

Paul Murray - Product Line General Manager   _~~~~~~_   12/16/2022

AUTHORIZED SIGNATURE

SOFTWARE AS A SERVICE AGREEMENT

This Software as a Service Agreement (this **"Agreement"**), effective as of the date set forth below (the **"Effective Date"**), is by and between **ECHOLOGICS, LLC,** a Delaware limited liability company with offices located at 1200 Abernathy Rd, NE, Suite 1200, Atlanta, GA 30328 (**"Provider"**), and you, the customer, as further identified below, (**"Customer"**). Provider and Customer may be referred to herein collectively as the **"Parties"** or individually as a **"Party."**

> **WHEREAS,** Provider and its Affiliates provide advanced water network monitoring, measurement, and control systems through its Software Services platform;

> **WHEREAS,** Customer has entered into a separate agreement with Provider and/or its Affiliate(s) for products and/or services ("Prime Agreement"), which reference and incorporate this Agreement as if fully set forth therein; and

> **WHEREAS,** Customer desires to access the Software Services, and Provider desires to provide Customer access to the Software Services, subject to the terms and conditions of this Agreement.

> **NOW, THEREFORE,** in consideration of the mutual covenants, terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Definitions.

(a) **"Affiliate(s)"** means any other entity that, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, a party.

(b) **"Affiliate Product(s)"** means Provider Affiliate product(s) which may work in combination with the Software Services.

(c) **"Aggregated Statistics"** means data and information related to Customer's use of the Software Services that is used by Provider in an aggregate and anonymized manner, including to compile statistical and performance information related to the provision and operation of the Software Services.

(d) **"Authorized User"** means Customer's employees, consultants, contractors, and agents (i) who are authorized by Customer to access and use the Software Services under the rights granted to Customer pursuant to this Agreement and (ii) for whom access to the Software Services has been purchased hereunder.

(e) **"Customer Data"** means, other than Aggregated Statistics, information, data, and other content, in any form or medium, that is submitted, posted, or otherwise transmitted by or on behalf of Customer or an Authorized User through the Software Services.

(f) **"Documentation"** means Provider's user manuals, handbooks, and guides relating to the Software Services provided to Customer upon its access to the Software Services.

(g) **"Provider IP"** means the Software Services, the Documentation, and any and all intellectual property provided to Customer or any Authorized User in connection with the foregoing. For the avoidance of doubt, Provider IP includes Aggregated Statistics and any information, data, or other content derived from Provider's monitoring of Customer's access to or use of the Software Services, but does not include Customer Data.

(h) **"Software Services"** means the online SENTRYX™ software-as-a-service offering for use and operation by Customer and its Authorized User(s). For avoidance of doubt, the Software Services do not include any Provider-managed services.

(i) **"Third-Party Products"** means third-party products which may work in combination with the Software Services.

2. Access and Use.

(a) Provision of Access. Subject to and conditioned on Customer's payment of Fees and compliance with all other terms and conditions of this Agreement, Provider hereby grants Customer a non-exclusive, non-transferable right to access and use the Software Services during the Term, solely for use by Authorized Users in accordance with the terms and conditions herein. Such use is limited to Customer's internal use. Provider shall provide to Customer the necessary passwords and network links, mobile device application download links, or connections to allow Customer to access the Software Services.

(b)   <u>Documentation License</u>. Subject to the terms and conditions contained in this Agreement, Provider hereby grants to Customer a non-exclusive, non-sublicensable, non-transferable license to use the Documentation during the Term solely for Customer's internal business purposes in connection with its use of the Software Services.

(c)   <u>Use Restrictions</u>. Customer shall not use the Software Services for any purposes beyond the scope of the access granted in this Agreement. Customer shall not at any time, directly or indirectly, and shall not permit any Authorized Users to: (i) copy, modify, or create derivative works of the Software Services or Documentation, in whole or in part; (ii) rent, lease, lend, sell, license, sublicense, assign, distribute, publish, transfer, or otherwise make available the Software Services or Documentation; (iii) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to any software component of the Software Services, in whole or in part; (iv) remove any proprietary notices from the Software Services or Documentation; or (v) use the Software Services or Documentation in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law.

(d)   <u>Reservation of Rights</u>. Provider reserves all rights not expressly granted to Customer in this Agreement. Except for the limited rights and licenses expressly granted under this Agreement, nothing in this Agreement grants, by implication, waiver, estoppel, or otherwise, to Customer or any third party any intellectual property rights or other right, title, or interest in or to the Provider IP.

(e)   <u>Suspension</u>. Notwithstanding anything to the contrary in this Agreement, Provider may temporarily suspend Customer's and any Authorized User's access to any portion or all of the Software Services if: (i) Provider reasonably determines that (A) there is a threat or attack on any of the Provider IP; (B) Customer's or any Authorized User's use of the Provider IP disrupts or poses a security risk to the Provider IP or to any other customer or vendor of Provider; (C) Customer, or any Authorized User, is using the Provider IP for fraudulent or illegal activities; (D) subject to applicable law, Customer has ceased to continue its business in the ordinary course, made an assignment for the benefit of creditors or similar disposition of its assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution, or similar proceeding; or (E) Provider's provision of the Software Services to Customer or any Authorized User is prohibited by applicable law; (ii) any vendor of Provider has suspended or terminated Provider's access to or use of any third-party services or products required to enable Customer to access the Software Services; or (iii) in accordance with Section 5(a)(iii) ("Fees") (any such suspension described in subclause (i), (ii), or (iii), a **"Service Suspension"**). Provider shall use commercially reasonable efforts to provide written notice of any Service Suspension to Customer and to provide updates regarding resumption of access to the Software Services following any Service Suspension. Provider shall use commercially reasonable efforts to resume providing access to the Software Services as soon as reasonably possible after the event giving rise to the Service Suspension is cured. Provider will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Customer or any Authorized User may incur as a result of a Service Suspension.

(f)   <u>Aggregated Statistics</u>. Notwithstanding anything to the contrary in this Agreement, Provider may monitor Customer's use of the Software Services and collect and compile Aggregated Statistics. As between Provider and Customer, all right, title, and interest in Aggregated Statistics, and all intellectual property rights therein, belong to and are retained solely by Provider. Customer acknowledges that Provider may compile Aggregated Statistics based on Customer Data input into the Software Services. Customer agrees that Provider may (i) make Aggregated Statistics publicly available in compliance with applicable law, and (ii) use Aggregated Statistics to the extent and in the manner permitted under applicable law; provided that such Aggregated Statistics do not identify Customer or Customer's Confidential Information unless otherwise approved in writing by Customer.

3.   <u>Customer Responsibilities</u>.

(a)   <u>General</u>. Customer is responsible and liable for all uses of the Software Services and Documentation resulting by Customer, directly or indirectly, whether such access or use is permitted by or in violation of this Agreement. Without limiting the generality of the foregoing, Customer is responsible for all acts and omissions of Authorized Users, and any act or omission by an Authorized User that would constitute a breach of this Agreement if taken by Customer will be deemed a breach of this Agreement by Customer. Customer shall use reasonable efforts to make all Authorized Users aware of this Agreement's provisions as applicable to such Authorized User's use of the Software Services, and shall cause Authorized Users to comply with such provisions.

(b)   <u>Customer Systems</u>. Customer is responsible for (i) the acquisition, set-up and maintenance of its own mobile device and/or desktop computer equipment, as applicable, and the competent operation thereof in accordance with the Documentation; (ii) providing Provider with such access to its computer systems as is necessary for Provider to provide the Software Services; and (iii) providing all cooperation and assistance as Provider may reasonably request to enable Provider to provide the Software Services in connection with this Agreement.

(c)   <u>Third-Party Products and Affiliate Products</u>. Provider may from time to time allow Third-Party Products or Affiliate Products to work in combination with or to be supported by the Software Services. For purposes of this Agreement, such Third-Party Products and/or Affiliate Products are subject to their own terms and conditions and must be procured by Customer separately from this Agreement.

4.   <u>Service Levels and Updates</u>.

(a)   <u>Service Levels</u>. Subject to the terms and conditions of this Agreement, Provider shall use commercially reasonable efforts to make the Software Services available in accordance with the service levels set forth below:

Provider shall ensure that, in each calendar month from the start date of the Software Services ("Availability Period"), each of the Software Services will have an average availability of 99.5% of the Availability Period as measured from within Provider's infrastructure environment (the "Availability Target"), as calculated in accordance with the following formula:

Software Services Availability = (System Time - Disregarded Downtime) * 100 / System Time

"System Time" means the number of hours in the relevant Availability Period. "Disregarded Downtime" means the number of hours of non-availability of the Software Services as measured from within Provider's infrastructure environment, excluding non-availability caused by:

     i.   Planned maintenance or outages for which Provider has provided the Customer at least five (5) days' prior notice;

     ii.   Any device failure including, without limitation, non-availability or reduced availability of mobile network cover;

     iii.   Any problem with the internet or the Customer's internet connection (including any Wi-Fi connection where one is being used);

     iv.   Any act or omission by the Customer, or any person acting on behalf of the Customer, which prevents or delays the availability of the hosted services; and/or

     v.   Any Force Majeure event, including any failure of the internet or an occurrence of another major circumstance or event outside of Provider's control.

Provider reserves the right to take the Software Services offline in order to carry out emergency maintenance, but shall use commercially reasonable efforts to provide the Customer with as much notice as is reasonably possible.

Provider cannot guarantee the availability of the mobile phone networks on which data communications depend.

(b)   <u>Updates</u>. Customer acknowledges that the Software Services may from time to time include updates, upgrades and other enhancements which Provider in its sole discretion will make available. All upgrades and testing of the Software Services will be performed at Provider's discretion. Customer will have no right hereunder to require specific customization of the Software Services, such as access to a prior version level or unique user interface.

5.   <u>Fees and Payment</u>.

(a)   <u>Fees</u>. Customer shall pay Provider the fees (**"Fees"**) according to the payment terms set forth in the Prime Agreement, without offset or deduction. The applicable purchase order, invoice, schedule, exhibit, attachment, task order or other ordering document (**"Order"**), issued pursuant to the Prime Agreement, will establish the original order date for the Software Services (**"Order Date"**). If Customer fails to make any payment when due, without limiting Provider's other rights and remedies: (i) Provider may charge interest on the past due amount at the rate of 1.5% per month calculated daily and compounded monthly or, if lower, the highest rate permitted under applicable law; (ii) Customer shall reimburse Provider for all costs incurred by Provider in collecting any late payments or interest, including attorneys' fees, court costs, and collection agency fees; and (iii) if such failure continues for 60 days or more, Provider may suspend Customer's and its Authorized Users' access to any portion or all of the Software Services until such amounts are paid in full.

(b)   <u>Fee Increase</u>. Provider's Fee for any Renewal Terms(s) (as defined below) shall escalate annually as of each annual anniversary of the Software Services original Order Date by the amount of the prior term's Fee plus the increase as

based upon the U. S. Bureau of Labor Statistics Producer Price Index for Data Processing and Related Services, Hosting, ASP and Other IT Infrastructure Provisioning Services, Series ID: PCU5182105182105, 12-month percent change.

(c)   Taxes. All Fees and other amounts payable by Customer for the Software Services under this Agreement are exclusive of taxes and similar assessments. Customer is responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental or regulatory authority on any amounts payable by Customer hereunder, other than any taxes imposed on Provider's income.

(d)   Auditing Rights and Required Records. During the Term and for up to two (2) years after the Agreement's termination or expiration, Provider may, at its own expense, on reasonable prior notice, periodically inspect and audit Customer's records with respect to matters covered by this Agreement, provided that if such inspection and audit reveals that Customer has underpaid Provider with respect to any amounts due and payable during the Term, Customer shall promptly pay the amounts necessary to rectify such underpayment, together with interest in accordance with Section 5(a).

6.   Confidential Information and Data Privacy.

(a)   From time to time during the Term, either Party may disclose or make available to the other Party non-public, proprietary information about its business affairs, products, services, confidential intellectual property, trade secrets, third-party confidential information, and other sensitive or proprietary information, whether orally or in written, electronic, or other tangible form, that is reasonably understood from the context of the disclosure, or is affirmatively marked, designated, or otherwise identified as "confidential" (collectively, "**Confidential Information**"). Confidential Information does not include information that, at the time of disclosure is: (a) in the public domain; (b) known to the receiving Party at the time of disclosure; (c) rightfully obtained by the receiving Party on a non-confidential basis from a third party; (d) independently developed by the receiving Party; or (e) disclosed under legal compulsion. The receiving Party shall use the Confidential Information solely for the performance of this Agreement and shall not disclose the disclosing Party's Confidential Information to any person or entity, except to the receiving Party's employees who have a need to know the Confidential Information for the receiving Party to exercise its rights or perform its obligations hereunder. Notwithstanding the foregoing, each Party may disclose Confidential Information to the limited extent required (i) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the Party making the disclosure pursuant to the order shall first have given written notice to the other Party and made a reasonable effort to obtain a protective order; or (ii) to establish a Party's rights under this Agreement, including to make required court filings. On the expiration or termination of the Agreement, the receiving Party shall promptly return to the disclosing Party all copies, whether in written, electronic, or other form or media, of the disclosing Party's Confidential Information, or destroy all such copies and certify in writing to the disclosing Party that such Confidential Information has been destroyed. Each Party's obligations of non-disclosure with regard to Confidential Information are effective as of the Effective Date and will expire five (5) years from the date first disclosed to the receiving Party; provided, however, with respect to any Confidential Information that constitutes a trade secret (as determined under applicable law), such obligations of non-disclosure will survive the termination or expiration of this Agreement for as long as such Confidential Information remains subject to trade secret protection under applicable law.

(b)   Data Privacy and Security.

    i.   By Provider. Without limiting Provider's obligation of confidentiality as further described herein, Provider will use commercially reasonable efforts to establish and maintain a data privacy and information security program, including physical, technical, administrative, and organizational safeguards, that is designed to: (a) ensure the security and confidentiality of the Customer Data; (b) protect against any anticipated threats or hazards to the security or integrity of the Customer Data; (c) protect against unauthorized disclosure, access to, or use of the Customer Data; (d) ensure the proper disposal of Customer Data; and, (e) ensure that all employees, agents, and subcontractors of Provider, if any, comply with all of the foregoing.

    ii.   Data Protection. Each Party shall comply with all laws and regulations applicable to the processing of personal data in connection with any transactions related to this Agreement which may be applicable, including any other legal requirements related to (a) privacy and data security, and (b) the use, collection, retention, storage, security, disclosure, transfer, disposal and other processing of personal data ("**Privacy Laws**"). Unless otherwise agreed in the Prime Agreement, Customer consents to the storage of Customer Data on a Provider server located in the United States or Ireland. Customer is responsible for obtaining any necessary authorizations and consents prior to disclosing Customer Data to Provider or to any third party. The terms "controller", "personal data" and "processing" used in this section shall have the meaning set out in the applicable Privacy Laws. Either Party may use personal data consisting of ordinary business contact

data (e.g., name, phone number, email address, etc.) in its capacity as a controller or processor strictly in accordance with applicable Privacy Laws in the normal course of business but only for the purpose of administration of the Party's business relationship and performance of their obligations under this Agreement.

7.   Intellectual Property Ownership; Feedback.

(a)   Provider IP. Customer acknowledges that, as between Customer and Provider, Provider owns all right, title, and interest, including all intellectual property rights, in and to the Provider IP, and with respect to Third-Party Products or Affiliate Products, the applicable third-party or Affiliate owns all right, title, and interest, including all intellectual property rights, in and to the Third-Party Products or Affiliate Products.

(b)   Customer Data. Provider acknowledges that, as between Provider and Customer, Customer owns all right, title, and interest, including all intellectual property rights, in and to the Customer Data. Customer hereby grants to Provider a non-exclusive, royalty-free, worldwide license to reproduce, distribute, and otherwise use and display the Customer Data and perform all acts with respect to the Customer Data as may be necessary for Provider to provide the Software Services to Customer, and a non-exclusive, perpetual, irrevocable, royalty-free, worldwide license to reproduce, distribute, modify, and otherwise use and display Customer Data incorporated within the Aggregated Statistics.

(c)   Feedback. If Customer or any of its employees or contractors sends or transmits any communications or materials to Provider by mail, email, telephone, or otherwise, suggesting or recommending changes to the Provider IP, including without limitation, new features or functionality relating thereto, or any comments, questions, suggestions, or the like ("**Feedback**"), Provider is free to use such Feedback irrespective of any other obligation or limitation between the Parties governing such Feedback. Customer hereby assigns to Provider on Customer's behalf, and on behalf of its employees, contractors and/or agents, all right, title, and interest in, and Provider is free to use, without any attribution or compensation to any party, any ideas, know-how, concepts, techniques, or other intellectual property rights contained in the Feedback, for any purpose whatsoever, although Provider is not required to use any Feedback.

8.   Limited Warranty.

(a)   Provider warrants that the Software Services will conform in all material respects to the service levels set forth in Section 4(a) when accessed and used in accordance with the Documentation. Provider does not make any representations or guarantees regarding uptime or availability of third party networks such as but not limited to datacenter hosting or cellular or other connectivity. Any failure by Provider to meet the Availability Period shall entitle Customer to a term extension of Software Services for the period of time the Availability Period was not achieved. The remedy set forth in in this Section 8(a) is Customer's sole remedy and Provider's sole liability, and no Provider failure to maintain the Availability Period at any time shall be deemed a breach of this Agreement. THE FOREGOING WARRANTY DOES NOT APPLY, AND PROVIDER STRICTLY DISCLAIMS ALL WARRANTIES, WITH RESPECT TO ANY THIRD-PARTY PRODUCTS OR AFFILIATE PRODUCTS.

(b)   EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 8(a),THE SOFTWARE SERVICES ARE PROVIDED "AS IS" AND ON A "AS AVAILABLE" BASIS. TO THE MAXIMUM EXTENT PERMISSIBLY BY LAW, PROVIDER HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. PROVIDER SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, ACCURACY OF INFORMATIONAL CONTENT AND SYSTEM INTEGRATION, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 8(a), PROVIDER MAKES NO WARRANTY OF ANY KIND THAT THE PROVIDER IP, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM, OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE. CUSTOMER EXPRESSLY ACKNOWLEDGES AND AGREES THAT USE OF THE SOFTWARE SERVICES IS AT CUSTOMER'S RISK. PROVIDER DOES NOT WARRANT AND IS NOT RESPONSIBLE FOR ANY THIRD-PARTY PRODUCTS OR SERVICES OR AFFILIATE PRODUCTS OR SERVICES.

9.   Indemnification.

(a)   Provider Indemnification.

    i.   Provider shall indemnify, defend, and hold harmless Customer from and against any and all losses, damages, liabilities, costs (including reasonable attorneys' fees) ("**Losses**") incurred by Customer resulting from any third-party claim, suit, action, or proceeding ("**Third-Party Claim**") that the Software Services, or

any use of the Software Services in accordance with this Agreement, infringes or misappropriates such third party's intellectual property rights, patents, copyrights, or trade secrets, provided that Customer promptly notifies Provider in writing of the claim, cooperates with Provider, and allows Provider sole authority to control the defense and settlement of such claim.

    ii.   If such a Third-Party Claim is made or appears possible, Customer agrees to permit Provider, at Provider's sole discretion, to (A) modify or replace the Software Services, or component or part thereof, to make it non-infringing, or (B) obtain the right for Customer to continue use. If Provider determines that neither alternative is reasonably available, Provider may terminate this Agreement, in its entirety or with respect to the affected component or part, effective immediately on written notice to Customer, and refund Customer any pre-paid Fees on a pro rata basis as of the time of termination.

    iii.   This Section 9(a) will not apply to the extent that the alleged infringement arises from: (A) use of the Software Services in combination with data, software, hardware, equipment, or technology not provided by Provider or authorized by Provider in writing; (B) modifications to the Software Services not made by Provider; (C) Customer Data; or (D) Third-Party Products.

(b)   Customer Indemnification. Customer shall indemnify, hold harmless, and, at Provider's option, defend Provider from and against any Losses resulting from any Third-Party Claim that the Customer Data, or any use of the Customer Data in accordance with this Agreement, infringes or misappropriates such third party's intellectual property rights, and any Third-Party Claims based on Customer's or any Authorized User's (i) failure to obtain any necessary consents in accordance with the Privacy Laws; (ii) negligence or willful misconduct; (iii) use of the Software Services in a manner not authorized by this Agreement; (iv) use of the Software Services in combination with data, software, hardware, equipment, or technology not provided by Provider or authorized by Provider in writing; or (v) modifications to the Software Services not made by Provider, provided that Customer may not settle any Third-Party Claim against Provider unless Provider consents to such settlement, and further provided that Provider will have the right, at its option, to defend itself against any such Third-Party Claim or to participate in the defense thereof by counsel of its own choice.

(c)   Sole Remedy. THIS SECTION 9 SETS FORTH CUSTOMER'S SOLE REMEDIES AND PROVIDER'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE SOFTWARE SERVICES INFRINGE, MISAPPROPRIATE, OR OTHERWISE VIOLATE ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

10.   Limitations of Liability. IN NO EVENT WILL EITHER PARTY BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (i) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, LIQUIDATED, OR PUNITIVE DAMAGES; (ii) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES, OR PROFITS; (iii) LOSS OF GOODWILL OR REPUTATION; (iv) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY, OR RECOVERY OF ANY DATA, OR BREACH OF DATA OR SYSTEM SECURITY; OR (v) COST OF REPLACEMENT GOODS OR SERVICES, IN EACH CASE REGARDLESS OF WHETHER EITHER PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE. IN NO EVENT WILL PROVIDER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE EXCEED THE TOTAL AMOUNTS PAID TO PROVIDER UNDER THIS AGREEMENT IN THE TWELVE MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM OR CUSTOMER'S ACTUAL DAMAGES, WHICHEVER IS LESS.

11.   Term and Termination.

(a)   Term. The initial term of this Agreement begins on the Order Date and, unless terminated earlier pursuant to this Agreement's express provisions, will continue in effect until one (1) year from such date (the "**Initial Term**"). This Agreement will automatically renew for additional successive one (1) year terms unless earlier terminated pursuant to this Agreement's express provisions or either Party gives the other Party written notice of non-renewal at least 90 days prior to the expiration of the then-current term (each a "**Renewal Term**" and together with the Initial Term, the "**Term**").

(b)   Termination. In addition to any other express termination right set forth in this Agreement:

    i.   Provider may terminate this Agreement, effective on written notice to Customer, if Customer: (A) fails to pay any amount when due hereunder, and such failure continues more than thirty (30) days after Provider's delivery of written notice thereof; or (B) breaches any of its obligations under Section 2(c) or Section 6;

ii.   either Party may terminate this Agreement, effective on written notice to the other Party, if the other Party materially breaches this Agreement, and such breach: (A) is incapable of cure; or (B) being capable of cure, remains uncured thirty (30) days after the non-breaching Party provides the breaching Party with written notice of such breach; or

iii.   either Party may terminate this Agreement, effective immediately upon written notice to the other Party, if the other Party: (A) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (B) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law; (C) makes or seeks to make a general assignment for the benefit of its creditors; or (D) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

(c)   Effect of Expiration or Termination. Upon expiration or earlier termination of this Agreement, Customer shall immediately discontinue use of the Provider IP and, without limiting Customer's obligations under Section 6, Customer shall delete, destroy, or return all copies of the Provider IP and certify in writing to the Provider that the Provider IP has been deleted or destroyed. No expiration or termination will affect Customer's obligation to pay all Fees that may have become due before such expiration or termination or entitle Customer to any refund.

(d)   Survival. This Section 11(d) and Sections 1, 5, 6, 7, 8(b), 9, 10, and 12 survive any termination or expiration of this Agreement. No other provisions of this Agreement survive the expiration or earlier termination of this Agreement.

12.   Miscellaneous.

(a)   Entire Agreement. This Agreement, together with any other documents incorporated herein by reference and all related Orders, constitutes the sole and entire agreement of the Parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, and representations and warranties, both written and oral, with respect to such subject matter.

(b)   Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "**Notice**") must be in writing and addressed to the Parties at the addresses set forth on the first and/or last page of this Agreement (or to such other address that may be designated by the Party giving Notice from time to time in accordance with this Section). All Notices must be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), or email (with confirmation of transmission), or certified or registered mail (in each case, return receipt requested, postage pre-paid). Except as otherwise provided in this Agreement, a Notice is effective only: (i) upon receipt by the receiving Party; and (ii) if the Party giving the Notice has complied with the requirements of this Section.

(c)   Force Majeure. In no event shall Provider be liable to Customer, or be deemed to have breached this Agreement, for any failure or delay in performing its obligations under this Agreement, if and to the extent such failure or delay is caused by any circumstances beyond Provider's reasonable control, including but not limited to acts of God, any natural disaster, epidemic, pandemic (including, but not limited to, COVID-19), explosion, war, terrorism, invasion, riot or other civil unrest, strikes, labor stoppages or slowdowns or other industrial disturbances such as but not limited to failures or fluctuations in electrical power, telecommunications equipment or hosting services, or passage of law, order, regulation or any action taken by a governmental or public authority, including imposing an embargo.

(d)   Amendment and Modification; Waiver. This Agreement may not be amended or modified orally but only through a written amendment that is signed by each Party. No waiver of any right or duty under this Agreement will be effective, and no course of dealing will be binding on either Party, unless set forth in writing and signed by both Parties.

(e)   Severability. If any provision of this Agreement is void or unenforceable: (i) the Parties agree to replace such void or unenforceable provision with a replacement provision that most nearly approximates the outcome intended by the void or unenforceable provision, and (ii) such invalidity or enforceability will not affect the validity or enforceability of any other provision hereof.

(f)   Governing Law; Submission to Jurisdiction. This Agreement is governed by and construed in accordance with the internal laws of the State of Delaware, United States, without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of Delaware. In the event of a dispute the Parties may mutually agree to resolve the dispute by direct negotiation, mediation, or non-binding arbitration. Any legal suit, action, or proceeding arising out of or related to this Agreement or the licenses granted hereunder will be instituted in the federal courts of the United States or the courts

of the State of Delaware, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding. The Parties agree that neither the United Nations Convention on Contracts for the International Sale of Goods, nor the Uniform Computer Information Transaction Act (UCITA) shall apply to this Agreement, regardless of where the Parties do business or are incorporated.

(g)   Assignment. Neither Party may assign any of its rights or delegate any of its obligations hereunder without the prior written consent of Provider provided, however, that each Party may assign its rights and obligations hereunder to an Affiliate. Any purported assignment or delegation in violation of this Section will be null and void. This Agreement is binding upon and inures to the benefit of the Parties and their respective permitted successors and assigns.

(h)   Compliance with Laws/Export Regulation. The Parties will comply with all applicable laws, regulations and codes, including procurement of permits and licenses, when needed, of their respective states, territories, provinces, and/or countries in the performance of this Agreement, provided such is not in violation of the U.S. Government's Export and Anti-boycott Rules and Regulations. The Software Services and related technical information, documents and materials are subject to export controls under the U.S. Export Administration Regulations and other applicable laws. Customer will (a) comply strictly with all legal requirements established under these controls; (b) cooperate fully with Provider in any audit or inspection that relates to these controls; and (c) not export, re-export, divert or transfer, directly or indirectly, any such item to any country or person who or which is embargoed by Executive Order or any applicable law, including any rules, regulations or policies promulgated thereunder.

(i)   US Government Rights. Each of the Documentation and the software components that constitute the Software Services is a "commercial product" as that term is defined at 48 C.F.R. § 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. § 12.212. Accordingly, if Customer is an agency of the US Government or any contractor thereof, Customer only receives those rights with respect to the Software Services and Documentation as are granted to all other end users, in accordance with (a) 48 C.F.R. § 227.7201 through 48 C.F.R. § 227.7204, with respect to the Department of Defense and their contractors, or (b) 48 C.F.R. § 12.212, with respect to all other US Government users and their contractors.

(j)   Equitable Relief. Each Party acknowledges and agrees that a breach or threatened breach by such Party of any of its obligations under Section 6 or, in the case of Customer, Section 2(c), would cause the other Party irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, the other Party will be entitled to equitable relief, including a restraining order, an injunction, specific performance, and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity, or otherwise.

(k)   Publicity. Neither Party may release any information to third parties, make any public statements about this Agreement or otherwise use the other Party's name, logo or trademarks without the other Party's express written consent.

(l)   Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date set forth below.

ECHOLOGICS, LLC

By: _L S t_

Name: Eric Stacey

Title: VP & GM, Water Management Solutions

CUSTOMER

Customer Name: _City of Trenton twp_

Address: _317 East State St_
            Trenton, 08608

By: _W. Hill_

Name: _W. Reed Guscibrg_

Title: _Mayor_

Date: _2.27.23_

CONTRACT AWARD

Upon opening proposals, pricing shall remain firm for a period of sixty (60) calendar days. In the event that the award is not made within sixty (60) calendar days, bidders may hold their bid consideration beyond sixty days or until the contract is awarded.

✓   Check here if willing to hold the pricing consideration beyond sixty days or until the contract is awarded.

     Check here if not willing to hold the pricing consideration beyond sixty days or until the contract is awarded.

Paul Murray - Product Line General Manager   _(signature)_   12/16/2022

AUTHORIZED SIGNATURE

SOFTWARE AS A SERVICE AGREEMENT

This Software as a Service Agreement (this **"Agreement"**), effective as of the date set forth below (the **"Effective Date"**), is by and between **ECHOLOGICS, LLC,** a Delaware limited liability company with offices located at 1200 Abernathy Rd, NE, Suite 1200, Atlanta, GA 30328 (**"Provider"**), and you, the customer, as further identified below, (**"Customer"**). Provider and Customer may be referred to herein collectively as the **"Parties"** or individually as a **"Party."**

> **WHEREAS,** Provider and its Affiliates provide advanced water network monitoring, measurement, and control systems through its Software Services platform;

> **WHEREAS,** Customer has entered into a separate agreement with Provider and/or its Affiliate(s) for products and/or services ("Prime Agreement"), which reference and incorporate this Agreement as if fully set forth therein; and

> **WHEREAS,** Customer desires to access the Software Services, and Provider desires to provide Customer access to the Software Services, subject to the terms and conditions of this Agreement.

> **NOW, THEREFORE,** in consideration of the mutual covenants, terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Definitions.

(a) **"Affiliate(s)"** means any other entity that, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, a party.

(b) **"Affiliate Product(s)"** means Provider Affiliate product(s) which may work in combination with the Software Services.

(c) **"Aggregated Statistics"** means data and information related to Customer's use of the Software Services that is used by Provider in an aggregate and anonymized manner, including to compile statistical and performance information related to the provision and operation of the Software Services.

(d) **"Authorized User"** means Customer's employees, consultants, contractors, and agents (i) who are authorized by Customer to access and use the Software Services under the rights granted to Customer pursuant to this Agreement and (ii) for whom access to the Software Services has been purchased hereunder.

(e) **"Customer Data"** means, other than Aggregated Statistics, information, data, and other content, in any form or medium, that is submitted, posted, or otherwise transmitted by or on behalf of Customer or an Authorized User through the Software Services.

(f) **"Documentation"** means Provider's user manuals, handbooks, and guides relating to the Software Services provided to Customer upon its access to the Software Services.

(g) **"Provider IP"** means the Software Services, the Documentation, and any and all intellectual property provided to Customer or any Authorized User in connection with the foregoing. For the avoidance of doubt, Provider IP includes Aggregated Statistics and any information, data, or other content derived from Provider's monitoring of Customer's access to or use of the Software Services, but does not include Customer Data.

(h) **"Software Services"** means the online SENTRYX™ software-as-a-service offering for use and operation by Customer and its Authorized User(s). For avoidance of doubt, the Software Services do not include any Provider-managed services.

(i) **"Third-Party Products"** means third-party products which may work in combination with the Software Services.

2. Access and Use.

(a) Provision of Access. Subject to and conditioned on Customer's payment of Fees and compliance with all other terms and conditions of this Agreement, Provider hereby grants Customer a non-exclusive, non-transferable right to access and use the Software Services during the Term, solely for use by Authorized Users in accordance with the terms and conditions herein. Such use is limited to Customer's internal use. Provider shall provide to Customer the necessary passwords and network links, mobile device application download links, or connections to allow Customer to access the Software Services.

(b)   <u>Documentation License</u>. Subject to the terms and conditions contained in this Agreement, Provider hereby grants to Customer a non-exclusive, non-sublicensable, non-transferable license to use the Documentation during the Term solely for Customer's internal business purposes in connection with its use of the Software Services.

(c)   <u>Use Restrictions</u>. Customer shall not use the Software Services for any purposes beyond the scope of the access granted in this Agreement. Customer shall not at any time, directly or indirectly, and shall not permit any Authorized Users to: (i) copy, modify, or create derivative works of the Software Services or Documentation, in whole or in part; (ii) rent, lease, lend, sell, license, sublicense, assign, distribute, publish, transfer, or otherwise make available the Software Services or Documentation; (iii) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to any software component of the Software Services, in whole or in part; (iv) remove any proprietary notices from the Software Services or Documentation; or (v) use the Software Services or Documentation in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law.

(d)   <u>Reservation of Rights</u>. Provider reserves all rights not expressly granted to Customer in this Agreement. Except for the limited rights and licenses expressly granted under this Agreement, nothing in this Agreement grants, by implication, waiver, estoppel, or otherwise, to Customer or any third party any intellectual property rights or other right, title, or interest in or to the Provider IP.

(e)   <u>Suspension</u>. Notwithstanding anything to the contrary in this Agreement, Provider may temporarily suspend Customer's and any Authorized User's access to any portion or all of the Software Services if: (i) Provider reasonably determines that (A) there is a threat or attack on any of the Provider IP; (B) Customer's or any Authorized User's use of the Provider IP disrupts or poses a security risk to the Provider IP or to any other customer or vendor of Provider; (C) Customer, or any Authorized User, is using the Provider IP for fraudulent or illegal activities; (D) subject to applicable law, Customer has ceased to continue its business in the ordinary course, made an assignment for the benefit of creditors or similar disposition of its assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution, or similar proceeding; or (E) Provider's provision of the Software Services to Customer or any Authorized User is prohibited by applicable law; (ii) any vendor of Provider has suspended or terminated Provider's access to or use of any third-party services or products required to enable Customer to access the Software Services; or (iii) in accordance with Section 5(a)(iii) ("Fees") (any such suspension described in subclause (i), (ii), or (iii), a **"Service Suspension"**). Provider shall use commercially reasonable efforts to provide written notice of any Service Suspension to Customer and to provide updates regarding resumption of access to the Software Services following any Service Suspension. Provider shall use commercially reasonable efforts to resume providing access to the Software Services as soon as reasonably possible after the event giving rise to the Service Suspension is cured. Provider will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Customer or any Authorized User may incur as a result of a Service Suspension.

(f)   <u>Aggregated Statistics</u>. Notwithstanding anything to the contrary in this Agreement, Provider may monitor Customer's use of the Software Services and collect and compile Aggregated Statistics. As between Provider and Customer, all right, title, and interest in Aggregated Statistics, and all intellectual property rights therein, belong to and are retained solely by Provider. Customer acknowledges that Provider may compile Aggregated Statistics based on Customer Data input into the Software Services. Customer agrees that Provider may (i) make Aggregated Statistics publicly available in compliance with applicable law, and (ii) use Aggregated Statistics to the extent and in the manner permitted under applicable law; provided that such Aggregated Statistics do not identify Customer or Customer's Confidential Information unless otherwise approved in writing by Customer.

3.   <u>Customer Responsibilities.</u>

(a)   <u>General</u>. Customer is responsible and liable for all uses of the Software Services and Documentation resulting by Customer, directly or indirectly, whether such access or use is permitted by or in violation of this Agreement. Without limiting the generality of the foregoing, Customer is responsible for all acts and omissions of Authorized Users, and any act or omission by an Authorized User that would constitute a breach of this Agreement if taken by Customer will be deemed a breach of this Agreement by Customer. Customer shall use reasonable efforts to make all Authorized Users aware of this Agreement's provisions as applicable to such Authorized User's use of the Software Services, and shall cause Authorized Users to comply with such provisions.

(b)   <u>Customer Systems</u>. Customer is responsible for (i) the acquisition, set-up and maintenance of its own mobile device and/or desktop computer equipment, as applicable, and the competent operation thereof in accordance with the Documentation; (ii) providing Provider with such access to its computer systems as is necessary for Provider to provide the Software Services; and (iii) providing all cooperation and assistance as Provider may reasonably request to enable Provider to provide the Software Services in connection with this Agreement.

(c)   <u>Third-Party Products and Affiliate Products</u>. Provider may from time to time allow Third-Party Products or Affiliate Products to work in combination with or to be supported by the Software Services. For purposes of this Agreement, such Third-Party Products and/or Affiliate Products are subject to their own terms and conditions and must be procured by Customer separately from this Agreement.

4.   <u>Service Levels and Updates</u>.

(a)   <u>Service Levels</u>. Subject to the terms and conditions of this Agreement, Provider shall use commercially reasonable efforts to make the Software Services available in accordance with the service levels set forth below:

Provider shall ensure that, in each calendar month from the start date of the Software Services ("Availability Period"), each of the Software Services will have an average availability of 99.5% of the Availability Period as measured from within Provider's infrastructure environment (the "Availability Target"), as calculated in accordance with the following formula:

Software Services Availability = (System Time - Disregarded Downtime) * 100 / System Time

"System Time" means the number of hours in the relevant Availability Period. "Disregarded Downtime" means the number of hours of non-availability of the Software Services as measured from within Provider's infrastructure environment, excluding non-availability caused by:

    i.   Planned maintenance or outages for which Provider has provided the Customer at least five (5) days' prior notice;

    ii.   Any device failure including, without limitation, non-availability or reduced availability of mobile network cover;

    iii.   Any problem with the internet or the Customer's internet connection (including any Wi-Fi connection where one is being used);

    iv.   Any act or omission by the Customer, or any person acting on behalf of the Customer, which prevents or delays the availability of the hosted services; and/or

    v.   Any Force Majeure event, including any failure of the internet or an occurrence of another major circumstance or event outside of Provider's control.

Provider reserves the right to take the Software Services offline in order to carry out emergency maintenance, but shall use commercially reasonable efforts to provide the Customer with as much notice as is reasonably possible.

Provider cannot guarantee the availability of the mobile phone networks on which data communications depend.

(b)   <u>Updates</u>. Customer acknowledges that the Software Services may from time to time include updates, upgrades and other enhancements which Provider in its sole discretion will make available. All upgrades and testing of the Software Services will be performed at Provider's discretion. Customer will have no right hereunder to require specific customization of the Software Services, such as access to a prior version level or unique user interface.

5.   <u>Fees and Payment</u>.

(a)   <u>Fees</u>. Customer shall pay Provider the fees (**"Fees"**) according to the payment terms set forth in the Prime Agreement, without offset or deduction. The applicable purchase order, invoice, schedule, exhibit, attachment, task order or other ordering document (**"Order"**), issued pursuant to the Prime Agreement, will establish the original order date for the Software Services (**"Order Date"**). If Customer fails to make any payment when due, without limiting Provider's other rights and remedies: (i) Provider may charge interest on the past due amount at the rate of 1.5% per month calculated daily and compounded monthly or, if lower, the highest rate permitted under applicable law; (ii) Customer shall reimburse Provider for all costs incurred by Provider in collecting any late payments or interest, including attorneys' fees, court costs, and collection agency fees; and (iii) if such failure continues for 60 days or more, Provider may suspend Customer's and its Authorized Users' access to any portion or all of the Software Services until such amounts are paid in full.

(b)   <u>Fee Increase</u>. Provider's Fee for any Renewal Terms(s) (as defined below) shall escalate annually as of each annual anniversary of the Software Services original Order Date by the amount of the prior term's Fee plus the increase as

based upon the U. S. Bureau of Labor Statistics Producer Price Index for Data Processing and Related Services, Hosting, ASP and Other IT Infrastructure Provisioning Services, Series ID: PCU5182105182105, 12-month percent change.

(c)   Taxes. All Fees and other amounts payable by Customer for the Software Services under this Agreement are exclusive of taxes and similar assessments. Customer is responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental or regulatory authority on any amounts payable by Customer hereunder, other than any taxes imposed on Provider's income.

(d)   Auditing Rights and Required Records. During the Term and for up to two (2) years after the Agreement's termination or expiration, Provider may, at its own expense, on reasonable prior notice, periodically inspect and audit Customer's records with respect to matters covered by this Agreement, provided that if such inspection and audit reveals that Customer has underpaid Provider with respect to any amounts due and payable during the Term, Customer shall promptly pay the amounts necessary to rectify such underpayment, together with interest in accordance with Section 5(a).

6.   Confidential Information and Data Privacy.

(a)   From time to time during the Term, either Party may disclose or make available to the other Party non-public, proprietary information about its business affairs, products, services, confidential intellectual property, trade secrets, third-party confidential information, and other sensitive or proprietary information, whether orally or in written, electronic, or other tangible form, that is reasonably understood from the context of the disclosure, or is affirmatively marked, designated, or otherwise identified as "confidential" (collectively, **"Confidential Information"**). Confidential Information does not include information that, at the time of disclosure is: (a) in the public domain; (b) known to the receiving Party at the time of disclosure; (c) rightfully obtained by the receiving Party on a non-confidential basis from a third party; (d) independently developed by the receiving Party; or (e) disclosed under legal compulsion. The receiving Party shall use the Confidential Information solely for the performance of this Agreement and shall not disclose the disclosing Party's Confidential Information to any person or entity, except to the receiving Party's employees who have a need to know the Confidential Information for the receiving Party to exercise its rights or perform its obligations hereunder. Notwithstanding the foregoing, each Party may disclose Confidential Information to the limited extent required (i) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the Party making the disclosure pursuant to the order shall first have given written notice to the other Party and made a reasonable effort to obtain a protective order; or (ii) to establish a Party's rights under this Agreement, including to make required court filings. On the expiration or termination of the Agreement, the receiving Party shall promptly return to the disclosing Party all copies, whether in written, electronic, or other form or media, of the disclosing Party's Confidential Information, or destroy all such copies and certify in writing to the disclosing Party that such Confidential Information has been destroyed. Each Party's obligations of non-disclosure with regard to Confidential Information are effective as of the Effective Date and will expire five (5) years from the date first disclosed to the receiving Party; provided, however, with respect to any Confidential Information that constitutes a trade secret (as determined under applicable law), such obligations of non-disclosure will survive the termination or expiration of this Agreement for as long as such Confidential Information remains subject to trade secret protection under applicable law.

(b)   Data Privacy and Security.

    i.   By Provider. Without limiting Provider's obligation of confidentiality as further described herein, Provider will use commercially reasonable efforts to establish and maintain a data privacy and information security program, including physical, technical, administrative, and organizational safeguards, that is designed to: (a) ensure the security and confidentiality of the Customer Data; (b) protect against any anticipated threats or hazards to the security or integrity of the Customer Data; (c) protect against unauthorized disclosure, access to, or use of the Customer Data; (d) ensure the proper disposal of Customer Data; and, (e) ensure that all employees, agents, and subcontractors of Provider, if any, comply with all of the foregoing.

    ii.   Data Protection. Each Party shall comply with all laws and regulations applicable to the processing of personal data in connection with any transactions related to this Agreement which may be applicable, including any other legal requirements related to (a) privacy and data security, and (b) the use, collection, retention, storage, security, disclosure, transfer, disposal and other processing of personal data (**"Privacy Laws"**). Unless otherwise agreed in the Prime Agreement, Customer consents to the storage of Customer Data on a Provider server located in the United States or Ireland. Customer is responsible for obtaining any necessary authorizations and consents prior to disclosing Customer Data to Provider or to any third party. The terms "controller", "personal data" and "processing" used in this section shall have the meaning set out in the applicable Privacy Laws. Either Party may use personal data consisting of ordinary business contact

data (e.g., name, phone number, email address, etc.) in its capacity as a controller or processor strictly in accordance with applicable Privacy Laws in the normal course of business but only for the purpose of administration of the Party's business relationship and performance of their obligations under this Agreement.

7. <u>Intellectual Property Ownership; Feedback.</u>

(a) <u>Provider IP</u>. Customer acknowledges that, as between Customer and Provider, Provider owns all right, title, and interest, including all intellectual property rights, in and to the Provider IP, and with respect to Third-Party Products or Affiliate Products, the applicable third-party or Affiliate owns all right, title, and interest, including all intellectual property rights, in and to the Third-Party Products or Affiliate Products.

(b) <u>Customer Data</u>. Provider acknowledges that, as between Provider and Customer, Customer owns all right, title, and interest, including all intellectual property rights, in and to the Customer Data. Customer hereby grants to Provider a non-exclusive, royalty-free, worldwide license to reproduce, distribute, and otherwise use and display the Customer Data and perform all acts with respect to the Customer Data as may be necessary for Provider to provide the Software Services to Customer, and a non-exclusive, perpetual, irrevocable, royalty-free, worldwide license to reproduce, distribute, modify, and otherwise use and display Customer Data incorporated within the Aggregated Statistics.

(c) <u>Feedback</u>. If Customer or any of its employees or contractors sends or transmits any communications or materials to Provider by mail, email, telephone, or otherwise, suggesting or recommending changes to the Provider IP, including without limitation, new features or functionality relating thereto, or any comments, questions, suggestions, or the like (**"Feedback"**), Provider is free to use such Feedback irrespective of any other obligation or limitation between the Parties governing such Feedback. Customer hereby assigns to Provider on Customer's behalf, and on behalf of its employees, contractors and/or agents, all right, title, and interest in, and Provider is free to use, without any attribution or compensation to any party, any ideas, know-how, concepts, techniques, or other intellectual property rights contained in the Feedback, for any purpose whatsoever, although Provider is not required to use any Feedback.

8. <u>Limited Warranty.</u>

(a) Provider warrants that the Software Services will conform in all material respects to the service levels set forth in Section 4(a) when accessed and used in accordance with the Documentation. Provider does not make any representations or guarantees regarding uptime or availability of third party networks such as but not limited to datacenter hosting or cellular or other connectivity.   Any failure by Provider to meet the Availability Period shall entitle Customer to a term extension of Software Services for the period of time the Availability Period was not achieved. The remedy set forth in in this Section 8(a) is Customer's sole remedy and Provider's sole liability, and no Provider failure to maintain the Availability Period at any time shall be deemed a breach of this Agreement. THE FOREGOING WARRANTY DOES NOT APPLY, AND PROVIDER STRICTLY DISCLAIMS ALL WARRANTIES, WITH RESPECT TO ANY THIRD-PARTY PRODUCTS OR AFFILIATE PRODUCTS.

(b) EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 8(a),THE SOFTWARE SERVICES ARE PROVIDED "AS IS" AND ON A "AS AVAILABLE" BASIS. TO THE MAXIMUM EXTENT PERMISSIBLY BY LAW, PROVIDER HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. PROVIDER SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, ACCURACY OF INFORMATIONAL CONTENT AND SYSTEM INTEGRATION, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 8(a), PROVIDER MAKES NO WARRANTY OF ANY KIND THAT THE PROVIDER IP, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM, OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE. CUSTOMER EXPRESSLY ACKNOWLEDGES AND AGREES THAT USE OF THE SOFTWARE SERVICES IS AT CUSTOMER'S RISK. PROVIDER DOES NOT WARRANT AND IS NOT RESPONSIBLE FOR ANY THIRD-PARTY PRODUCTS OR SERVICES OR AFFILIATE PRODUCTS OR SERVICES.

9. <u>Indemnification.</u>

(a) <u>Provider Indemnification.</u>

i. Provider shall indemnify, defend, and hold harmless Customer from and against any and all losses, damages, liabilities, costs (including reasonable attorneys' fees) (**"Losses"**) incurred by Customer resulting from any third-party claim, suit, action, or proceeding (**"Third-Party Claim"**) that the Software Services, or

any use of the Software Services in accordance with this Agreement, infringes or misappropriates such third party's intellectual property rights, patents, copyrights, or trade secrets, provided that Customer promptly notifies Provider in writing of the claim, cooperates with Provider, and allows Provider sole authority to control the defense and settlement of such claim.

ii.   If such a Third-Party Claim is made or appears possible, Customer agrees to permit Provider, at Provider's sole discretion, to (A) modify or replace the Software Services, or component or part thereof, to make it non-infringing, or (B) obtain the right for Customer to continue use. If Provider determines that neither alternative is reasonably available, Provider may terminate this Agreement, in its entirety or with respect to the affected component or part, effective immediately on written notice to Customer, and refund Customer any pre-paid Fees on a pro rata basis as of the time of termination.

iii. This Section 9(a) will not apply to the extent that the alleged infringement arises from: (A) use of the Software Services in combination with data, software, hardware, equipment, or technology not provided by Provider or authorized by Provider in writing; (B) modifications to the Software Services not made by Provider; (C) Customer Data; or (D) Third-Party Products.

(b)   <u>Customer Indemnification</u>. Customer shall indemnify, hold harmless, and, at Provider's option, defend Provider from and against any Losses resulting from any Third-Party Claim that the Customer Data, or any use of the Customer Data in accordance with this Agreement, infringes or misappropriates such third party's intellectual property rights, and any Third-Party Claims based on Customer's or any Authorized User's (i) failure to obtain any necessary consents in accordance with the Privacy Laws; (ii) negligence or willful misconduct; (iii) use of the Software Services in a manner not authorized by this Agreement; (iv) use of the Software Services in combination with data, software, hardware, equipment, or technology not provided by Provider or authorized by Provider in writing; or (v) modifications to the Software Services not made by Provider, provided that Customer may not settle any Third-Party Claim against Provider unless Provider consents to such settlement, and further provided that Provider will have the right, at its option, to defend itself against any such Third-Party Claim or to participate in the defense thereof by counsel of its own choice.

(c)   <u>Sole Remedy</u>. THIS SECTION 9 SETS FORTH CUSTOMER'S SOLE REMEDIES AND PROVIDER'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE SOFTWARE SERVICES INFRINGE, MISAPPROPRIATE, OR OTHERWISE VIOLATE ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

10.   <u>Limitations of Liability</u>. IN NO EVENT WILL EITHER PARTY BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (i) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, LIQUIDATED, OR PUNITIVE DAMAGES; (ii) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES, OR PROFITS; (iii) LOSS OF GOODWILL OR REPUTATION; (iv) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY, OR RECOVERY OF ANY DATA, OR BREACH OF DATA OR SYSTEM SECURITY; OR (v) COST OF REPLACEMENT GOODS OR SERVICES, IN EACH CASE REGARDLESS OF WHETHER EITHER PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE. IN NO EVENT WILL PROVIDER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE EXCEED THE TOTAL AMOUNTS PAID TO PROVIDER UNDER THIS AGREEMENT IN THE TWELVE MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM OR CUSTOMER'S ACTUAL DAMAGES, WHICHEVER IS LESS.

11.   <u>Term and Termination</u>.

(a)   <u>Term</u>. The initial term of this Agreement begins on the Order Date and, unless terminated earlier pursuant to this Agreement's express provisions, will continue in effect until one (1) year from such date (the **"Initial Term"**). This Agreement will automatically renew for additional successive one (1) year terms unless earlier terminated pursuant to this Agreement's express provisions or either Party gives the other Party written notice of non-renewal at least 90 days prior to the expiration of the then-current term (each a **"Renewal Term"** and together with the Initial Term, the **"Term"**).

(b)   <u>Termination</u>. In addition to any other express termination right set forth in this Agreement:

i.   Provider may terminate this Agreement, effective on written notice to Customer, if Customer: (A) fails to pay any amount when due hereunder, and such failure continues more than thirty (30) days after Provider's delivery of written notice thereof; or (B) breaches any of its obligations under Section 2(c) or Section 6;

ii.   either Party may terminate this Agreement, effective on written notice to the other Party, if the other Party materially breaches this Agreement, and such breach: (A) is incapable of cure; or (B) being capable of cure, remains uncured thirty (30) days after the non-breaching Party provides the breaching Party with written notice of such breach; or

iii.   either Party may terminate this Agreement, effective immediately upon written notice to the other Party, if the other Party: (A) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (B) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law; (C) makes or seeks to make a general assignment for the benefit of its creditors; or (D) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

(c)   Effect of Expiration or Termination. Upon expiration or earlier termination of this Agreement, Customer shall immediately discontinue use of the Provider IP and, without limiting Customer's obligations under Section 6, Customer shall delete, destroy, or return all copies of the Provider IP and certify in writing to the Provider that the Provider IP has been deleted or destroyed. No expiration or termination will affect Customer's obligation to pay all Fees that may have become due before such expiration or termination or entitle Customer to any refund.

(d)   Survival. This Section 11(d) and Sections 1, 5, 6, 7, 8(b), 9, 10, and 12 survive any termination or expiration of this Agreement. No other provisions of this Agreement survive the expiration or earlier termination of this Agreement.

12.   Miscellaneous.

(a)   Entire Agreement. This Agreement, together with any other documents incorporated herein by reference and all related Orders, constitutes the sole and entire agreement of the Parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, and representations and warranties, both written and oral, with respect to such subject matter.

(b)   Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "**Notice**") must be in writing and addressed to the Parties at the addresses set forth on the first and/or last page of this Agreement (or to such other address that may be designated by the Party giving Notice from time to time in accordance with this Section). All Notices must be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), or email (with confirmation of transmission), or certified or registered mail (in each case, return receipt requested, postage pre-paid). Except as otherwise provided in this Agreement, a Notice is effective only: (i) upon receipt by the receiving Party; and (ii) if the Party giving the Notice has complied with the requirements of this Section.

(c)   Force Majeure. In no event shall Provider be liable to Customer, or be deemed to have breached this Agreement, for any failure or delay in performing its obligations under this Agreement, if and to the extent such failure or delay is caused by any circumstances beyond Provider's reasonable control, including but not limited to acts of God, any natural disaster, epidemic, pandemic (including, but not limited to, COVID-19), explosion, war, terrorism, invasion, riot or other civil unrest, strikes, labor stoppages or slowdowns or other industrial disturbances such as but not limited to failures or fluctuations in electrical power, telecommunications equipment or hosting services, or passage of law, order, regulation or any action taken by a governmental or public authority, including imposing an embargo.

(d)   Amendment and Modification; Waiver. This Agreement may not be amended or modified orally but only through a written amendment that is signed by each Party. No waiver of any right or duty under this Agreement will be effective, and no course of dealing will be binding on either Party, unless set forth in writing and signed by both Parties.

(e)   Severability. If any provision of this Agreement is void or unenforceable: (i) the Parties agree to replace such void or unenforceable provision with a replacement provision that most nearly approximates the outcome intended by the void or unenforceable provision, and (ii) such invalidity or enforceability will not affect the validity or enforceability of any other provision hereof.

(f)   Governing Law; Submission to Jurisdiction. This Agreement is governed by and construed in accordance with the internal laws of the State of Delaware, United States, without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of Delaware. In the event of a dispute the Parties may mutually agree to resolve the dispute by direct negotiation, mediation, or non-binding arbitration. Any legal suit, action, or proceeding arising out of or related to this Agreement or the licenses granted hereunder will be instituted in the federal courts of the United States or the courts

of the State of Delaware, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding. The Parties agree that neither the United Nations Convention on Contracts for the International Sale of Goods, nor the Uniform Computer Information Transaction Act (UCITA) shall apply to this Agreement, regardless of where the Parties do business or are incorporated.

(g) Assignment. Neither Party may assign any of its rights or delegate any of its obligations hereunder without the prior written consent of Provider provided, however, that each Party may assign its rights and obligations hereunder to an Affiliate. Any purported assignment or delegation in violation of this Section will be null and void. This Agreement is binding upon and inures to the benefit of the Parties and their respective permitted successors and assigns.

(h) Compliance with Laws/Export Regulation. The Parties will comply with all applicable laws, regulations and codes, including procurement of permits and licenses, when needed, of their respective states, territories, provinces, and/or countries in the performance of this Agreement, provided such is not in violation of the U.S. Government's Export and Anti-boycott Rules and Regulations. The Software Services and related technical information, documents and materials are subject to export controls under the U.S. Export Administration Regulations and other applicable laws. Customer will (a) comply strictly with all legal requirements established under these controls; (b) cooperate fully with Provider in any audit or inspection that relates to these controls; and (c) not export, re-export, divert or transfer, directly or indirectly, any such item to any country or person who or which is embargoed by Executive Order or any applicable law, including any rules, regulations or policies promulgated thereunder.

(i) US Government Rights. Each of the Documentation and the software components that constitute the Software Services is a "commercial product" as that term is defined at 48 C.F.R. § 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. § 12.212. Accordingly, if Customer is an agency of the US Government or any contractor thereof, Customer only receives those rights with respect to the Software Services and Documentation as are granted to all other end users, in accordance with (a) 48 C.F.R. § 227.7201 through 48 C.F.R. § 227.7204, with respect to the Department of Defense and their contractors, or (b) 48 C.F.R. § 12.212, with respect to all other US Government users and their contractors.

(j) Equitable Relief. Each Party acknowledges and agrees that a breach or threatened breach by such Party of any of its obligations under Section 6 or, in the case of Customer, Section 2(c), would cause the other Party irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, the other Party will be entitled to equitable relief, including a restraining order, an injunction, specific performance, and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity, or otherwise.

(k) Publicity. Neither Party may release any information to third parties, make any public statements about this Agreement or otherwise use the other Party's name, logo or trademarks without the other Party's express written consent.

(l) Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date set forth below.

ECHOLOGICS, LLC

By: _(signature)_

Name: Eric Stacey

Title: VP & GM, Water Management Solutions

CUSTOMER

Customer Name: _City of Trenton TWW_

Address: _317 East State St_
Trenton, 08608

By: _(signature)_

Name: _W. Reed Gusciora_

Title: _Mayor_

Date: _2-27-23_

CONTRACT AWARD

Upon opening proposals, pricing shall remain firm for a period of sixty (60) calendar days. In the event that the award is not made within sixty (60) calendar days, bidders may hold their bid consideration beyond sixty days or until the contract is awarded.

✓   Check here if willing to hold the pricing consideration beyond sixty days or until the contract is awarded.

Check here if not willing to hold the pricing consideration beyond sixty days or until the contract is awarded.

Paul Murray - Product Line General Manager   _~~~~~~~~_   12/16/2022
AUTHORIZED SIGNATURE