

DIR-CPO-4691

APPENDIX F

OMS SOLUTIONS AGREEMENT

Agreement No. _____

This Appendix to DIR Contract Number: DIR-CPO-4691, Cartegraph OMS Solutions Agreement (“Agreement”) is a contract between Cartegraph Systems LLC, a Delaware corporation, having its principal place of business at 3600 Digital Drive, Dubuque, Iowa 52003 (“Cartegraph”) and you, or if you represent an entity or other organization, that entity or organization, (in either case, the “Customer”). Cartegraph and Customer may be referred to in this Agreement collectively as the “parties” or individually as a “party.”

This Agreement is subject to the terms and conditions set forth in the Texas Department of Information Resources (DIR) Contract Number DIR-CPO-4691 and all Appendixes thereto (collectively, the “DIR Contract”). In the event of a conflict between this Agreement and the DIR Contract, the DIR Contract shall control.

Cartegraph provides certain hosted operations management and asset management solutions (the “Cartegraph Solutions” or “Solutions”). Customer desires to purchase a subscription to access and use certain of the Cartegraph Solutions for Customer’s own internal use and operations.

This Agreement sets forth the terms and conditions under which Cartegraph will agree to provide Customer with a subscription to access and use those Solutions specified in written Purchase Agreements referencing this Agreement entered into by Cartegraph and Customer (each, a “Purchase Agreement”) and perform those services specified in each Purchase Agreement (the services provided by Cartegraph under this Agreement, including the services made available through the Solutions, the “Services”). All access to and use of the Solutions and the performance of all Services are subject to the terms of this Agreement.

This Agreement includes any Purchase Agreement entered into by the parties referencing this Agreement and any written Addendum attached to a Purchase Agreement, including descriptions of any Solutions or Services (each, an “Addendum”), all of which are hereby incorporated into and made a part of this Agreement. Terms used in this Agreement will have the definitions given in this Agreement or, if not defined in this Agreement, will have their plain English (US) meaning.

PLEASE CAREFULLY READ THIS AGREEMENT. BY ACCEPTING THIS AGREEMENT, THROUGH THE EXECUTION OF A PURCHASE AGREEMENT THAT REFERENCES THIS AGREEMENT, OR BY CLICKING A BOX THAT STATES THAT YOU ACCEPT OR AGREE TO THIS AGREEMENT, YOU AGREE THAT YOU HAVE READ AND AGREE TO BE BOUND BY THIS AGREEMENT. IF YOU DO NOT AGREE TO THIS AGREEMENT, OR DO NOT MEET THE QUALIFICATIONS INCLUDED IN THIS AGREEMENT OR ANY PURCHASE AGREEMENT, CARTEGRAPH IS NOT WILLING TO PROVIDE YOU, AS CUSTOMER, WITH ACCESS TO OR USE OF CARTEGRAPH SOLUTIONS OR SERVICES, AND YOU MUST NOT ACCESS OR USE CARTEGRAPH SOLUTIONS OR SERVICES. IF YOU ACCESS OR USE CARTEGRAPH SOLUTIONS OR SERVICES, YOU ACKNOWLEDGE THAT YOU

MEET THE QUALIFICATIONS INCLUDED IN THIS AGREEMENT AND ANY PURCHASE AGREEMENT, AND AGREE TO BE BOUND BY THE TERMS AND CONDITIONS HEREIN.

1. TERM.

The term of this Agreement shall begin upon the execution of an initial Purchase Agreement under this Agreement and, unless earlier terminated as permitted herein, shall continue for the period of time specified in that Purchase Agreement (“Initial Term”). The execution of any subsequently added Purchase Agreement under this Agreement shall not extend the Initial Term unless otherwise expressly stated in that Purchase Agreement. Unless otherwise stated in an applicable Purchase Agreement under this Agreement, the Initial Term of this Agreement shall automatically renew for successive additional 1 year renewal periods (each, a “Renewal Term”) unless either party provides the other party with written notice of its intent not to renew this Agreement at least 60 days before the end of the Initial Term or any such Renewal Term.

2. SOLUTIONS.

2.1 FUNCTIONALITY.

The Solutions will include the functionality described in the applicable Purchase Agreement or Addendum for each Solution. Cartegraph may from time to time update, change, or revise the functionality of the Solutions, provided the functionality of the Solutions is not materially decreased from that described in the applicable Purchase Agreement or Addendum to a Purchase Agreement.

2.2 SUBSCRIPTION.

Subject to the terms and conditions of this Agreement, during the term of this Agreement Cartegraph will provide Customer with a non-exclusive, non-transferable, and non-sublicensable subscription to allow employees and independent contractors of Customer (“Users”) to access and use the Solutions, solely for purposes of Customer’s own internal use and operations. If Customer has purchased a per-user subscription, as indicated in the applicable Purchase Agreement, only the finite number of subscriptions indicated in each applicable Purchase Agreement have been purchased by Customer and only that finite number of Users may access and use the Solutions at any given time. If Customer has purchased an unlimited subscription, as indicated in the applicable Purchase Agreement, all Users associated with Customer are permitted to access and use the Solutions at any given time. In either case, the subscription applies only to the Users and does not allow access to or use of the Solutions by any affiliated entities or organizations, or any other entity unless approved in advance by Cartegraph in writing.

2.3 ACCESS.

Customer may access the Solutions solely through the account established for Customer (an “Account”). Customer will be permitted to establish user identifications and passwords through which individual

Users may access the Solutions through Customer's Account ("User IDs"). Each User ID is issued to a specific User and may be used only by that User. Customer will ensure that all information about each User provided to Cartegraph in connection with establishing each User ID is accurate and complete and will maintain that information as accurate and complete throughout the term of this Agreement. Customer is and will remain solely responsible for all use of the Solutions by any User and for compliance by each User with the applicable terms of this Agreement. If Customer authorizes an independent contractor or consultant as a User, in addition to being responsible for such independent contractor's or consultant's actions as a User, Customer shall also require such independent contractor or consultant to agree to terms at least as protective of the Solutions as those contained in this Agreement prior to being granted access to the Solutions. Customer will ensure the security and confidentiality of each User ID and will use commercially reasonable efforts to prevent unauthorized access to or use of the Solutions. Customer will notify Cartegraph promptly of any such unauthorized access or use of the Solutions or if any User ID is lost, stolen, or otherwise compromised.

2.4 RESTRICTIONS.

The Solutions, the software, hardware, databases, and other technology used by or on behalf of Cartegraph to provide the Solutions (the "Cartegraph Technology"), and their structure, organization, and underlying data, information, and source code, constitute valuable trade secrets of Cartegraph and its licensors. As a condition to the use of and access to the Solutions, Customer will not, and will not permit any User or other third party to: (a) access or use the Solutions except as expressly permitted by this Agreement; (b) access or use the Cartegraph Technology directly, except through the Solutions as expressly provided in this Agreement; (c) use the Solutions in any unlawful or illegal manner or in any other manner that could damage, disable, overburden or impair the Cartegraph Technology; (d) use automated scripts to collect information from or otherwise interact with the Cartegraph Technology; (e) alter, modify, reproduce, create derivative works of the Cartegraph Technology; (f) distribute, sell, resell, lend, loan, lease, license, sublicense, transfer, or otherwise make available the Solutions or any of Customer's rights to access or use the Solutions or any Service to any third party; (g) reverse engineer, disassemble, decompile, or otherwise attempt to derive the source code or method of operation of or any trade secrets embodied in the Cartegraph Technology; (h) attempt to circumvent or overcome any technological protection measures intended to restrict access to any portion of the Cartegraph Technology; (i) use the Cartegraph Technology for purposes of monitoring their availability, performance or functionality, or for any other benchmarking, business intelligence, data mining, or competitive purposes; or (j) interfere in any manner with the operation or hosting of the Cartegraph Technology.

2.5 THIRD PARTY OFFERINGS.

Customer agrees and acknowledges that certain portions of the Solutions may be provided by third party providers (“Third-Party Offerings”). Customer’s access to and use of any Third-Party Offering is also subject to any other agreement separate from this Agreement that Customer may enter into (or may have entered into) relating to those Third-Party Offerings (“Third Party Terms”). In addition to the terms of this Agreement, access to and use of each Third-Party Offerings is also subject to the terms and conditions of any Third-Party Terms applicable to that Third-Party Offering. Except as set forth in the DIR Contract and this Agreement, any applicable Third-Party Terms will control in the event of a conflict between the terms of this Agreement and those Third-Party Terms. Except as expressly set forth in any Third-Party Terms, You are granted no licenses or rights, whether by implication, estoppel, or otherwise, in or to any Third Party Offerings.

3. SERVICES.

If Customer enters into a Purchase Agreement, including any applicable Addendum specifying any of the following Services, Cartegraph will use commercially reasonable efforts to provide those Services to Customer during the term of this Agreement. All such Services are provided subject to the terms and conditions of this Agreement and in accordance with Section 1 of Appendix A of the DIR Contract. Cartegraph has no obligation to provide any of the following Services unless specified in a Purchase Agreement or Addendum to this Agreement.

3.1 ON-SITE INSTALLATION SERVICES.

Cartegraph shall provide Customer with deployment and installation Services for the Solutions if indicated in a Purchase Agreement (“On-Site Installation Services”). On-Site Installation Services will be subject to scheduling in cooperation with Customer. Customer will provide all equipment and hardware stated in such Purchase Agreement, and any additional equipment and hardware reasonably necessary for the operation of the Solutions. Customer shall be responsible for maintaining the equipment and hardware, which shall include providing sufficient resources (e.g., electricity, HVAC, or other resources) necessary for the equipment and hardware to properly operate. Cartegraph’s warranties contained in this Agreement shall be limited to the extent that such obligation arises from Customer’s equipment and hardware. Customer shall coordinate with Cartegraph to provide Cartegraph with the level of access to the equipment and hardware to perform On-Site Installation Services and any other Services as specified in a Purchase Agreement. If no level of access is specified in a Purchase Agreement, then all access by Cartegraph to the equipment and hardware shall be remote access. Unless otherwise specified in a Purchase Agreement, Cartegraph shall have no obligation to perform the On-Site Installation Services, or any other Services, on Customer’s premises. If Cartegraph determines that it is necessary to perform any Services on Customer’s premises, Cartegraph shall first receive approval from Customer prior to performing such Services on Customer’s premises. Except as provided by the DIR Contract, Cartegraph shall have no responsibility to Customer for any liability to

the extent that such liability arises from Customer's failure to provide Cartegraph sufficient or timely access to the equipment or hardware. Customer understands that Customer does not receive any rights to the Cartegraph Technology separate and apart from Customer's right to access the Solutions installed on-site by Cartegraph as described in this Agreement. If Customer requires additional rights to access the Solutions, Customer shall obtain Cartegraph's prior written consent.

3.2 SUPPORT SERVICES.

Cartegraph will provide Customer with support Services for the Solutions as specified in Addendum A if such Addendum is attached to a Purchase Agreement ("Support Services").

3.3 FIELD SERVICES.

Cartegraph will provide Customer with the field implementation Services for the Solutions as specified in Addendum B if such Addendum is attached to a Purchase Agreement ("Field Services"). Field Services will be subject to scheduling in cooperation with Customer.

3.4 DATA SERVICES.

Cartegraph will provide Customer with the data collection Services for the Solutions as specified in Addendum C if such Addendum is attached to a Purchase Agreement ("Data Services"). Data Services will be subject to scheduling in cooperation with Customer.

3.5 ADDITIONAL SERVICES.

Cartegraph will perform any additional Services relating to the Solutions ("Additional Services") if specified in any written statement of work mutually agreed to by both parties under this Agreement. Cartegraph will perform all Additional Services at the rates for those Additional Services set forth in each applicable statement of work, or, if no rates are set forth in an applicable statement of work, at Cartegraph's then-current rates for those Additional Services. Additional Services shall be performed during the working hours stated in the statement of work applicable to those Additional Services, or, if no working hours are stated, the Additional Services will be provided during the hours of 7:00 a.m. to 7:00 p.m., Central Standard or Central Daylight Time, whichever is applicable, Monday through Friday excluding holidays.

4. SOFTWARE.

Cartegraph may provide Customer with software in connection with the Solutions ("Software"). Unless any Software provided by Cartegraph in connection with the Solutions is subject to a license or other agreement separate from this Agreement that Customer has entered into (or may enter into) with Cartegraph (a "Software License Agreement"), Cartegraph grants Customer a limited, non-exclusive, non-transferrable, non-assignable, license solely to install and execute the Software in accordance with the instructions provided by Cartegraph for Customer's own internal use and operations in connection with Customer's access to and use of the Solutions. Except as expressly set forth in the foregoing

sentence (or any applicable Software License Agreement), Customer is granted no licenses or rights, whether by implication, estoppel, or otherwise, in or to any Software, and Customer may not modify, reproduce, perform, display, create derivative works from, republish, post, transmit, transfer, sell, distribute, or in any way exploit any Software without the prior written permission of Cartegraph. Except as set forth in the DIR Contract and in this Agreement, the terms of any Software License Agreement will control in the event of a conflict between the terms of this Agreement and that Software License Agreement. Customer agrees that use of the Software is limited as described in the Purchase Agreement, as either: (1) Browser Based User – Each browser based User is defined by User ID; or For Server Software – One copy of Software for each server. Customer agrees that Cartegraph may audit Customer’s Software usage remotely or on-site upon reasonable notice and during standard business hours. Prevention of audit by Customer may be grounds for termination of this Agreement. Except as provided by the DIR Contract, Cartegraph and its licensors will not be responsible to Customer for loss of use of any Software or for any other liabilities arising from alterations, additions, adjustments, or repairs which are made to any Software by Customer or other third parties. Cartegraph reserves the right to terminate the licenses granted to any Software or any Services provided in connection with that Software upon written notice to Customer if any such alteration, addition, adjustment, or repair adversely affects Cartegraph’s ability to render Services.

5. FEES AND PAYMENT.

5.1 FEES.

Customer agrees to pay Cartegraph all fees specified in any Purchase Agreement and as otherwise specified in this Agreement (“Fees”) in accordance with Section 8.2 of Appendix A of the DIR Contract.

5.2 PAYMENT.

All Fees will be invoiced in advance in accordance with the terms applicable to such Fees and in accordance with Section 8 of Appendix A of the DIR Contract. If no terms for an applicable Fee are set forth in the applicable Purchase Agreement, such Fees will be invoiced on a monthly basis following the end of the month in which they were incurred. All Fees as set forth on each invoice issued by Cartegraph under this Agreement will be due and payable by Customer in immediately available U.S. funds within 30 days of the date of invoice. If Customer has not made payment within 30 days of the date of invoice, Customer shall be in default. Customer’s default will constitute sufficient cause for Cartegraph to suspend Customer’s access to the Solutions or any Services upon notice to Customer.

5.3 EXPENSES.

In accordance with Section 8 of Appendix A of the DIR Contract, Customer shall reimburse Cartegraph for reasonable expenses incurred during the provision of Services. Reasonable expenses include, but are not limited to, travel, lodging, and meals. Expenses are billed based on actual costs incurred.

Estimated expenses shall be included in each Purchase Agreement. Cartegraph shall not exceed the estimated expenses without written approval from Customer.

6. TERMINATION.

6.1 EFFECT OF TERMINATION.

Upon termination or expiration of this Agreement for any reason, and following any applicable Transition Period: (a) Cartegraph may cease providing access to all Solutions and Services under this Agreement; (b) all subscriptions and other rights and licenses granted to Customer under this Agreement will terminate; (c) Customer will immediately cease all use of and access to all Solutions and Services; and (d) Cartegraph will either return to Customer or, at Customer's discretion, destroy any Customer Data and Customer Confidential Information) then in Cartegraph's possession or control. The following Sections will survive termination or expiration of this Agreement for any reason: 5 (Fees and Payment), 6.4 (Effect of Termination), 7 (Ownership), 10 (Disclaimer), 11 (Indemnification), 12 (Limitation on Liability), 14 (Confidentiality), 15 (Governing Law), 16 (Non-Solicitation), 17 (Force Majeure), 18 (Notice), and 19 (Additional Terms).

6.2 TRANSITION SERVICES.

Except in the case of a termination under Section 6.1 by Cartegraph, at any time prior to the effective date of any termination or expiration of this Agreement, Customer may request that Cartegraph continue to provide Customer with any Services then provided under this Agreement for purposes of transitioning and migrating Customer off of the Solutions ("Transition Services"). Upon such request, the parties will develop a mutually agreed to transition plan describing the Transition Services and each party's respective obligations in connection with the transition and migration of Customer off of the Solutions ("Transition Plan"). Cartegraph will provide the Transition Services for the period agreed to in the Transition Plan, such period not to exceed 180 days following termination or expiration of this Agreement (the "Transition Period"). Customer will compensate Cartegraph for all Transition Services at rates specified in the Transition Plan or, if no rates are agreed upon by the parties prior to the performance of the Transition Services, at Cartegraph's then current rates for the Services. All Transition Services will otherwise be subject to the terms of this Agreement.

7. OWNERSHIP.

Except as provided by the DIR Contact, Cartegraph retains all right, title, and interest in and to the Solutions, Cartegraph Technology, Cartegraph Data, any additions, improvements, updates, new versions, or other modifications thereto created by either party, whether or not through the Services, alone, jointly, or with any third party, and all IPR (as defined below) therein and related thereto. Except as provided by the DIR Contract, Customer does not receive any ownership interest in or to any of the

foregoing, and no right or license is granted to Customer to use any of the foregoing apart from Customer's right to access and use the Solutions under this Agreement. Customer will perform all acts reasonably necessary to assist Cartegraph in perfecting and defending Cartegraph's ownership interest in any of the foregoing. Without limiting the foregoing, Customer agrees to and does hereby make all assignments necessary to provide Cartegraph with the ownership rights set forth in this Section. All names and logos associated with the Solutions and other Services are trademarks of Cartegraph (or its third-party providers) and no right or license is granted to Customer to use them. Except as provided by the DIR Contract, any rights not expressly granted to Customer hereunder are reserved by Cartegraph. Customer will not remove or alter any proprietary rights legend on the Solutions, Cartegraph Technology, or Cartegraph Data. For purposes of this Agreement, "IPR" means any and all intellectual property and other proprietary rights throughout the world, including, all copyrights, trademarks, service marks, trade secrets, patent rights, moral rights, rights in data and databases, and contract rights.

8. DATA.

8.1 CUSTOMER DATA.

As between Customer and Cartegraph, Customer retains ownership of all data, information, and other content provided to Cartegraph or through the Solutions by or on behalf of Customer ("Customer Data"). Customer is responsible for all Customer Data, including the accuracy, quality, integrity, legality, reliability, and appropriateness thereof. Customer will obtain and maintain all authorizations, approvals, permissions, and other rights necessary for Cartegraph to use and process all Customer Data in the performance of the Services and any other obligations of Cartegraph under this Agreement. Customer will maintain an adequate back-up of all Customer Data.

8.2 CARTEGRAPH DATA.

As between Cartegraph and Customer, Cartegraph retains ownership of all data, information, and other content provided to Customer through the Solutions and the other Services, excluding any Customer Data ("Customer Data"). Subject to the terms of this Agreement, Customer may access the Cartegraph Data without modification solely for Customer's own internal business purposes in connection with Customer's use of and access to the Solutions. Cartegraph uses commercially reasonable measures to ensure the accuracy and reliability of all Cartegraph Data, but except as provided by the DIR Contract and as expressly provided herein Cartegraph will not be responsible for any erroneous data, information, or content provided through the Solutions. Except as provided by the DIR Contract and as expressly provided in this Agreement, Customer is granted no rights in or to the Cartegraph Data.

8.3 DATA SECURITY.

Cartegraph shall establish and maintain during the term an information security policy providing for reasonable administrative, technical, physical safeguards and security measures designed to protect against the unintended or unauthorized destruction, loss, alteration, or access of any Customer Data in

the possession or control of Cartegraph, which safeguards and measures are compliant with applicable federal, state, provincial, or local laws, rules, and regulations (“Laws”). Customer will establish and maintain during the term reasonable and appropriate administrative, technical, and physical safeguards and security measures designed to protect against the unintended or unauthorized destruction, loss, alteration, or access of any Cartegraph Data in the possession or control of Customer, which safeguards and measures are consistent with applicable Laws. Each party will promptly notify the other party of any data security breach or similar incident that has, or might have, compromised the privacy or security of any Customer Data or, in the case of Customer, any Cartegraph Data in the possession or control of such party.

9. LIMITATION ON LIABILITY.

Limitation of Liability shall be handled in accordance with Section 10.12 of Appendix A of the DIR Contract.

10. INSURANCE.

If Cartegraph will provide Services at Customer’s location, Cartegraph will carry commercial general liability insurance in accordance with Section 10.15.1 of Appendix A of the DIR Contract.

11. GOVERNING LAW.

The interpretation of the rights and obligations of the parties under this Agreement, including, to the extent applicable, any negotiations, arbitrations or other proceedings hereunder, will be governed in all respects exclusively by the laws of the State of Texas and in accordance with Section 4.6 of Appendix A of the DIR Contract. Each party agrees that it will bring any action or proceeding arising from or relating to this Agreement exclusively in a federal or state/provincial court in the State of Texas and in accordance with Section 4.6 of Appendix A of the DIR Contract, and each party irrevocably submits to the personal jurisdiction and venue of any such court in any such action or proceeding or in any action or proceeding brought in such courts.

12. ADDITIONAL TERMS.

Except as provided by the DIR Contract, this Agreement will govern Customer’s access to and use of the Solutions and all Services. Except as provided by the DIR Contract and as expressly set forth in this Agreement, this Agreement may be modified or amended only in writing signed by both parties. If any provision of this Agreement is held to be unenforceable, that provision will be removed to the extent necessary to comply with the law, replaced by a provision that most closely approximates the original intent and economic effect of the original to the extent consistent with the law, and the remaining

provisions will remain in full force. Except as provided by the DIR Contract, neither this Agreement nor any rights or obligations of either party hereunder may be assigned without the prior written consent of the other party. Any assignment in violation of the foregoing will be null and void.. In accordance with Section 10.7 of Appendix A of the DIR Contract, Cartegraph may subcontract its obligations under this Agreement, provided that Cartegraph remains responsible for compliance with the applicable terms of this Agreement as to those obligations. The words “include,” “includes” and “including” means “include,” “includes” or “including,” in each case, “without limitation.” All waivers under this Agreement must be in writing. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

The parties hereto are independent parties, not agents, employees or employers of the other or joint venturers', and neither acquires hereunder any right or ability to bind or enter into any obligation on behalf of the other.