

**LARAMIE COUNTY CLERK  
BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM PROCESSING FORM**

**1. DATE OF PROPOSED ACTION:** March 17, 2015

**2. AGENDA ITEM:**    ☐ Appointments    ☐ Bids/Purchases    ☐ Claims  
☒ Contracts/agreements/leases    ☐ Grants    ☐ Land Use: Variances/Board App/Plats  
☐ Proclamations    ☐ Public Hearings/Rules & Reg's    ☐ Reports & Public Petitions  
☐ Resolutions    ☐ Other

**3. DEPARTMENT:** Laramie County Sheriff's Dept.

**APPLICANT:** Brazos Technology

**AGENT:** Lt. Don Hollingshead

**4. DESCRIPTION:** Consideration of a software and maintenance agreement with Brazos Technology Corp. for website eCitation processing that interfaces with New World and the State of Wyoming Supreme Court.

Amount \$

From

To  
RECEIVED AND APPROVED AS  
TO FORM ONLY BY THE  
DEPUTY LARAMIE COUNTY  
ATTORNEY

**5. DOCUMENTATION:** 2 Originals



Clerks Use Only:

Commissioner

Ash \_\_\_\_\_  
Heath \_\_\_\_\_  
Holmes \_\_\_\_\_  
Kailey \_\_\_\_\_  
Thompson \_\_\_\_\_  
Action \_\_\_\_\_  
Postponed/Tabled \_\_\_\_\_

Signatures

Co Attny \_\_\_\_\_  
Assist Co Attny \_\_\_\_\_  
Grants Manager \_\_\_\_\_  
Outside Agency \_\_\_\_\_

**ADDENDUM TO SOFTWARE LICENSE AGREEMENT**  
**between**  
**LARAMIE COUNTY and BRAZOS TECHNOLOGY CORPORATION**

THIS ADDENDUM is made and entered into by and between Laramie County, 309 West 20<sup>th</sup> Street, P.O. Box 608, Cheyenne Wyoming, 82003-0608 (hereinafter referred to as "COUNTY") and BRAZOS TECHNOLOGY CORPORATION, a Texas Corporation, 526 University Drive East, Suite 201-A, College Station, Texas 77840 (hereinafter referred to as "CONTRACTOR"). The parties agree as follows:

**I. PURPOSE**

The purpose of this Addendum is to modify the Software License Agreement (8 pages with Exhibits A & B) attached hereto as Attachment A, collectively "Agreement."

**II. MODIFICATIONS**

The Software License Agreement is modified as follows:

A. Paragraph 13 of the Agreement, titled "Governing Law" is modified to add the following underlined language at the end: "This provision is not intended nor shall it be construed to waive COUNTY's statutory governmental or sovereign immunity."

**III. ADDITIONAL PROVISIONS**

A. Entire Agreement: This Addendum (3 pages), and Attachment A (Software License Agreement (8 pages with Exhibits A & B), represent the entire and integrated agreement and understanding between the parties and supersede all prior negotiations, statements, representations and agreements, whether written or oral.

B. Confidentiality: Notwithstanding anything in the Software License Agreement, including ¶ 4 "Non-disclosure," to the contrary, CONTRACTOR recognizes the duties and obligations of COUNTY may be limited and controlled by the operation of State or Federal law regarding the expenditure of public funds, and the disclosure of publicly held records. CONTRACTOR agrees that COUNTY shall not be held in breach or default of this Addendum in the event information related to this Addendum and its subject matter is released in accord with and pursuant to any applicable law or regulation, including, but not limited to, the Wyoming Public Records Act, Wyo. Stat. § 16-4-201 et seq., as amended. CONTRACTOR further agrees that it bears the sole responsibility for demonstrating in any court or other forum that any information it designates as proprietary or confidential is in fact confidential, and not subject to disclosure.

C. Modification: The Agreement and this Addendum shall be modified only by a written agreement, duly executed by all parties hereto.

D. Contingencies: CONTRACTOR certifies and warrants no gratuities, kick-backs, or contingency fees were paid in connection with the Agreement and this Addendum, nor were gratuities, kick-backs or contingency fees made contingent upon the award of the Agreement and this Addendum.

E. Governmental/Sovereign Immunity: COUNTY does not waive its Governmental/ Sovereign Immunity, as provided by any applicable law including Wyo. Stat. §§ 1-39-101 through 121 (as amended), by entering into the Agreement and this Addendum. Further, COUNTY fully retains all immunities and defenses provided by law with regard to any action, whether in tort, contract or any other theory of law.

F. Conflict of Interest: COUNTY and CONTRACTOR affirm, to their knowledge, no CONTRACTOR employee has any personal beneficial interest whatsoever in the Agreement and this Addendum described herein. No staff member of CONTRACTOR, compensated either partially or wholly with funds from the Agreement and this Addendum, shall engage in any conduct or activity which would constitute a conflict of interest relative to the Agreement and this Addendum.

G. Addendum Controls: Where a conflict exists or arises between any provision or condition of this Addendum and the Agreement, the provisions and conditions set forth in this Addendum shall control.

H. Compliance with Law: CONTRACTOR shall comply with all applicable laws, regulations and ordinances, whether Federal, State or Local.

I. Third Parties: The parties do not intend to create in any other individual or entity the status of third party beneficiary, and the Agreement and this Addendum shall not be construed so as to create such status. The rights, duties and obligations contained in the Agreement and this Addendum shall operate only between the parties to the Agreement and this Addendum, and shall inure solely to the benefit of the parties to the Agreement and this Addendum.

**(Remainder of this page is intentionally left blank)**

**ADDENDUM TO SOFTWARE LICENSE AGREEMENT**  
**between**  
**LARAMIE COUNTY and BRAZOS TECHNOLOGY CORPORATION**

**Signature page**

**LARAMIE COUNTY, WYOMING**

By: \_\_\_\_\_  
Amber Ash, Chairman, Laramie County Commissioners

Date \_\_\_\_\_

**ATTEST:**

By: \_\_\_\_\_  
Debbye Lathrop, Laramie County Clerk

Date \_\_\_\_\_

**CONTRACTOR: BRAZOS TECHNOLOGY CORPORATION**

By: Michael S. McAleen Michael S. McAleen  
Name (printed):  
Title: President

Date 3-10-15

This Agreement is effective the date of the last signature affixed to this page.

**REVIEWED AND APPROVED AS TO FORM ONLY**

By: Bernard Haggerty  
Bernard Haggerty, Deputy Laramie County Attorney

Date 3-10-15



## **SOFTWARE LICENSE AGREEMENT**

THIS AGREEMENT is entered into as of the last day of execution by the parties, (hereinafter referred to as the "Effective Date") by and between Brazos Technology Corporation, a Texas corporation, with its principal offices located at 526 University Drive East, Suite 201-A, College Station, Texas 77840 (hereinafter referred to as "Brazos Technology"), and County of Laramie, a Wyoming County, with its principal offices located at 1910 Pioneer, Cheyenne, Wyoming 82001 (hereinafter referred to as "Licensee").

This Agreement is made with respect to the following facts and objectives:

### **RECITALS:**

- A. Brazos Technology has developed a proprietary software product, which is designed to extend data and processes across multiple platforms and technologies (hereinafter referred to as the "Software").
- B. Licensee desires to obtain a non-exclusive license to use the Software and Brazos Technology desires to grant Licensee such a license.
- C. Licensee desires to purchase Software from CDWg

### **AGREEMENT:**

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual promises and covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. **License.** Brazos Technology hereby grants to Licensee a non-exclusive license to use the Software and the documentation, if any, provided in connection therewith (hereinafter referred to as the "Documentation").
2. **Licensee Fee.** Licensee agrees to pay CDWg the license fee identified in Exhibit A of this Agreement. Such fee shall be due immediately upon execution of this Agreement by the parties. Fees for Configuration/Installation will be due on the following schedule: ½ upon officially beginning the project (which may be later than the execution of this agreement for Licensee's convenience) and ½ upon delivery. Fees for training will be due upon delivery. Additional licenses purchased by Licensee will be governed by this agreement.

3. **Limitations of Use.** Licensee acknowledges and agrees that Licensee will not timeshare, modify, sublicense, transfer, assign, copy, reverse engineer or decompile the Software, Documentation or any portion thereof except as expressly set forth herein. Licensee further acknowledges and agrees that Licensee will limit its use of the Software and Documentation to the number of users and/or the site location identified in Exhibit A to this Agreement.

4. **Non-disclosure.** Licensee acknowledges and agrees that the Software and Documentation contain trade secrets and/or confidential information (hereinafter collectively referred to as "Confidential Information") and that Licensee will take reasonable efforts to prevent the disclosure of such Confidential Information to any third party.

5. **Ownership.** Licensee acknowledges and agrees that Brazos Technology is the sole owner of all right, title and interest in and to the Software and Documentation and that nothing contained herein shall grant Licensee any ownership interest in the Software or Documentation.

6. **Upgrades.** In the event that Brazos Technology, in its sole discretion, should provide Licensee with any upgrades, corrections or modifications to the Software or Documentation, such upgrades, corrections or modifications shall be considered, as applicable, "Software" or "Documentation" for the purposes of this Agreement. Notwithstanding the foregoing, nothing contained in this Agreement shall be construed as obligating Brazos Technology to provide Licensee with any upgrades, corrections, modifications, maintenance services or support services hereunder. All upgrades, corrections, modifications, maintenance services or support services will be governed by the Maintenance Agreement.

7. **Warranty.**

a. Brazos Technology warrants and represents that it is the owner of all right, title and interest in and to the Software and Documentation and that use of the Software and Documentation as contemplated herein shall not infringe upon any third party patent or copyright. This warranty and representation does not apply to any infringement arising out of any unauthorized modification of the Software or Documentation or any infringement arising out of the use of the Software or Documentation in combination with any third party product.

b. Brazos Technology warrants, for Customer's benefit alone, that the Software conforms in all material respects to the specifications for the current version of the Software provided by Brazos Technology, beginning upon the earlier of (i) the date of Customer's cutover to live operation of the Software (Go-live); or (ii) twelve (12) months after the Effective Date, and ending twelve (12) months thereafter (the

"Warranty Period"). This warranty is expressly conditioned on Customer's observance of the operation, security, and data-control procedures set forth in the Documentation included with the Software.

c. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 7, THE SOFTWARE AND DOCUMENTATION IS PROVIDED "AS IS" AND BRAZOS TECHNOLOGY EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, WRITTEN OR VERBAL, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. BRAZOS TECHNOLOGY DOES NOT WARRANT OR REPRESENT THAT ANY USE OF THE SOFTWARE OR DOCUMENTATION WILL BE UNINTERRUPTED OR ERROR FREE. LICENSEE EXPRESSLY ASSUMES ALL RISKS AND LIABILITIES RESULTING FROM THE USE OR INABILITY TO USE THE SOFTWARE OR DOCUMENTATION, INCLUDING WITHOUT LIMITATION ANY ECONOMIC LOSS, PROPERTY DAMAGE, PHYSICAL INJURY, LOST PROFITS, LOST SAVINGS, LOSS OF RECORDS OR LOSS OF DATA.

8. Indemnification. Brazos Technology agrees to indemnify and defend Licensee from and against any third party claim arising out of a breach of the Warranty provisions set forth in this Agreement, provided that Brazos Technology is provided with prompt notice of any such third party claim and Brazos Technology is allowed full control over the defense of such claim. Licensee acknowledges and agrees that Brazos Technology may fulfill its obligations hereunder by (i) obtaining from the third party claimant a license pursuant to which Licensee may continue its use of the Software and Documentation or (ii) providing Licensee with substitute software and/or documentation that does not infringe upon the rights of the third party claimant. Licensee further acknowledges and agrees that in the event that Brazos Technology, in its sole discretion, determines that neither of the options set forth above are reasonable, Brazos Technology may fulfill its obligations hereunder by terminating this Agreement and refunding to Licensee the license fees paid by Licensee to Brazos Technology hereunder, prorated over a period of five (5) years.

9. Limitation of Liability.

a. EXCEPT AS PROVIDED IN SECTIONS 7 AND 8 ABOVE, LICENSEE EXPRESSLY ACKNOWLEDGES AND AGREES THAT BRAZOS TECHNOLOGY SHALL NOT, UNDER ANY CIRCUMSTANCES, BE LIABLE TO LICENSEE OR ANY THIRD PARTY FOR ANY DIRECT, INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL, PUNITIVE OR EXEMPLARY DAMAGES OR LOSSES OR ANY KIND WHATSOEVER, INCLUDING WITHOUT LIMITATION, ANY ECONOMIC LOSS, PROPERTY DAMAGE, PHYSICAL INJURY, LOST PROFITS, LOST SAVINGS, LOSS OF RECORDS OR LOSS OF DATA, ARISING OUT OF THE USE OF THE SOFTWARE OR DOCUMENTATION, REGARDLESS OF WHETHER ARISING UNDER BREACH OF CONTRACT, WARRANTY, TORT, STRICT LIABILITY OR ANY OTHER LEGAL THEORY OR CLAIM,

EVEN IF BRAZOS TECHNOLOGY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE OR IF SUCH LOSS OR DAMAGE COULD HAVE BEEN REASONABLY FORESEEN.

b. LICENSEE EXPRESSLY ACKNOWLEDGES AND AGREES THAT UNDER NO CIRCUMSTANCES SHALL THE ENTIRE LIABILITY OF BRAZOS TECHNOLOGY FOR ANY LOSS OR CLAIM ARISING OUT OF THIS AGREEMENT, ANY USE OF THE SOFTWARE OR DOCUMENTATION, OR ANY INABILITY TO USE THE SOFTWARE OR DOCUMENTATION, EXCEED THE SUM OF THE LICENSE FEE PAID BY LICENSEE TO BRAZOS TECHNOLOGY HEREUNDER.

10. Allocation or Risks. LICENSEE ACKNOWLEDGES AND AGREES THAT THE LICENSEE FEE PAID BY LICENSEE TO BRAZOS TECHNOLOGY FAIRLY AND ACCURATELY REFLECTS THE ALLOCATION OF RISKS BETWEEN LICENSEE AND BRAZOS TECHNOLOGY, INCLUDING WITHOUT LIMITATION, THE TERMS AND CONDITIONS SET FORTH IN THE WARRANTY AND LIMITATION OF LIABILITY SECTIONS OF THE AGREEMENT. LICENSEE FURTHER ACKNOWLEDGES AND AGREES THAT ANY MODIFICATIONS TO THE ALLOCATIONS OF RISK WOULD REQUIRE BRAZOS TECHNOLOGY TO CHARGE A HIGHER LICENSEE FEE FOR THE SOFTWARE AND DOCUMENTATION. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, LICENSEE ACKNOWLEDGES AND AGREES THAT EACH OF THE TERMS AND CONDITIONS SET FORTH IN THE WARRANTY AND LIMITATION OF LIABILITY SECTIONS OF THIS AGREEMENT SHALL REMAIN IN FULL FORCE AND EFFECT, EVEN IF ANY REMEDY CONTAINED HEREIN IS DETERMINED TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

11. Term and Termination.

a. This Agreement shall commence as of the Effective Date and shall continue unless and until terminated as set forth herein.

b. Either party may terminate this Agreement in the event that the other party commits a material breach of this Agreement and fails to cure such material breach within twenty (20) days after receiving written notice of the same.

c. Brazos Technology may terminate this Agreement, immediately upon written notice to Licensee, in the event that Licensee fails to use the Software and Documentation for the purpose contemplated herein.

d. Immediately upon any termination of this Agreement, Licensee shall return to Brazos Technology any and all copies of any Software or Documentation in its possession.



e. The terms and conditions of this Agreement relating to Non-disclosure, Warranty, Limitation of Liability and Allocation of Risks shall survive any termination or expiration of this Agreement.

12. **Assignment.** Licensee acknowledges and agrees that it may not assign any right or obligation arising under this Agreement to any third party without the express written consent of Brazos Technology which may be withheld for any or no reason.

13. **Governing Law.** This Agreement, including its interpretation, performance and enforcement shall be governed by and construed in accordance with the laws of the State of Wyoming applicable to contracts entered into and performed in Laramie County, and exclusive jurisdiction over any dispute arising out of or relating to this Agreement shall be held by the appropriate state and/or federal courts located in Laramie County, Wyoming.

14. **Binding Effect.** This Agreement shall inure to the benefit of and binding upon the parties hereto and to their respective successors and legal representatives.

15. **Nonwaiver.** No provisions of this Agreement will be waived by any party except in writing. The parties hereto agree that the waiver by any party of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach of that provision by the same party, or any other provision or condition of this Agreement.

16. **No Joint Venture.** Nothing herein contained shall be construed to place the parties in the relationship of partners, joint venturers, or principal and agent and neither party shall have any power to obligate or bind the other party in any manner whatsoever.

17. **Severability.** If any provision or application of this Agreement shall be held invalid or unenforceable the remaining provisions and applications of this Agreement shall not be affected, but rather shall remain valid and enforceable.

18. **Entire Agreement.** This Agreement constitutes the entire agreement and supersedes any and all other understandings and agreements between the parties with respect to the subject matter hereof and no representation, statement or promise not contained herein shall be binding on either party. This Agreement may be modified only by a written amendment duly signed by persons authorized to sign agreements on behalf of the parties and shall not be supplemented or modified by any course of dealing or trade usage.



V1.2

IN WITNESS WHEREOF, the parties have hereunder executed this Agreement effective as of the date last signed.

COUNTY OF LARAMIE

BRAZOS TECHNOLOGY

Signed: \_\_\_\_\_

Signed: Michael S. McAleer

Print Name: \_\_\_\_\_

Print Name: Michael S. McAleer

Title: \_\_\_\_\_

Title: President

Date: \_\_\_\_\_

Date: 3-10-15

**EXHIBIT A**

Forty (40) RunIT software license for Laptop \$ 23,540 USD

Software Includes:

- Unlimited number of logins to the Laptop
- One-Year of Software Maintenance
- One-Year of Software Support

Configuration/Installation Fee \$ 8,025 USD

Configuration Includes:

- Customized Laptop/Web screen layouts
- Customized citation receipt for defendant
- Customized citation report for SO and Courts
- Integration with New World RMS
- Integration with New World Mobile
- Integration with State Supreme Court

Extended Training \$ 3,745 USD

- 2 days of on-site training of officers
- 1 day of administrator training
- Classroom and practical training

\* Brazos will deliver the equipment to eliminate shipping to customer.

**EXHIBIT B – Hardware**

**There is no hardware on this Agreement**

**EXHIBIT A -- COVERED SITES, SOFTWARE AND CONFIGURATION****A. Covered Sites.**

This Agreement covers the following Licensee sites:

Laramie County Facilities  
State of Wyoming Supreme Court and affiliates  
City of Pine Bluffs Facilities

**B. Covered Software.**

This Agreement covers the following software components at each site listed in Exhibit A, Section A:

Brazos BuildIT Website for eCitation processing  
Brazos RunIT Mobile software  
eCitation processing for both Laptops and Tablets

Interfaces with New World RMS, New World Mobile, and State of Wyoming Supreme Court

**C. Covered Configuration.**

This Agreement covers the following configuration:

Forty (40) workstation/PDA licenses of Covered Software purchased by Licensee. Additionally, any licenses purchased in the future will be covered under this agreement.



v1.2

## EXHIBIT B -- AUTHORIZED LICENSEE CONTACTS

For purposes of this Agreement, the following individuals shall be designated per site as the authorized Licensee support contacts:

Laramie County Address:

Name	Title	Phone #
------	-------	---------

Contact: \_\_\_\_\_



v1.2

## **EXHIBIT C -- SERVICES AND FEES**

### **A. Maintenance Fee**

Maintenance Services for the applications and configuration listed in Exhibit A will be included in the software cost for the first year of this Agreement. This fee will be adjusted at each anniversary date of this Agreement to the then current pricing. Should additional software be licensed and installed at the Covered Site(s), the fee will be adjusted to reflect the additional software.

**ADDENDUM TO SOFTWARE MAINTENANCE AGREEMENT**  
**between**  
**Laramie County and BRAZOS TECHNOLOGY CORPORATION**

THIS ADDENDUM is made and entered into by and between Laramie County, 310 West 19<sup>th</sup> Street, P.O. Box 608, Cheyenne Wyoming, 82003-0608 (hereinafter referred to as "COUNTY"), and BRAZOS TECHNOLOGY CORPORATION, a Texas Corporation, 526 University Drive East, Suite 201-A, College Station, Texas 77840 (hereinafter referred to as "CONTRACTOR"). The parties agree as follows:

**I. PURPOSE**

The purpose of this Addendum is to modify the Software Maintenance Agreement (11 pages with Exhibits A, B, & C) attached hereto as Attachment A, collectively "Agreement."

**II. MODIFICATIONS**

The Software License Agreement is modified as follows:

A. The following underlined language is added as Paragraph XII.F. of the Agreement:

"To the fullest extent permitted by law, CONTRACTOR agrees to indemnify and hold harmless COUNTY, its elected and appointed officials, employees and volunteers from any and all liability for injuries, damages, claims, penalties, actions, demands or expenses arising from or in connection with work performed by or on behalf of CONTRACTOR for COUNTY except to the extent liability is caused by the negligence or willful misconduct of COUNTY or its employees. CONTRACTOR shall carry liability insurance sufficient to cover its obligations under this provision."

B. Paragraph XII.B. of the Agreement is modified to add the following underlined language at the end: "This provision is not intended nor shall it be construed to waive COUNTY's statutory governmental or sovereign immunity."

**III. ADDITIONAL PROVISIONS**

A. Entire Agreement: This Addendum (5 pages), and Attachment A (Software Maintenance Agreement (11 pages with Exhibits A, B, & C)), represent the entire and integrated agreement and understanding between the parties and supersede all prior negotiations, statements, representations and agreements, whether written or oral.

B. Confidentiality: The CONTRACTOR recognizes the duties and obligations of COUNTY may be limited and controlled by the operation of State or Federal law regarding the expenditure of public funds, and the disclosure of publicly held records. CONTRACTOR agrees that COUNTY shall not be held in breach or default of this Addendum in the event information related to this Addendum and its subject matter is released in accord with and pursuant to any



applicable law or regulation, including, but not limited to, the Wyoming Public Records Act, Wyo. Stat. § 16-4-201 et seq., as amended. CONTRACTOR further agrees that it bears the sole responsibility for demonstrating in any court or other forum that any information it designates as proprietary or confidential is in fact confidential, and not subject to disclosure.

C. Independent Contractor: The services to be performed by CONTRACTOR are those of an independent contractor and not as an employee of COUNTY. CONTRACTOR is not eligible for Laramie County Employee benefits and will be treated as an independent contractor for federal tax filing purposes. CONTRACTOR assumes responsibility for its personnel who provide services pursuant to this contract and will make all deductions required of employers by state, federal and local laws and shall maintain liability insurance for each of them. CONTRACTOR is free to perform the same or similar services for others.

D. Acceptance Not Waiver: COUNTY approval of the reports, and work or materials furnished hereunder shall not in any way relieve CONTRACTOR of responsibility for the technical accuracy of the work. COUNTY approval or acceptance of, or payment for, any of the services shall not be construed to operate as a waiver of any rights under the Agreement and this Addendum or of any cause of action arising out of the performance of the Agreement and this Addendum.

E. Assignment: Neither the Agreement, this Addendum, nor any rights or obligations hereunder shall be assigned or delegated by a party without the prior written consent of the other party.

F. Modification: The Agreement and this Addendum shall be modified only by a written agreement, duly executed by all parties hereto.

G. Invalidity: If any provision of the Agreement and this Addendum is held invalid or unenforceable by any court of competent jurisdiction, or if the COUNTY is advised of any such actual or potential invalidity or unenforceability, such holding or advice shall not invalidate or render unenforceable any other provision hereof. It is the express intent of the parties the provisions of the Agreement and this Addendum are fully severable.

H. Contingencies: CONTRACTOR certifies and warrants no gratuities, kick-backs or contingency fees were paid in connection with the Agreement and this Addendum, nor were any fees, commissions, gifts or other considerations made contingent upon the award of the Agreement and this Addendum.

I. Discrimination: All parties agree they will not discriminate against any person who performs work under the terms and conditions of the Agreement and this Addendum because of race, color, gender, creed, handicapping condition, or national origin.

J. ADA Compliance: All parties agree they will not discriminate against a qualified individual with disability, pursuant to a law as set forth in the Americans With Disabilities Act,

P.L. 101-336, 42 U.S.C. § 12101, *et seq.*, as amended, and/or any properly promulgated rules and regulations relating thereto.

K. Governmental/Sovereign Immunity: COUNTY does not waive its Governmental/Sovereign Immunity, as provided by any applicable law including Wyo. Stat. § 1-39-101 through 121 (2011), by entering into the Agreement and this Addendum. Further, COUNTY fully retains all immunities and defenses provided by law with regard to any action, whether in tort, contract or any other theory of law, based on the Agreement and this Addendum.

L. Third Parties: The parties do not intend to create in any other individual or entity the status of third party beneficiary, and the Agreement and this Addendum shall not be construed so as to create such status. The rights, duties and obligations contained in the Agreement and this Addendum shall operate only between the parties to the Agreement and this Addendum, and shall inure solely to the benefit of the parties to the Agreement and this Addendum.

M. Conflict of Interest: COUNTY and CONTRACTOR affirm, to their knowledge, no CONTRACTOR employee has any personal beneficial interest whatsoever in the Agreement and this Addendum described herein. No staff member of CONTRACTOR, compensated either partially or wholly with funds from the Agreement and this Addendum, shall engage in any conduct or activity which would constitute a conflict of interest relative to the Agreement and this Addendum.

N. Force Majeure: Neither party shall be liable to perform under the Agreement and this Addendum if such failure arises out of causes beyond the control, and without the fault or the negligence of said party. Such causes may include, but are not restricted to, Act of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. In every case, however, a failure to perform must be beyond the control and without the fault or the negligence of said party.

O. Limitation on Payment: CONTRACTOR shall bill COUNTY by detailed invoice submitted to the Laramie County Clerk, Finance Office. Payments shall be in accordance with Wyo. Stat. § 16-6-602, as amended. No payment shall be made before the last signature is affixed to this Agreement. COUNTY's payment obligation is conditioned upon the availability of funds which are appropriated or allocated for the payment of this obligation. If funds are not allocated and available for the continuance of the services and equipment provided by CONTRACTOR the Agreement and this Addendum may be terminated by COUNTY at the end of the period for which funds are available. COUNTY shall notify CONTRACTOR at the earliest possible time of the services which will or may be affected by a shortage of funds. At the earliest possible time means at least thirty (30) days before the shortage will affect payment of claims, if COUNTY knows of the shortage at least thirty (30) days in advance. No penalty shall accrue to COUNTY in the event this provision is exercised, and COUNTY shall not be obligated or liable for any future payments due or for any damages as a result of termination under this provision. This provision shall not be interpreted or construed to permit COUNTY to terminate the Agreement and this Addendum in order to acquire similar services from another party.

P. Notices: All notices required and permitted under the Agreement and this Addendum shall be deemed to have been given, if and when deposited in the U.S. Mail, properly stamped and addressed to the party for whom intended at such parties' address listed herein, or when personally delivered personally to such party. A party may change its address for notice hereunder by giving written notice to the other party.

Q. Addendum Controls: Where a conflict exists or arises between any provision or condition of this Addendum and the Agreement, the provisions and conditions set forth in this Addendum shall control.

R. Compliance with Law: CONTRACTOR shall comply with all applicable laws, regulations and ordinances, whether Federal, State or Local.

**[The remainder of this page is intentionally left blank]**

**ADDENDUM TO MAINTENANCE AGREEMENT**  
**between**  
**Laramie County and BRAZOS TECHNOLOGY CORPORATION**

**Signature Page**

**LARAMIE COUNTY, WYOMING**

By: \_\_\_\_\_  
Amber Ash, Chairman, Laramie County Commissioners

Date \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Debbye Lathrop, Laramie County Clerk

Date \_\_\_\_\_

**CONTRACTOR: BRAZOS TECHNOLOGY CORPORATION**

By: Michael S. McAleen Michael S. McAleen  
Name (printed):  
Title: President

Date 3-10-15

This Agreement is effective the date of the last signature affixed to this page.

**REVIEWED AND APPROVED AS TO FORM ONLY**

By: Bernard Haggerty  
Bernard Haggerty, Deputy Laramie County Attorney

Date 3-10-15

## **SOFTWARE MAINTENANCE AGREEMENT**

This Agreement ("Agreement") is made and entered into and effective the last date of execution by the parties, by and between Brazos Technology Corporation, having its principal place of business at 526 University Drive East, Suite 201-A, College Station, Texas 77840, USA ("Brazos Technology") and County of Laramie, a Wyoming County, having its principal place of business at 1910 Pioneer, Cheyenne, Wyoming 82001 ("Licensee").

### **Licensee**

WHEREAS, BRAZOS TECHNOLOGY has provided to Licensee certain software as specified in Exhibit A of this Agreement ("Covered Software") pursuant to a software license agreement between the parties (the "License Agreement"); and

WHEREAS, Licensee wishes to have BRAZOS TECHNOLOGY provide maintenance and support services pursuant to the terms and conditions of this Agreement;

NOW, THEREFORE, the parties agree as follows:

### **I. INCORPORATION OF DOCUMENTS**

The following documents are attached hereto and, by this reference, incorporated in this Agreement:

Exhibit A	Covered Sites, Software & Configuration
Exhibit B	Authorized Licensee Contacts
Exhibit C	Services and Fees

### **II. COVERAGE**

During the term of this Agreement, BRAZOS TECHNOLOGY agrees to provide maintenance and support services for the Covered Software operating at the site(s) and on the hardware configurations listed in Exhibit A ("Maintenance Services"). Unless specifically listed in Exhibit A, Section II, Covered Software does not include hardware vendor operating systems and other system software, Licensee-developed software, and third-party software (except any third party software embedded in the Covered Software).

### **III. DESCRIPTION OF MAINTENANCE SERVICES**

A. Support Services. During the term of this Agreement, BRAZOS TECHNOLOGY will provide the services described herein so as to maintain the Covered Software in



v1.2

good working order, keeping it free from material defects so that the Covered Software shall function properly and in accordance with the accepted level of performance as set forth in the License Agreement.

(1) **Service Response.** BRAZOS TECHNOLOGY will make available to Licensee a telephone number (the "Support Center HOTLINE") for Licensee to call requesting service of the Covered Software. The Support Center HOTLINE operates 24 x 7 x 365. The HOTLINE can also be used to notify BRAZOS TECHNOLOGY of problems associated with the Covered Software and related documentation.

**B. Remedial Support.** Upon receipt by BRAZOS TECHNOLOGY of notice from Licensee through the Support Center HOTLINE of an error, defect, malfunction or nonconformity in the Covered Software, BRAZOS TECHNOLOGY shall respond as provided below:

**Severity 1:** Produces an emergency situation in which the Covered Software is inoperable, produces incorrect results, or fails catastrophically.

**RESPONSE:** BRAZOS TECHNOLOGY will provide a response by a qualified member of its staff to begin to diagnose and to correct a Severity 1 problem as soon as reasonably possible, but in any event a response via telephone will be provided within one (1) hour. BRAZOS TECHNOLOGY will continue to provide best efforts to resolve Severity 1 problems in less than forty-eight (48) hours. The resolution will be delivered to Licensee as a work-around or as an emergency software fix. If BRAZOS TECHNOLOGY delivers an acceptable work-around, the severity classification will drop to a Severity 2.

**Severity 2:** Produces a detrimental situation in which performance (throughput or response) of the Covered Software degrades substantially under reasonable loads, such that there is a severe impact on use; the Covered Software is usable, but materially incomplete; one or more mainline functions or commands is inoperable; or the use is otherwise significantly impacted.

**RESPONSE:** BRAZOS TECHNOLOGY will provide a response by a qualified member of its staff to begin to diagnose and to correct a Severity 2 problem as soon as reasonable possible, but in any event a response via telephone will be provided within four (4) hours. BRAZOS TECHNOLOGY will exercise best efforts to resolve Severity 2 problems within five (5) days. The resolution will be delivered to Licensee in the same format as Severity 1 problems. If BRAZOS TECHNOLOGY delivers an acceptable work-around for a Severity 2 problem, the severity classification will drop to a Severity 3.

**Severity 3:** Produces an inconvenient situation in which the Covered Software is usable, but does not provide a function in the most convenient or expeditious

manner, and the user suffers little or no significant impact.

**RESPONSE: BRAZOS TECHNOLOGY will exercise best efforts to resolve Severity 3 problems in the next maintenance release.**

**Severity 4: Produces a noticeable situation in which the use is affected in some way which is reasonably correctable by a documentation change or by a future, regular release from BRAZOS TECHNOLOGY.**

**RESPONSE: BRAZOS TECHNOLOGY will provide, as agreed by the parties, a fix or fixes for Severity 4 problems in future maintenance releases.**

**C. Maintenance Services. During the term of this Agreement, BRAZOS TECHNOLOGY will maintain the Covered Software by providing software updates and enhancements to Licensee as the same are offered by BRAZOS TECHNOLOGY to its licensees of the Covered Software under maintenance generally ("Updates"). All software updates and enhancements provided to Licensee by BRAZOS TECHNOLOGY pursuant to the terms of this Agreement shall be subject to the terms and conditions of the License Agreement between the parties. Updates will be provided on an as-available basis and include the items listed below:**

- (1) Bug fixes;**
- (2) Enhancements to market data service software provided by BRAZOS TECHNOLOGY to keep current with changes in market data services or as BRAZOS TECHNOLOGY makes enhancements;**
- (3) Enhancements to keep current with the current hardware vendor's OS releases, as available from BRAZOS TECHNOLOGY, provided that the current hardware vendor's OS release is both binary and source-compatible with the OS release currently supported by BRAZOS TECHNOLOGY; and**
- (4) Performance enhancements to Covered Software.**
- (5) Updates do not include:**
  - (a) Platform extensions including product extensions to (i) different hardware platforms; (ii) different windowing system platforms; (iii) different operating system platforms; and**
  - (b) New operating system updates or hardware bios updates.**

**Updates will be provided in machine-readable format and updates to related documentation will be provided in hard copy form. All such deliveries shall be**



v1.2

made electronically to the installed computers automatically during a sync process. Licensee agrees to sync each device no less than once per month to obtain any software or configuration changes. Duplication, distribution and installation of documentation updates are the responsibility of Licensee. If requested, BRAZOS TECHNOLOGY will provide on-site assistance in the installation of Updates on a time and materials basis, plus expenses.

BRAZOS TECHNOLOGY will provide support services for previous releases for a minimum period of six (6) months following the general availability of a new release or software update. After this time, BRAZOS TECHNOLOGY shall have no further responsibility for supporting and maintaining the prior releases.

BRAZOS TECHNOLOGY assumes no responsibility for the correctness of, performance of, or any resulting incompatibilities with, current or future releases of the Covered Software if the Licensee has made changes to the system hardware/software configuration or modifications to any supplied source code which changes effect the performance of the Covered Software and were made without prior notification and written approval by BRAZOS TECHNOLOGY. BRAZOS TECHNOLOGY assumes no responsibility for the operation or performance of any Licensee-written or third-party application.

D. Services Not Included. Maintenance Services do not include any of the following: (1) custom programming services; (2) on-site support, including installation of hardware or software; (3) support of any software not Covered Software; (4) training; or (5) out-of-pocket and reasonable expenses, including hardware and related supplies.

#### IV. ON-SITE SUPPORT

As requested by Licensee, and upon reasonable notice and approval by BRAZOS TECHNOLOGY, BRAZOS TECHNOLOGY shall maintain personnel at any of the covered Sites. On-site personnel will perform ongoing system administration, monitoring, reconfiguration and tuning, problem diagnosis, and resolution, and interfacing with Licensee personnel on production system issues, to the extent possible during normal business hours. These personnel shall also be responsible for the installation of new BRAZOS TECHNOLOGY software releases on the production system and the distribution of documentation updates. In addition, on-site personnel will provide training to Licensee personnel on the operation and administration of the Covered Software as time permits.

#### V. TIME AND MATERIALS SERVICES

A. For Non-BRAZOS TECHNOLOGY Problems. In the event that Licensee notifies BRAZOS TECHNOLOGY of a problem experienced by Licensee in connection with the operation of the Covered Software, BRAZOS TECHNOLOGY shall respond as provided in Section III.B., above. If the cause of



such problem is not an error, defect or nonconformity in the Covered Software, Licensee shall compensate BRAZOS TECHNOLOGY for all work performed by BRAZOS TECHNOLOGY in connection therewith, on a time and materials basis at Brazos Technology's then current standard rates, unless otherwise agreed by the parties in writing at the time, plus expenses. Expenses for travel and travel-related expenses and individual expenses in excess of US\$500 require the prior approval of Licensee.

B. For Non-BRAZOS TECHNOLOGY Software. Upon request and reasonable notice from Licensee, BRAZOS TECHNOLOGY will provide assistance in the installation of non-BRAZOS TECHNOLOGY software on a time and materials basis, plus expenses. Non-BRAZOS TECHNOLOGY software consists of any software not specifically listed in Exhibit A, Section II, including the following:

1. New releases and updates to hardware vendor operating systems and other system software not listed in Exhibit A;
2. Licensee-developed software; and
3. Third-party software (except third party software embedded in the Covered Software).

## VII. ACCESS

Software Maintenance is conditioned upon provision by Licensee to BRAZOS TECHNOLOGY of reasonable appropriate access to the system(s) running the Covered Software, including, but not limited to, passwords, system data, file transfer capabilities, and remote log-in-capabilities. BRAZOS TECHNOLOGY will maintain security of the system and use such access only for the purposes of this Agreement and will comply with Licensee standard security procedures. Information accessed by BRAZOS TECHNOLOGY agents or employees as a result of accessing Licensee system shall be deemed confidential information pursuant to the terms of the Software License Agreement executed concurrently between the parties hereto.

Licensee shall also use commercially reasonable efforts to provide voice telephone lines at each site which is available continuously when required for support access.

## VIII. PROBLEM REPORTING AND TRACKING PROCEDURES

Licensee may use the services described herein only by making reference to the authorized support Agreement number. All such reports and requests will be made through the authorized individuals (up to two [2] per site), designated by Licensee in Exhibit B, who may be changed by Licensee from time to time by written notice to BRAZOS TECHNOLOGY. A twenty-four (24) hour Support Center HOTLINE is provided for problem reporting outside of normal business hours.

## **IX. FEES**

**A. Maintenance Fees.** Fees for Maintenance Services provided under this Agreement are contained in Exhibit C. Any time a site or software package is added or deleted from Exhibit A, BRAZOS TECHNOLOGY will automatically adjust and/or amend Exhibit A and Exhibit C accordingly. BRAZOS TECHNOLOGY will also perform a bi-annual audit of all sections in Exhibit A. If changes have occurred, BRAZOS TECHNOLOGY will adjust and/or amend Exhibit A and Exhibit C, and maintenance fees will be adjusted accordingly.

Rates will be reviewed and adjusted accordingly when another site is added and/or the workstation/server base increases (i.e., added equipment and/or installed software) and/or software to be supported exceeds the Covered Software.

**B. Expenses.** Licensee agrees to reimburse BRAZOS TECHNOLOGY for reasonable expenses related to the performance of services. Expenses may include, but are not limited to, charges for materials, freight, travel (including lodging and associated expenses), printing and documentation, and other out-of-pocket expenses reasonably required for performance. Expenses for travel and travel-related expenses and individual expenses in excess of US\$500 require the prior approval of Licensee.

## **X. PAYMENT**

**A.** Maintenance fees and fees for on-site support, if applicable, will be invoiced annually, thirty (30) days in advance of the year.

## **XI. EXCLUSION OF LIABILITY**

- a.** LICENSEE EXPRESSLY ACKNOWLEDGES AND AGREES THAT BRAZOS TECHNOLOGY SHALL NOT, UNDER ANY CIRCUMSTANCES, BE LIABLE TO LICENSEE OR ANY THIRD PARTY FOR ANY DIRECT, INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL, PUNITIVE OR EXEMPLARY DAMAGES OR LOSSES OR ANY KIND WHATSOEVER, INCLUDING WITHOUT LIMITATION, ANY ECONOMIC LOSS, PROPERTY DAMAGE, PHYSICAL INJURY, LOST PROFITS, LOST SAVINGS, LOSS OF RECORDS OR LOSS OF DATA, ARISING OUT OF THE USE OF THE SOFTWARE OR DOCUMENTATION, REGARDLESS OF WHETHER ARISING UNDER BREACH OF CONTRACT, WARRANTY, TORT, STRICT LIABILITY OR ANY OTHER LEGAL THEORY OR CLAIM, EVEN IF BRAZOS TECHNOLOGY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE OR IF SUCH LOSS OR DAMAGE COULD HAVE BEEN REASONABLY FORESEEN.

- ab.** LICENSEE EXPRESSLY ACKNOWLEDGES AND AGREES THAT



v1.2

UNDER NO CIRCUMSTANCES SHALL THE ENTIRE LIABILITY OF BRAZOS TECHNOLOGY FOR ANY LOSS OR CLAIM ARISING OUT OF THIS AGREEMENT, ANY USE OF THE SOFTWARE OR DOCUMENTATION, OR ANY INABILITY TO USE THE SOFTWARE OR DOCUMENTATION, EXCEED THE SUM OF THE MAINTENANCE FEES FOR THE TWELVE (12) MONTH IMMEDIATELY PRECEDING THE ACCRUAL OF THE CAUSE OF ACTION.

## **XII. General**

A. Each party acknowledges that it is bound by the terms of this Agreement and further agrees that it is the complete and exclusive statement of the Agreement between the parties, which supersedes and merges all prior proposals, understandings and all other Agreement with respect to software maintenance, oral and written, between the parties relating to this Agreement. This Agreement may not be modified or altered except by a written instrument duly executed by both parties.

B. This Agreement and performance hereunder shall be governed by and construed in accordance with the laws of the State of Wyoming. Any and all proceedings relating to the subject matter hereof shall be maintained in the state or federal courts of Laramie County, Wyoming, which courts shall have exclusive jurisdiction for such purpose. Each of the parties waives any objection to venue or in personam jurisdiction, provided that service is effective.

C. If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby.

D. Neither party may assign, without the prior written consent of the other, its rights, duties or obligations under this Agreement to any other person or entity, in whole or in part.

E. The waiver or failure of either party to exercise in any respect any right provided for herein shall not be deemed a waiver of any further right hereunder.

## **XIII. TERM AND TERMINATION**

The term of this Agreement shall be for one (1) year. Software Maintenance service shall commence upon the expiration of the Warranty Period set forth in the License Agreement and shall remain in effect for the original one-year (1-year) term and, thereafter, for renewal terms on a year-to-year basis until terminated (i) by Licensee in the event the Covered Software is taken out of service and upon sixty (60) days' notice to BRAZOS TECHNOLOGY; (ii) by either party upon sixty (60) days' notice



v1.2

prior to the expiration of the original one-year (1-year) or any subsequent one-year (1-year) renewal term; (iii) by either party upon a default of the other party, such default remaining uncured for thirty (30) days from the date of written notice from the non-defaulting party to the other specifying such default; (iv) upon the bankruptcy or insolvency of BRAZOS TECHNOLOGY; or (v) the License Agreement is terminated. Upon such termination, BRAZOS TECHNOLOGY shall refund to Licensee a portion of the maintenance fee prorated to reflect the date of termination and neither BRAZOS TECHNOLOGY nor Licensee shall have any further obligations hereunder.

IN WITNESS WHEREOF, each party has caused a counterpart of the original of this Agreement to be executed as of the date first written above by its duly authorized representative.

COUNTY OF LARAMIE

BRAZOS TECHNOLOGY

Signed: \_\_\_\_\_

Signed: Michael McAleer

Print Name: \_\_\_\_\_

Print Name: Michael McAleer

Title: \_\_\_\_\_

Title: President

Date: \_\_\_\_\_

Date: 3-10-15