

YB25



STATE OF NEW HAMPSHIRE
DEPARTMENT OF INFORMATION TECHNOLOGY
 27 Hazen Dr., Concord, NH 03301
 Fax: 603-271-1516 TDD Access: 1-800-735-2964
 www.nh.gov/doiit

Denis Goulet
 Commissioner

February 24, 2017

His Excellency, Governor Christopher T. Sununu
 and the Honorable Executive Council
 State House
 Concord, New Hampshire 03301

REQUESTED ACTION

Authorize the Department of Information Technology to enter into a **SOLE SOURCE** contract with ASG Technologies, Inc., (VC# 175894), 708 Goodlette Road, Naples, FL 34102, to provide a Perpetual License and support and maintenance for SQL Analyzer™ Feature for ASG-TMON/BD2. The funding amount is not to exceed \$68,345.50, and is effective upon Governor and Council through December 31, 2019.

Funding is available in the following account in State Fiscal Year 2017 and anticipated to be available in State Fiscal Years 2018 through Fiscal Year 2019 upon the availability and continued appropriation of funds in the future operating budget, with the ability to adjust encumbrances between State Fiscal Years through the Budget Office, if needed and justified.

Source of Funds: 100% Other (Agency Class 027) funds: the Agency Class 027 used by the Department of Health and Human Services to reimburse DoIT for this work will be 58% General and 42% Federal.

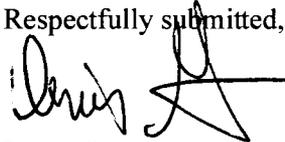
| SFY | CAT#-DEPT#-AGENCY#-ACTIVITY#-ACCTG UNIT#- DEPT NAME -ACCTG UNIT NAME | JOB # | AMOUNT |
|------|---|------------------------|--------------------|
| | CLASS CODE-ACCOUNT CODE -OBJ (ACCOUNT) DESC | | |
| 2017 | 01-03-03-030010-7703-DoIT-Central IT Svc and Ops 038-500178 - Software Mainframe/Network | 03950047 | \$50,254.00 |
| 2018 | 01-03-03-030010-7703-DoIT-Central IT Svc and Ops 038-500178 - Software Mainframe/Network | 03950047 | \$8,615.00 |
| 2019 | 01-03-03-030010-7703-DoIT-Central IT Svc and Ops 038-500178 - Software Mainframe/Network | 03950047 | \$9,476.50 |
| | | GRAND TOTAL | \$68,345.00 |

Explanation

This contract is **SOLE SOURCE** because there is no other vendor that can provide the performance management solution for IBM's DB2 relational database management system SQL Analyzer™ Feature for the ASG-TMON/BD2. The ASG proprietary software used by the Department of Information Technology, in support of Department of Health and Human Services, is deeply integrated into the applications and operations management. This software efficiently monitors performance, schedules and runs batch jobs, and manages the mainframe computing resources. This software supports the New HEIGHTS application. DHHS has been utilizing this software since 1997 and has developed additional code around this software. Failure to make the procurement will place an unreasonable level of risk and/or failure to existing systems and would prevent DHHS from delivering services to NH citizens since there are no agency resources available to meet the need.

The Department of Information Technology respectfully requests your approval of this contract.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Denis Goulet", with a stylized flourish extending to the right.

Denis Goulet

DG/kaf
DoIT: 2017-044
A&E RID #19811



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Denis Goulet
Commissioner

February 16, 2017

Wendy Pouliot
Director of Operations
Department of Information Technology
State of New Hampshire
27 Hazen Dr.
Concord, NH 03301

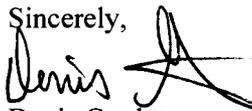
Dear Ms. Pouliot:

This letter represents formal notification that the Department of Information Technology (DoIT) has approved the Operations Division request to enter into a contract with ASG Technologies Group, Inc. of Naples, FL as described below and referenced as DoIT No. 2017-044.

This is a request is to enter into a contract with ASG Technologies Group, Inc. to provide a Perpetual License and support and maintenance for SQL Analyzer™ Feature for ASG-TMON/BD2. The funding amount is not to exceed \$68,345.00, and the contract shall become effective upon Governor and Council approval through December 31, 2019.

A copy of this letter should accompany the submission to the Governor and Executive Council for approval.

Sincerely,



Denis Goulet

DG/kaf
Contract #2017-044

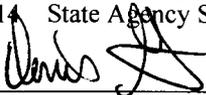
Notice: This agreement and all of its attachments shall become public upon submission to Governor and Executive Council for approval. Any information that is private, confidential or proprietary must be clearly identified to the agency and agreed to in writing prior to signing the contract.

AGREEMENT

The State of New Hampshire and the Contractor hereby mutually agree as follows:

GENERAL PROVISIONS

I. IDENTIFICATION.

| | | | |
|---|--|--|-------------------------------------|
| 1.1 State Agency Name NH Department of Information Technology | | 1.2 State Agency Address 27 Hazen Drive Concord, NH 03301 | |
| 1.3 Contractor Name ASG Technologies Group, Inc. | | 1.4 Contractor Address 708 Goodlette Road North Naples, FL 34102 | |
| 1.5 Contractor Phone Number 800-932-5536 | 1.6 Account Number 010 - 003 - 7703 - 0300 - 038 - 0178 | 1.7 Completion Date December 31, 2019 | 1.8 Price Limitation \$68,345.50 |
| 1.9 Contracting Officer for State Agency Denis Goulet | | 1.10 State Agency Telephone Number 603-223-5744 | |
| 1.11 Contractor Signature  | | 1.12 Name and Title of Contractor Signatory Linda J. Stephenson, Senior Director of Contracts | |
| 1.13 Acknowledgement: State of <i>Florida</i> , County of <i>Collier</i> On <i>2.16.17</i> , before the undersigned officer, personally appeared the person identified in block 1.12, or satisfactorily proven to be the person whose name is signed in block 1.11, and acknowledged that s/he executed this document in the capacity indicated in block 1.12. | | | |
| 1.13.1 Signature of Notary Public or Justice of the Peace  [Seal] | |  | |
| 1.13.2 Name and Title of Notary or Justice of the Peace | | | |
| 1.14 State Agency Signature  | | 1.15 Name and Title of State Agency Signatory Denis Goulet, Commissioner & CIO | |
| 1.16 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By: _____ Director, On: _____ | | | |
| 1.17 Approval by the Attorney General (Form, Substance and Execution) (if applicable) By: <i>Gloria M. Burgatti</i> On: <i>3.3.17</i> | | | |
| 1.18 Approval by the Governor and Executive Council (if applicable) By: _____ On: _____ | | | |

2. EMPLOYMENT OF CONTRACTOR/SERVICES TO BE PERFORMED. The State of New Hampshire, acting through the agency identified in block 1.1 (“State”), engages contractor identified in block 1.3 (“Contractor”) to perform, and the Contractor shall perform, the work or sale of goods, or both, identified and more particularly described in the attached EXHIBIT A which is incorporated herein by reference (“Services”).

3. EFFECTIVE DATE/COMPLETION OF SERVICES.
3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, if applicable, this Agreement, and all obligations of the parties hereunder, shall become effective on the date the Governor and Executive Council approve this Agreement as indicated in block 1.18, unless no such approval is required, in which case the Agreement shall become effective on the date the Agreement is signed by the State Agency as shown in block 1.14 (“Effective Date”).
3.2 If the Contractor commences the Services prior to the Effective Date, all Services performed by the Contractor prior to the Effective Date shall be performed at the sole risk of the Contractor, and in the event that this Agreement does not become effective, the State shall have no liability to the Contractor, including without limitation, any obligation to pay the Contractor for any costs incurred or Services performed. Contractor must complete all Services by the Completion Date specified in block 1.7.

4. CONDITIONAL NATURE OF AGREEMENT. Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds, and in no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate this Agreement immediately upon giving the Contractor notice of such termination. The State shall not be required to transfer funds from any other account to the Account identified in block 1.6 in the event funds in that Account are reduced or unavailable.

5. CONTRACT PRICE/PRICE LIMITATION/ PAYMENT.
5.1 The contract price, method of payment, and terms of payment are identified and more particularly described in EXHIBIT B which is incorporated herein by reference.
5.2 The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance hereof, and shall be the only and the complete compensation to the Contractor for the Services. The State shall have no liability to the Contractor other than the contract price.

5.3 The State reserves the right to offset from any amounts otherwise payable to the Contractor under this Agreement those liquidated amounts required or permitted by N.H. RSA 80:7 through RSA 80:7-c or any other provision of law.
5.4 Notwithstanding any provision in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made hereunder, exceed the Price Limitation set forth in block 1.8.

6. COMPLIANCE BY CONTRACTOR WITH LAWS AND REGULATIONS/ EQUAL EMPLOYMENT OPPORTUNITY.
6.1 In connection with the performance of the Services, the Contractor shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal opportunity laws. This may include the requirement to utilize auxiliary aids and services to ensure that persons with communication disabilities, including vision, hearing and speech, can communicate with, receive information from, and convey information to the Contractor. In addition, the Contractor shall comply with all applicable copyright laws.
6.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and will take affirmative action to prevent such discrimination.
6.3 If this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all the provisions of Executive Order No. 11246 (“Equal Employment Opportunity”), as supplemented by the regulations of the United States Department of Labor (41 C.F.R. Part 60), and with any rules, regulations and guidelines as the State of New Hampshire or the United States issue to implement these regulations. The Contractor further agrees to permit the State or United States access to any of the Contractor’s books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants, terms and conditions of this Agreement.

7. PERSONNEL.
7.1 The Contractor shall at its own expense provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.
7.2 Unless otherwise authorized in writing, during the term of this Agreement, and for a period of six (6) months after the Completion Date in block 1.7, the Contractor shall not hire, and shall not permit any subcontractor or other person, firm or corporation with whom it is engaged in a combined effort to perform the Services to hire, any person who is a State employee or official, who is materially involved in the procurement, administration or performance of this

Contractor Initials SP
Date 2.16.17

Agreement. This provision shall survive termination of this Agreement.

7.3 The Contracting Officer specified in block 1.9, or his or her successor, shall be the State's representative. In the event of any dispute concerning the interpretation of this Agreement, the Contracting Officer's decision shall be final for the State.

8. EVENT OF DEFAULT/REMEDIES.

8.1 Any one or more of the following acts or omissions of the Contractor shall constitute an event of default hereunder ("Event of Default"):

8.1.1 failure to perform the Services satisfactorily or on schedule;

8.1.2 failure to submit any report required hereunder; and/or

8.1.3 failure to perform any other covenant, term or condition of this Agreement.

8.2 Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:

8.2.1 give the Contractor a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely remedied, terminate this Agreement, effective two (2) days after giving the Contractor notice of termination;

8.2.2 give the Contractor a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the contract price which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the Event of Default shall never be paid to the Contractor;

8.2.3 set off against any other obligations the State may owe to the Contractor any damages the State suffers by reason of any Event of Default; and/or

8.2.4 treat the Agreement as breached and pursue any of its remedies at law or in equity, or both.

9. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.

9.1 As used in this Agreement, the word "data" shall mean all information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, papers, and documents, all whether finished or unfinished.

9.2 All data and any property which has been received from the State or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason.

9.3 Confidentiality of data shall be governed by N.H. RSA chapter 91-A or other existing law. Disclosure of data requires prior written approval of the State.

10. TERMINATION. In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall deliver to the Contracting Officer, not later than fifteen (15) days after the date of termination, a report ("Termination Report") describing in detail all Services performed, and the contract price earned, to and including the date of termination. The form, subject matter, content, and number of copies of the Termination Report shall be identical to those of any Final Report described in the attached EXHIBIT A.

11. CONTRACTOR'S RELATION TO THE STATE. In the performance of this Agreement the Contractor is in all respects an independent contractor, and is neither an agent nor an employee of the State. Neither the Contractor nor any of its officers, employees, agents or members shall have authority to bind the State or receive any benefits, workers' compensation or other emoluments provided by the State to its employees.

12. ASSIGNMENT/DELEGATION/SUBCONTRACTS. The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written notice and consent of the State. None of the Services shall be subcontracted by the Contractor without the prior written notice and consent of the State.

13. INDEMNIFICATION. The Contractor shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees, and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any person, on account of, based or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Contractor. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

14. INSURANCE.

14.1 The Contractor shall, at its sole expense, obtain and maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:

14.1.1 comprehensive general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate ; and

14.1.2 special cause of loss coverage form covering all property subject to subparagraph 9.2 herein, in an amount not less than 80% of the whole replacement value of the property.

14.2 The policies described in subparagraph 14.1 herein shall be on policy forms and endorsements approved for use in the State of New Hampshire by the N.H. Department of Insurance, and issued by insurers licensed in the State of New Hampshire.

14.3 The Contractor shall furnish to the Contracting Officer identified in block 1.9, or his or her successor, a certificate(s) of insurance for all insurance required under this Agreement. Contractor shall also furnish to the Contracting Officer identified in block 1.9, or his or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than thirty (30) days prior to the expiration date of each of the insurance policies. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference. Each certificate(s) of insurance shall contain a clause requiring the insurer to provide the Contracting Officer identified in block 1.9, or his or her successor, no less than thirty (30) days prior written notice of cancellation or modification of the policy.

15. WORKERS' COMPENSATION.

15.1 By signing this agreement, the Contractor agrees, certifies and warrants that the Contractor is in compliance with or exempt from, the requirements of N.H. RSA chapter 281-A (*"Workers' Compensation"*).

15.2 To the extent the Contractor is subject to the requirements of N.H. RSA chapter 281-A, Contractor shall maintain, and require any subcontractor or assignee to secure and maintain, payment of Workers' Compensation in connection with activities which the person proposes to undertake pursuant to this Agreement. Contractor shall furnish the Contracting Officer identified in block 1.9, or his or her successor, proof of Workers' Compensation in the manner described in N.H. RSA chapter 281-A and any applicable renewal(s) thereof, which shall be attached and are incorporated herein by reference. The State shall not be responsible for payment of any Workers' Compensation premiums or for any other claim or benefit for Contractor, or any subcontractor or employee of Contractor, which might arise under applicable State of New Hampshire Workers' Compensation laws in connection with the performance of the Services under this Agreement.

16. WAIVER OF BREACH. No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event of Default, or any subsequent Event of Default. No express failure to enforce any Event of Default shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other Event of Default on the part of the Contractor.

17. NOTICE. Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses given in blocks 1.2 and 1.4, herein.

18. AMENDMENT. This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Executive Council of the State of New Hampshire unless no

such approval is required under the circumstances pursuant to State law, rule or policy.

19. CONSTRUCTION OF AGREEMENT AND TERMS.

This Agreement shall be construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns. The wording used in this Agreement is the wording chosen by the parties to express their mutual intent, and no rule of construction shall be applied against or in favor of any party.

20. THIRD PARTIES. The parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.

21. HEADINGS. The headings throughout the Agreement are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

22. SPECIAL PROVISIONS. Additional provisions set forth in the attached EXHIBIT C are incorporated herein by reference.

23. SEVERABILITY. In the event any of the provisions of this Agreement are held by a court of competent jurisdiction to be contrary to any state or federal law, the remaining provisions of this Agreement will remain in full force and effect.

24. ENTIRE AGREEMENT. This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire Agreement and understanding between the parties, and supersedes all prior Agreements and understandings relating hereto.

**STATE OF NEW HAMPSHIRE
DEPARTMENT OF INFORMATION TECHNOLOGY
SOFTWARE LICENSE AGREEMENT 2017-044
EXHIBIT A – SCOPE OF WORK**

INTRODUCTION

This Agreement is between the New Hampshire Department of Information Technology (“DoIT” or “State”) and ASG Technologies Group, Inc., f/k/a Allen Systems Group, Inc. (“ASG” or “Payee” or “Vendor”) having its principle place of business at 708 Goodlette Road North, Naples, Florida, 34102. This agreement sets forth the terms and conditions under which ASG will license the standard software licenses, maintenance, and technical support services as specified herein.

RECITALS

The State wishes to enter into an agreement with ASG to procure a Perpetual License of SQL Analyzer™ Feature for ASG-TMON/BD2 and support and maintenance; and

ASG Technologies Group, Inc. wishes to provide a perpetual Software License for SQL Analyzer™ Feature for ASG-TMON/BD2 and support and maintenance to the State, all in accordance with the provisions of this Agreement,

Therefore, in consideration of the foregoing recitals and the mutual covenants set forth below, the State and ASG now agree as follows:

1. Contract Documents:

This Contract is comprised of the following documents:

- A. State Terms and Conditions contained in the Form P-37
- B. Exhibit A – Statement of Work
- C. Exhibit B – Payment Schedule
- D. Exhibit C – Special Provisions

2. Contract Term

The Contract shall take effect after full execution by the parties and the receipt of Governor and Executive Council approval.

The Contract term will begin on March 8th, 2017 or the date of Governor and Executive Council approval, whichever is later. The term will be for three (3) years and may be extended for one additional two (2) year term with Governor and Executive Council approval. The Extended Term is at the sole option of the State, subject to the parties’ prior written agreement on applicable fees and usage and maintenance fees.

The Contract Payment Schedule is detailed in Exhibit B – Payment Schedule, Table -1. The cost for Year One (1) includes the License Fee of \$43,074.00 for the Licensed Product(s) and the Annual Maintenance fee of \$7,180.00.

**STATE OF NEW HAMPSHIRE
DEPARTMENT OF INFORMATION TECHNOLOGY
SOFTWARE LICENSE AGREEMENT 2017-044
EXHIBIT A – SCOPE OF WORK**

The Annual Maintenance Fee for the Licensed Product(s) for Year Two (2) shall be \$8,615.00. Thereafter, the Annual Maintenance Fee for the Licensed Product(s) shall increase by ten percent (10%) per annum over the prior year's Annual Maintenance Fee. This limitation shall not apply to increases in licensed capacity or usage.

Upon the Governor and Executive Council approval and the State's receipt of the applicable license key the State will acknowledge receipt and acceptance.

Notwithstanding anything in the Agreement to the contrary, the warranty period for the Licensed Product(s) shall be ninety (90) days from Governor and Executive Council Approval.

A purchase order or similar document issued by the State that contains additional or different terms and conditions than those stated in this Agreement are specifically disclaimed by ASG and shall not apply.

2.1. Delivery

ASG will be responsible for the ordered Software Licenses and maintenance and technical support services, the delivery of the license shall commence upon the Effective Date. If ASG cannot fulfill the order within this time in its entirety, ASG must immediately inform the Department of Information Technology with a revised delivery date not to exceed thirty (30) days from the original request.

2.2 Maintenance Services

Only those users licensed to utilize the Licensed Product(s) under this Master Agreement may access ASG Maintenance.

Provided the Annual Maintenance Fee has been paid, but only during the period covered by such Maintenance, ASG shall provide the State with all enhancements, improvements, and updates to the Licensed Product(s) which ASG similarly provides or offers to provide to its other clients who have elected to subscribe to Maintenance. The State shall not be eligible to receive any enhancements, improvements, or updates or submit technical support requests unless that request is submitted to ASG during the period covered by Maintenance – even if the enhancement, improvement, or update was available but not requested during the period covered by Maintenance. For the avoidance of doubt, the State may not request enhancements, improvements, or updates after the period of Maintenance has expired. ASG will attempt to correct any material errors or malfunctions or other nonconformities in the Licensed Product(s) for the term of this Agreement, provided the State's system, under which the Licensed Product(s) are licensed, and a State representative, is made readily available to ASG to assist in the diagnosis of the nonconformity. All requests for support services shall provide details sufficient to diagnose or reproduce said failure. With respect to the

**STATE OF NEW HAMPSHIRE
DEPARTMENT OF INFORMATION TECHNOLOGY
SOFTWARE LICENSE AGREEMENT 2017-044
EXHIBIT A – SCOPE OF WORK**

foregoing, any modification or attempted modification of the Licensed Product(s) by the State not in accordance with the user Documentation supplied by ASG, or any failure by the State to implement the current release of the Licensed Product(s) or the release immediately preceding the current release within six (6) months of the current release's availability shall void the obligations of ASG under this section unless the State has obtained prior written authorization from ASG permitting such modification, attempted modifications or failure to implement.

When the State updates and/or upgrades a Licensed Product to either (i) a later release of the same Licensed Product available during the course of the Maintenance, or (ii) a successor Licensed Product available during the course of the Maintenance, such an update/upgrade does not increase the State's total license entitlement. For the avoidance of doubt, the State does not have rights to utilize both releases simultaneously at the total licensed quantity each. If the State elects to keep multiple releases of the Licensed Product installed following such an update/upgrade, the total license installation/usage across all versions of the Licensed Product may not exceed the maximum license entitlement granted in this Agreement. Notwithstanding the foregoing, the State shall be authorized to exceed temporarily the maximum license entitlement, for no longer than ninety (90) days and solely for transitional purpose during the upgrade.

3. License Requirements

3.1 The license granted herein is perpetual. Commencing December 31, 2017, and provided all fees due under this Agreement, including any applicable upgrade fees, are paid in full, the State may elect to cancel maintenance services and retain the right to use the Licensed Product(s) in accordance with the terms and conditions of this Agreement. If the State elects to cancel maintenance services, the State shall notify ASG in writing at least thirty (30) days prior to the renewal date, and the State (i) shall not be entitled to a refund of any fees which are due and payable under this Agreement or which have been paid, and (ii) shall not be entitled to receive any rights provided for in the Agreement related to maintenance services including Customer Support Desk, error corrections, enhancements, improvements and updates. The State may elect to reinstate maintenance services by paying all maintenance fees that would have been due had the State not canceled maintenance services, in addition to the Maintenance Fee for the then current maintenance period.

3.2 Authorized Use

The State may utilize the Licensed Product(s) on a Single CPU (model and serial number to be listed on applicable purchase order) at the State location at 27 Hazen Drive, Concord, New Hampshire 03301, Provided that the total capacity of the CPU(s) does not exceed six hundred twenty one (621) MIPS. If the CPU serial or model number will change, the state will notify ASG through the technical support line to determine if any further documentation will be required in regards to any change in serial or model information. Should the State exceed 621 total capacity MIPS, the State shall provide ASG with prior written notice of such increase and the State shall

STATE OF NEW HAMPSHIRE
DEPARTMENT OF INFORMATION TECHNOLOGY
SOFTWARE LICENSE AGREEMENT 2017-044
EXHIBIT A – SCOPE OF WORK

pay an upgrade fee calculated as the difference between the then prevailing license fee for the greater number of MIPS and the then prevailing license fee for the previous number of MIPS. Should the State upgrade its MIPS, the additional Annual Maintenance Fee shall be calculated as twenty percent (20%) of the applicable upgrade fee. The additional Annual Maintenance Fee shall be payable at the time of upgrade (prorated from the effective date of the upgrade to the end of the applicable annual term) and for each annual term thereafter.

**STATE OF NEW HAMPSHIRE
DEPARTMENT OF INFORMATION TECHNOLOGY
SOFTWARE LICENSE AGREEMENT 2017-044
EXHIBIT B – PAYMENT SCHEDULE**

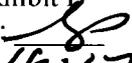
1. Table 1 - License and Support and Maintenance Fees

| | <u>Licensed Product</u> | <u>Support & Maintenance</u> | <u>Payment Schedule</u> |
|--|-------------------------|----------------------------------|--|
| Year 1 Governor and Council Approval through December 31, 2017 | \$43,074.00 | \$7,180.00 | Due 30 days from invoice receipt after Governor and Executive Council Approval |
| Total for Year 1 | | \$50,254.00 | |
| Year 2 Optional January 1, 2018-December 31, 2018 | | \$8,615.00* | Due 30 days from invoice prior to January 31, 2018 |
| Year 3 Optional January 1, 2019-December 31, 2019 | | \$9,476.50* | Due 30 days from invoice prior to January 31, 2019 |

*Provided that the total capacity of the CPU(s) does not exceed six hundred twenty one (621) MIPS as stated above in Section 3.2 Authorized Use.

1. Contract Price

Notwithstanding any provision in the Contract to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments made by the State exceed the price limitation in block 1.8 of the P-37 (“Total Contract Price”). The payment by the State of the total Contract price shall be the only, and the complete reimbursement to ASG for all fees and expenses, of whatever nature, incurred by ASG in the performance hereof.

2017-044 Exhibit B
ASG Initials: 
Date: 2-16-17

**STATE OF NEW HAMPSHIRE
DEPARTMENT OF INFORMATION TECHNOLOGY
SOFTWARE LICENSE AGREEMENT 2017-044
EXHIBIT B – PAYMENT SCHEDULE**

The State will not be responsible for any travel or out of pocket expenses incurred in the performance of the Services performed under this Contract.

2. Invoicing

ASG shall submit correct invoices to the State yearly for all amounts to be paid by the State. ASG shall only submit invoices for Services or Deliverables as permitted by the Contract. Invoices shall contain detailed information, including without limitation: itemization of each Deliverable and identification of the Deliverable for which payment is sought, and the Acceptance date triggering such payment; date of delivery, yearly maintenance charges; and/or any other support costs if applicable.

Upon receipt of the Licensed Product and a properly documented and undisputed invoice, the State will pay the correct and undisputed invoice within thirty (30) days of invoice receipt. Invoices will not be backdated and shall be promptly dispatched.

Invoices should be sent to BFA, DoIT, 27 Hazen Drive, Concord NH 03301

**STATE OF NEW HAMPSHIRE
DEPARTMENT OF INFORMATION TECHNOLOGY
SOFTWARE LICENSE AGREEMENT 2017-044
EXHIBIT C – SPECIAL PROVISIONS**

ASG hereby grants to the State, and the State hereby accepts from ASG a non-assignable, non-exclusive and non-transferable license to use the proprietary software system(s): SQL Analyzer™ Feature for ASG-TMON/BD2 (“Licensed Product(s)”), technical and other user documentation (“Documentation”), and any associated data and information listed on this agreement and for the term provided for herein.

The State shall have the right to use the Licensed Product(s) solely for its own internal use and benefit and only on the equipment and at the location designated herein. The State shall not transfer, sublease, assign this license or the Agreement or deliver Licensed Product(s) to other equipment, another location, or another company – including but not limited to as a consequence of a merger, acquisition, divestiture, change of ownership, or change of control - or provide or otherwise make Licensed Product(s) available to anyone other than the State’s personnel or do processing for the benefit of any entity other than as stated above, unless the State shall have obtained ASG’s prior written consent and paid any applicable fees. For the avoidance of doubt, contractors, consultants, outsourcing firms and all such similar third parties are specifically excluded from the scope of the State’s personnel. Should the State intend to increase its capacity or usage of the Licensed Product(s), the State agrees to provide ASG with prior written notice of such change and the State shall pay an upgrade fee as specified herein. The State is authorized to use the Licensed Product(s) on back-up equipment, at no additional charge, when the designated equipment is temporarily inoperable until operable status is restored and processing on the back-up equipment is completed. In addition, the State may install the Licensed Product(s) on non-production test equipment, for a total of thirty (30) days per annum, solely for testing, provided ASG is given prior written notice of such testing. The State expressly agrees that it shall neither apply nor benefit from the functionality of the Licensed Product(s) under such testing, except in the case of disaster.

ASG represents and warrants that it is the owner or authorized licensor of the Licensed Product(s). ASG further warrants that at the time of initial delivery of the Licensed Product(s) and for a period of ninety (90) days thereafter, the Licensed Product(s) will conform in all material respects to the Documentation supplied to the State. Provided that written notification is received by ASG within the warranty period, ASG shall, at ASG’s sole cost and expense, attempt to correct or replace any material nonconformity in the Licensed Product(s) which ASG determines to be necessary to cause the Licensed Product(s) to substantially conform to its Documentation. Should ASG be unable to bring the Licensed Product(s) into substantial conformance with the Documentation within sixty (60) days after the State’s written notification, the State and ASG may agree to extend this time period or, at the State’s option, the State may elect to terminate this Agreement for the nonconforming Licensed Product(s) and ASG shall refund the license fees paid by the State related to the nonconforming Licensed Product(s). Upon such termination, the State shall abide by the termination provisions of this Agreement. The foregoing remedy is exclusive and shall constitute the State’s sole remedy with respect to any claim relating to breach of warranty, including, without limitation, any remedy relating to recourse against any third party manufacturer of the Licensed Product(s). The warranty shall not apply if (i) an item of the Licensed Product(s) was not used in accordance with ASG’s instructions; (ii) an item of Licensed Product(s) shall have been altered, modified or converted by the State without ASG’s written approval; or (iii) any of the State’s equipment shall malfunction causing the defect in Licensed Product(s). The foregoing warranty is in lieu of all other

2017-044 Exhibit C
ASG Initials: ASG
Date: 2.16.17

**STATE OF NEW HAMPSHIRE
DEPARTMENT OF INFORMATION TECHNOLOGY
SOFTWARE LICENSE AGREEMENT 2017-044
EXHIBIT C – SPECIAL PROVISIONS**

warranties, expressed or implied, including, but not limited to, the implied warranties of merchantability and fitness for a particular purpose.

In the event of a United States copyright, trade secret, or patent infringement claim as a result of the use of Licensed Product(s) under the terms and conditions of this Agreement, under normal use and not in combination with other items, provided that ASG is promptly notified of such claim in writing, ASG shall, at its own expense, defend such claim, or ASG may at its option and its own expense: (i) procure for the State the right to continue using all or part of the Licensed Product(s); (ii) replace Licensed Product(s) with functionally equivalent non-infringing Licensed Product(s); (iii) modify the Licensed Product(s) so as to become non-infringing; or (iv) if none of the foregoing alternatives is reasonably available to ASG using its commercially reasonable efforts, terminate the license for the Licensed Product(s). In the event of termination of the Licensed Product(s) due to such infringement, ASG will refund a prorated portion of the License Fee(s) paid by the State for the Licensed Product(s), reducing the refund by 1/60 for each month following delivery of the Licensed Product(s) prior to injunction or adjudication. This shall constitute the entire liability of ASG with respect to a copyright, trade secret or patent infringement claim.

Except with respect to its aforementioned obligations in connection with copyright, trade secret, or patent infringement claims, ASG's total liability to client for all claims arising out of this agreement shall be limited to the license fee paid by client for the licensed product giving rise to the liability.

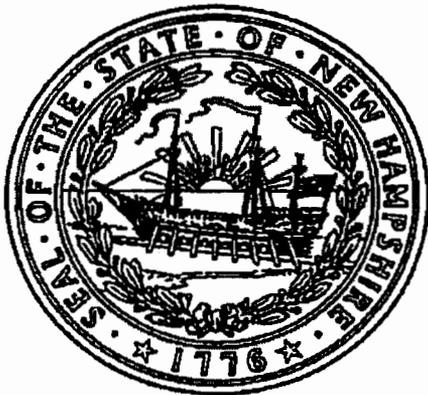
ASG, and any third party manufacturer of the licensed product(s) shall in no event be liable for loss of profit, goodwill, or other special, indirect or any consequential damages suffered by client or others in any way attributable to client's use of the licensed products(s) or any services provided hereunder.

State of New Hampshire
Department of State

CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that ASG TECHNOLOGIES GROUP, INC. is a Delaware Profit Corporation registered to transact business in New Hampshire on July 20, 2007. I further certify that all fees and documents required by the Secretary of State's office have been received and is in good standing as far as this office is concerned.

Business ID: 581391



IN TESTIMONY WHEREOF,

I hereto set my hand and cause to be affixed
the Seal of the State of New Hampshire,
this 6th day of February A.D. 2017.

A handwritten signature in black ink, appearing to read "William M. Gardner".

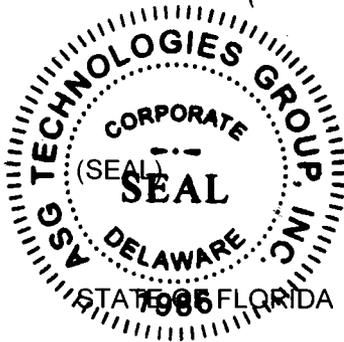
William M. Gardner
Secretary of State

CERTIFICATE OF VOTE

I, Derek S. Eckelman, do hereby certify that:

- (1) I am the Executive Vice President and Secretary of ASG Technologies Group, Inc, a Delaware corporation (the "Corporation").
- (2) I maintain and have custody and am familiar with the Seal and the minute books of the Corporation;
- (3) I am duly authorized to issue certificates;
- (4) The signature of Linda J. Stephenson, Senior Director of Contracts, of this Corporation affixed to any contract instrument or document shall bind the Corporation to the terms and conditions of the contract instrument or document;
- (5) The foregoing signature authority has not been revoked, annulled, or amended in any manner whatsoever and remains in full force and effect as of the date hereof;

IN WITNESS WHEREOF, I have hereunto set my hand as Executive Vice President and Secretary of the Corporation and have affixed its corporate seal this 16th of February 2017.

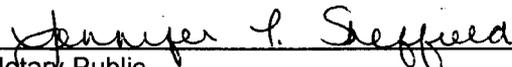



Executive Vice President and Secretary

COUNTY OF COLLIER

On this the 16th day of February, 2017, before me, Derek S. Eckelman, personally appeared, who acknowledged himself to be the Executive Vice President and Secretary, of ASG Technologies Group, Inc., a Delaware corporation, and he, as such being authorized to do so, executed the foregoing instrument.

IN WITNESS WHEREOF I hereunto set my hand and official seal.


Notary Public

My Commission Expires: 10/28/18



JENNIFER T. SHEFFIELD
MY COMMISSION # FF 142758
EXPIRES: October 28, 2018
Bonded Thru Budget Notary Services



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
05/16/2016

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

| | | |
|--|---|------------------------|
| PRODUCER Marsh USA, Inc 3031 N Rocky Point Drive West, Suite 700 Tampa, FL 33607 | CONTACT NAME: PHONE: (A/C, No, Ext): E-MAIL ADDRESS: | FAX: (A/C, No): |
| CN102386755-Allen-GAWX-16-17 | INSURER(S) AFFORDING COVERAGE | |
| INSURED Allen Systems Group, Inc. 708 Goodlette Road North Naples, FL 34102 | INSURER A: Great Northern Insurance Company | NAIC # 20303 |
| | INSURER B: Pacific Indemnity Co | 20346 |
| | INSURER C: Federal Insurance Company | 20281 |
| | INSURER D: | |
| | INSURER E: | |
| | INSURER F: | |

COVERAGES **CERTIFICATE NUMBER:** ATL-00386647-03 **REVISION NUMBER:** 1

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR LTR | TYPE OF INSURANCE | ADD'L SUBR (INSR) WVD | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS |
|----------|--|--|--|-------------------------|-------------------------|---|
| C | <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER | | 36030772 | 05/15/2016 | 05/15/2017 | EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 1,000,000 \$ |
| A | <input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS <input type="checkbox"/> HIRED AUTOS | | 73588737 Owned/Hired Car Physical Damage Deductible: \$1,000 | 05/15/2016 | 05/15/2017 | COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$ |
| C | <input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$ | | 79889284 | 05/15/2016 | 05/15/2017 | EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ \$ |
| B | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below | Y/N <input checked="" type="checkbox"/> N / A | 71752004 | 05/15/2016 | 05/15/2017 | <input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000 |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

| | |
|--|---|
| CERTIFICATE HOLDER State of New Hampshire Department of Information Technology 27 Hazen Drive Concord, NH 33010 | CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE of Marsh USA Inc. Nathan Collins |
|--|---|