

City of Fayetteville Staff Review Form

2019-0868

Legistar File ID

12/17/2019

City Council Meeting Date - Agenda Item Only
N/A for Non-Agenda Item

Andrea Foren

11/26/2019

PURCHASING (160)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

A resolution to approve a contract with Bonfire Interactive, Ltd. (Bonfire), through SP-19-0104 issued by the Arkansas Office of State Procurement, to provide an electronic bidding software solution to the City of Fayetteville for one year with four (4) automatic one (1) year renewals including year one services composed of \$19,000 and an annual renewal of \$15,000 per additional year with an annual maintenance increase of no more than 3%, plus a \$2,000 project contingency.

Budget Impact:

4470.170.8170-5315.00

Sales Tax Capital Improvement

Account Number

Fund

04047.1

Fayetteville-AR.gov Technical Imps

Project Number

Project Title

Budgeted Item? Yes

Current Budget \$ 30,596.00

Funds Obligated \$ -

Current Balance **\$ 30,596.00**

Does item have a cost? Yes

Item Cost \$ 21,000.00

Budget Adjustment Attached? No

Budget Adjustment

Remaining Budget **\$ 9,596.00**

V20180321

Purchase Order Number: _____

Previous Ordinance or Resolution # _____

Change Order Number: _____

Approval Date: _____

Original Contract Number: _____

Comments:



MEETING OF DECEMBER 17, 2019

TO: Mayor and City Council
THRU: Paul A. Becker, Chief Financial Officer
FROM: Andrea Foren, Purchasing Manager
DATE: Tuesday, November 26, 2019

SUBJECT: Resolution to approve Bonfire Interactive, Ltd. to provide an electronic bidding platform from the State of Arkansas Qualified Vendor List SP-19-0104

RECOMMENDATION:

A resolution to approve a contract with Bonfire Interactive, Ltd. (Bonfire), through SP-19-0104 issued by the Arkansas Office of State Procurement, to provide an electronic bidding software solution to the City of Fayetteville for one year with four (4) automatic one (1) year renewals including year one services composed of \$19,000 and an annual renewal of \$15,000 per additional year with an annual maintenance increase of no more than 3%, plus a \$2,000 project contingency.

BACKGROUND:

Arkansas state law was modified in 2017 to allow municipalities to accept electronic media for receiving bids. Act 1075 of the 2019 legislative session required public agencies desiring to accept electronic bid submissions to utilize a vendor from the Qualified Vendor List selected as part of a Request for Qualifications (RFQ) solicitation by the Office of State Procurement.

DISCUSSION:

Currently, the City only accepts sealed physically submitted paper bids in response to formal solicitations the City advertises to the general public.

In 2019, the State of Arkansas, Office of State Procurement (OSP), issued a RFQ on behalf of Public Agencies, using the procedures for the procurement of professional services under A.C.A. § 19-11-801 to select three (3) vendors to establish a Qualified Vendors List (QVL). Vendors prequalified on the resultant QVL may contract with Public Agencies, as needed, to provide online advertising and electronic bid submission of public works solicitations. The City of Fayetteville Purchasing Division was represented in this selection process upon request by OSP.

City Staff including team members from the Purchasing and Information Technology Divisions reviewed vendors on the QVL, researched software capability, participated in vendor demonstrations, had in-depth discussions on functionality and vendor relationship management. Bonfire was deemed to be in the best interest of the City for the following reasons, including but not limited to:

- Software solution providing economical and efficient administration
- Allows for online advertisement of notices on an intent to receive bids
- Cloud-based platform offers streamlined implementation
- 98% customer satisfaction rating with over 300 clients in North America
- Modernized procurement process designed to reduce the use of paper while allowing vendor flexibility to submit documents online
- Instantly export complete summary reports for debriefs or audits
- Ongoing training for City Staff and Vendors
- Tool utilization to drive best value evaluations
- Vendor-friendly online portal to post opportunities, manage questions & answers, and receive electronic submissions
- Simple vendor registration process & product support for vendors
- Flexible RFP evaluation workflows
- Custom-built evaluation tools for side-by-side comparison and price scenario analysis
- Automatic audit trails and dashboards for easy reporting
- Collaboration from across client base to enable learning from the experiences of other public-sector agencies
- Easy reporting
- Process consistency and compliance assurance
- Competitive price

Partnering with Bonfire will enable the City of Fayetteville to reduce paper, streamline processes for both internal City Staff and City Vendors. Procurement of the Bonfire software will improve many processes for the Purchasing Division and bring the City up to modern practices commonly conducted by public agencies nationwide.

BUDGET/STAFF IMPACT:

Funds are available for this software through the Information Technology Division's website technical improvement project.

Attachments:

Arkansas State Contract SP-19-0104, Contract Summary
 Bonfire Interactive Ltd. Order Form
 Bonfire Interactive Ltd. Terms and Conditions

QVL Overview

The Office of State Procurement (OSP) issued a Request for Qualifications (RFQ) on behalf of Public Agencies to issue a Qualified Vendors List (QVL) of prequalified Contractors. Contractors listed on the resultant QVL may contract with Public Agencies, as needed, to provide online advertising and electronic bid submission of public works bid solicitations.

The RFQ may be opened annually if one or more of the Contractors is removed from the QVL. It will be the decision of the Public Works Committee to determine if the RFQ will be re-opened.

QVL Term

The initial term of a resulting QVL will be for one (1) year (August 8, 2019 – August 7, 2020). The State may renew a Contractor's qualification status for up to six (6) additional one-year terms or portions thereof, not to exceed a total aggregate QVL term of seven (7) consecutive years.

Who can use this QVL?

Any Public Agency as defined by Act 1075 of the 92nd General Assembly.

"Public agency" means:

- (A) A county, city, town, and school district in this state; and
- (B) A department, agency, board, bureau, commission, committee, or authority of a county, city, town, or school district;

Contractor Information

Contractor	Contact Name	Contact Phone	Contact Email	Vendor Number
Bonfire	Jason Witt	519-591-6877	jwitt@gobonfire.com	100236620
Central Bidding	Ted Fleming	225-810-4814	ted@centralbidding.com	100201546
Ion Wave Technologies, Inc.	Nick McConnell	866-277-2645 X26	nmccconnell@ionwave.net	100232056

Contractor Pricing

Please contact the Contractor to ensure that you are receiving the best price based on your entities needs.

Bonfire

- Annual Subscription Fee - \$5,000 per user/year
 - Annual recurring subscription fee that includes unlimited sourcing events, on-going standard support, unlimited submissions, upgraded to purchased modules, and unlimited cloud storage. Annual fee is based on the number of buyers, managers, or platform administrators within the organization. Vendors, evaluators, observers, and drafters are free and unlimited in nature.
- All training, implementation, and set-up is unlimited in nature and is a one-time fee of \$5,000 per organization.
- Volume discounting is offered.

Central Bidding

- Central Bidding has two payment models that can be utilized (Vendor or Public Agency).
- Vendor Subscription Fees:
 - \$49.99 – Per bid
 - \$99.99 – One month
 - \$499.99 – Six months

- \$699.99 – Twelve months
- Public Agency Fees:
 - \$250 per bid (Utilized for Public Agencies that only post one or two bids per year)
 - Also, Central Bidding can negotiate a yearly fee for Public Agencies that post more than a few bids per year.

Ion Wave Technologies

See next page

Consulting - Scoped and priced by project	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD
Annual Support & Hosting (Included w/ SaaS Agreement)	<included>	<included>	<included>	<included>	<included>	<included>	<included>	<included>
Tier 2 Supplier Support (Included w/ SaaS Agreement)	<included>	<included>	<included>	<included>	<included>	<included>	<included>	<included>
Tier 1 Supplier Support (Annual Fee)	7,500	7,500	7,500	7,500	7,500	7,500	7,500	TBD

RENEWAL PRICING

4-5 Year Renewal Agreement - maximum price increase:	15%	15%	15%	15%	15%	15%	15%	TBD
2-4 Year Renewal Agreement - maximum price increase:	20%	20%	20%	20%	20%	20%	20%	TBD

*Pricing Tiers 1 and 2 are not applicable to Cooperative Purchasing Organizations

~Clients subscribing to multiple modules, and/or committing to multi-year agreement terms, and/or limiting users will qualify for a lower annual subscription depending up the final configuration and agreement terms.

~By User Pricing is also available.

Access Discount Scenarios at:

www.ionwave.net/Arkansas



ORDER FORM

Bonfire Interactive Ltd.
121 Charles St. West #C429 ,Kitchener ON, N2G 1H6

ORDER	DETAILS
Plan Type	Annual Contract
Currency	USD
Contract Type	Bonfire "Site License" Edition 2
Start Date	01-Jan-20
Renewal Date	31-Dec-20
Billing Cycle	Annual
Data Location	USA

CUSTOMER DETAILS / QUOTE TO
City of Fayetteville, Arkansas
City Hall
113 W. Mountain Street Room 306
Fayetteville, AR 72701
Prepared by Will Taylor
November 25th, 2019

Quantity	Description	Rate	Amount
5 seats	Bonfire Municipal "Site License" Edition 2	\$15,000.00	\$15,000.00
1	One-Time Implementation Fee	\$4,000.00	\$4,000.00
	Bid Tables Module	Included	
	Internal User Seats (as purchased)	Included	
	Unlimited Projects	Included	
	Unlimited Evaluators/Reviewers/Advisors/ Observers	Included	
	Unlimited Submissions	Included	
	Unlimited Suppliers & Vendors	Included	
	Best Value	Included	
	COI/NDA	Included	
	Training	Included	
	Implementation/Set-up	Included	
	Maintenance/Hosting	Included	
	Associated Releases/Upgrades	Included	
	On-going Support	Included	
	Annual Total		\$15,000.00
	Year One Total		\$19,000.00

QUOTE COMMENTS:

- This offer expires December 31, 2019
 - Includes all internal users including suppliers, data analysts, managers, administrators, evaluators & advisor/client roles for the organization
 - Includes implementation, training, unlimited projects, support, submissions, and cloud storage
 - Bonfire services including account activation and implementation to start immediately upon receiving signed order form
- The City of Fayetteville, Arkansas will be purchasing Bonfire based on the prequalification done by The Office of State Procurement (OSP) in the State of Arkansas via RFQ #SP-19-0104 and the inclusion of Bonfire in the associated Qualified Vendors List (QVL).**

SIGNATURE & EXECUTION:

The Customer hereby agrees to order the products and/or services outlined above at the prices indicated, and acknowledges it has read, understands and agrees to be bound by the terms and conditions detailed and attached below.

CITY OF FAYETTEVILLE:

Date: _____ Name: _____ Signature: _____
Payment Type: Credit Card Check Bank Transfer Purchase Order PO# _____

BONFIRE:

Date: **Nov 27, 2019** Name: **Omar Salaymeh** Signature:

TERMS AND CONDITIONS

1. **LICENSE.** Bonfire Interactive Ltd. (“**Bonfire**”) hereby grants to Customer (identified on the Order Form), for internal use by Customer, its agents, contractors, employees and suppliers (collectively, the “**Users**”) a non-transferable, non-exclusive, non-sub-licensable right and license (the “**License**”) to access and use the services identified on Schedule A (collectively, the “**Platform Services**”) (being software, data and applications of Bonfire for purposes of collecting, managing, analyzing and reporting data) during the Term (as outlined on the Order Form). The Platform Services shall be made available on-line at bonfirehub.com or bonfirehub.ca (or such other URL as Bonfire may designate from time to time) (the “**Site**”) from a third party hosted facility, located in the country specified on the Order Form, and/or other systems used by Bonfire to host the Platform Services in the country specified on the Order Form (collectively, the “**Systems**”). Platform Services may be amended, enhanced or modified from time to time by Bonfire. Users shall access the Platform Services by means of a specific account (the “**Customer’s Account**”) using individual User login names and passwords (“**Passwords**”) provided by Bonfire. Bonfire shall enable the Platform Services and provide the Passwords on the Plan Start Date (identified on the Order Form). The Customer is responsible for the confidentiality and use of its Passwords and Customer Account, and in no event shall Bonfire be liable for any loss of information of the Customer or other claims arising from unauthorized access to the Platform Services as a result of the failure by Customer to protect the confidentiality of its Passwords and Customer Account. Bonfire is also responsible for the confidentiality of the Passwords and Customer Account provided to Customer and shall in all events be liable and indemnify Customer for any breach of this provision.
2. **USE.** The License and Support (as defined in Section 3 below) is granted exclusively for Customer’s internal use, and the Customer is solely and exclusively responsible:
 - a. For the collection, accuracy, currency, quality, legality, completeness and use of Customer Data (as defined in Section 7.2 below) that is stored on the Systems, disclosed to or used by Customer or Users in connection with the Platform Services;
 - b. For the content of all communications (including without limitation, any transfer of signs, signals, text, images, videos, sounds, data or intelligence of any nature transmitted in whole or in part electronically the “**Electronic Communications**”) while using Customer’s Account;
 - c. To ensure that it and the Users will not use the Platform Services to communicate, by way of Electronic Communication or otherwise, any message or material that (1) is libelous, harmful to minors, obscene or constitutes pornography; (2) infringes the copyrights, patents, trade secrets, trademarks, trade names or other proprietary rights of a third party or is otherwise unlawful; or (3) would otherwise give rise to any breach of confidentiality or privacy laws, or any civil liability, or that constitutes or encourages conduct that could constitute a criminal offence, under any applicable law or regulation;
 - d. To ensure that the use of the Platform Services by any User is limited to the rights outlined herein; and the Customer shall not permit Users, directly or indirectly, to do (and shall be responsible for any violation of) any of the following acts:
 - i. Reverse engineer, de-compile, disassemble or otherwise attempt to discover the source code or underlying ideas or algorithms of the Platform Services;
 - ii. Modify, translate, or create derivative works from the Platform Services;

- iii. Rent, lease, distribute, license, sublicense, sell, resell, assign, or otherwise commercially exploit the Platform Services;
- iv. Publish or disclose to third parties any evaluation of the Platform Services without Bonfire's prior written consent;
- v. Violate any local, state / provincial, federal or foreign law, treaty, regulation or convention applicable to the Customer in connection with Users' use of the Platform Services;
- vi. Access data or log into a server or account on the System that the Customer is not authorized to access, or access or tamper with other customer accounts of Bonfire;
- vii. Willfully tamper with the security of, or probe, scan or test the vulnerability of, any of the Systems, or render any part of the Systems unusable.

3. SUPPORT AND MAINTENANCE. Bonfire shall provide general maintenance services and technical support in respect of the Platform Services ("**Support**") throughout the Term, during Business Days (as defined in Schedule A). The Customer acknowledges that the Support will not be available during System maintenance periods for purposes of upgrades and maintenance to the Platform Services and/or System. Downtime for such System maintenance periods shall only occur between the hours of 11:00 pm and 6:00 am Eastern Standard Time ("**Downtime**") unless there is a defect that renders the Platform Services unavailable in which case Bonfire shall take steps to correct such deficiency immediately. Otherwise, Bonfire will make reasonable efforts to announce the scheduled Downtime via e-mail to the Customer's designated e-mail address. Support does not include services required as a result of (i) User misuse, improper use, alteration, or damage of the Platform Services; (ii) any problem caused by modifications in any version of the Platform Services not made or authorized by Bonfire; (iii) any problem resulting from the Customer combining or merging the Platform Services with any hardware or software not supplied by Bonfire, or not identified by Bonfire as compatible with the Platform Services and/or Systems, or (iv) any custom development services outlined on Schedule A hereto. Optional additional services which may be provided by Bonfire at the request of the Customer are as outlined on Schedule A hereto.

4. SERVICE LEVEL AGREEMENT. Bonfire shall provide the Platform Services at a service level described in the Service Level Agreement outlined on Schedule B hereto.

5. CUSTOM DEVELOPMENT. In the event the Customer wishes to have Bonfire provide additional custom development and/or services at any time during the Term, the parties will negotiate the terms and conditions of such additional services, and enter into a mutually agreeable contract which, among other things, will address which party will own any and all intellectual property developed as a result.

6. FEES, PAYMENT AND TAXES.

6.1 Fees. Fees for the License, Platform Services and Support (collectively the "**Fees**") are based on (i) the Plan Type selected by the Customer, and (ii) the number of projects ("**Projects**") that the Plan Type includes, each as defined on the Order Form.

6.2 Payment.

- a. **General.** All Fees are quoted in American currency unless otherwise stated on the Order Form; and are non-refundable except as may otherwise be provided in this

Agreement. The Fees in an Order Form apply for the Initial Term and any Renewal subject always to Bonfire's right to increase the Fees by up to 3% above the previous applicable Fees at any time. Such revised Fees will apply only to a Renewal.

- b. **Invoicing.** Fees will be invoiced in advance and will be due on such dates and for such amounts as indicated on the invoices provided by Bonfire to the Customer.
- c. **Expenses.** The Customer shall pay Bonfire for all pre-approved costs and expenses incurred by Bonfire in providing any Support to the Customer (in excess of that provided as outlined in the Support and Maintenance Section contained herein) within 45 days of receipt of invoice from Bonfire, unless otherwise specified. The Customer is responsible for all its internet connection charges related to the use of the Platform Services.
- d. **Suspension of Service.** If Fees on any Customer Account are not paid by the due date, in addition to any other rights and remedies Bonfire may have (including interest owing, and the termination rights set forth herein), Bonfire reserves the right to suspend the Customer Account without liability to Bonfire, until such account is paid in full. "**Suspended Account**" means that all attempts to create new projects in Bonfire will be blocked and all Support will cease until the Customer makes the full payment due and owing, including any interest and other charges accruing during the suspension period. A Suspended Account does not remove the Customer's obligation to pay those amounts outstanding to the date of such suspension or thereafter for the remainder of the Term, as the case may be.

7. OWNERSHIP AND CONFIDENTIALITY.

7.1 Intellectual Property. The Customer acknowledges and agrees that the Platform Services, and all intellectual property rights therein (including without limitation, copyrights, patents, trade secrets, trademarks, moral rights and other intellectual property rights, in and to the Platform Services, and all modifications, changes, enhancements, or additions thereto (whether initiated by the Customer or otherwise), and all intellectual property rights relating to the provision of Support in respect of the Platform Services (collectively, "**Bonfire IP**"), are owned or licensed by Bonfire. Except for the License granted hereunder, nothing in this Agreement gives the Customer any right, title or interest in, to or under any of the Bonfire IP, and to the extent the Customer acquires rights in the Bonfire IP, Customer assigns such rights to Bonfire and waives any moral rights it may have in the Bonfire IP to and in favour of Bonfire. All Bonfire IP shall be deemed to be Confidential Information (as defined below), and the Customer shall be bound by all confidentiality provisions.

7.2 Customer Data. "**Customer Data**" means any data, information or other materials of any nature recorded in any form whatsoever, disclosed or provided to Bonfire by the Customer and by the Users in the course of using the Platform Services, including all information generated by the Users' use of the Platform Services. The Customer retains all right, title and interest in and to all Customer Data. The Customer Data shall be deemed to be Confidential Information (as defined below) of the Customer, and Bonfire will restrict access to Customer's Confidential Information to those Bonfire employees, consultants and/or subcontractors who have a need to access the Customer Data in order to provide the Platform Services and Support and have agreed to be bound by the confidentiality provisions outlined herein. The Customer agrees that it is solely and exclusively responsible for the collection, accuracy, currency, quality, legality, completeness and use of Customer Data that is stored on the System, disclosed to or used by Customer or Users in connection with the Platform Services,

and for compliance with all applicable laws and regulations in the appropriate jurisdiction, including without limitation with respect to privacy, non-disclosure and confidentiality.

7.3 Bonfire Access and Use. Bonfire shall have the right, in its sole discretion, to access the Customer's Account from time to time, for purposes of Support, administration, anonymized data aggregation, invoicing and to inspect the Customer's utilization of the Platform Services so as to ensure Customer's compliance with the provisions of this Agreement.

7.4 Bonfire Press Release. Customer agrees that Bonfire may issue a press release identifying Customer as a Bonfire customer and describing Customer's utilization and the benefits that Customer receives from use of Bonfire's services, subject to the Customer's prior review and approval of same.

7.5 Confidential Information. As used herein, "**Confidential Information**" means all confidential and proprietary information of a party that is disclosed to the other party pursuant to this Agreement, and includes without limitation all Passwords, Customer Account information, Customer Data, Bonfire IP, and the terms and conditions of this Agreement. Each party agrees to keep all Confidential Information disclosed to it by the other party strictly confidential, in the same manner as it protects the confidentiality of its own information and data (at all times exercising at least a reasonable degree of care in the protection of the Confidential Information). Confidential Information shall not include information which: (a) is known publicly; (b) is generally known in the industry before disclosure; (c) has become known publicly, without fault of a party, subsequent to disclosure by the other party; or (d) has been otherwise lawfully known or received by a party. This section will not be construed to prohibit the disclosure of Confidential Information if required by law or order of the court or other governmental authority, provided that a party shall give the other party prompt notice of such request, so that the other party has a reasonable time to attempt to limit or prevent such disclosure. Upon termination of this Agreement, all copies of all Confidential Information shall be either returned to the applicable party or destroyed, at the discretion and written direction of the other party.

8. PERSONAL INFORMATION.

8.1 Definition and Permitted Use.

- a. For this Agreement, "**Personal Information**" means any information that Bonfire collects, receives, or obtains, from or on behalf of Customer or any of its Authorized Users that identifies a specific individual or by or from which a specific individual may be identified, such as the individual's name, address, or social security number, and any other information relating to an identified or identifiable individual. Personal Information includes the information of or pertaining to Customer's personnel, directors, officers, agents, providers, contractors, investors, or customers.
- b. Bonfire shall not cause or permit any Personal Information to be processed in any manner or for any purpose other than the performance of the Services in compliance with the restrictions in this Agreement and all applicable Laws.

8.2 Ownership and Treatment of Personal Information. As between Customer and Bonfire, Customer is and shall remain the sole and exclusive owner of all right, title, and interest in and to Personal Information. Bonfire shall:

- a. Process Personal Information for the sole purpose of performing the Services and in compliance with: (i) this Agreement or as Customer may expressly direct in advance in writing; and (ii) all applicable data protection laws; and
- b. Notify Customer in writing if Bonfire becomes aware of any unauthorized access, use or other unauthorized act respecting Personal Information.

8.3 Customer as Controller. Customer agrees that if Customer, or any data submitted by Customer to the Platform Services, is subject to the General Data Protection Regulation (“**GDPR**”), or related laws including related laws of European Union member states: (i) Customer is the data controller of such data and Bonfire is a data processor of such data; and (ii) Customer further represents that Customer has undertaken all requirements to comply with all privacy and data protection laws including but not limited to GDPR. Such requirements may include but are not limited to maintaining adequate records and registration requirements with supervising or other regulatory authorities.

8.4 Legitimate purpose/consent. Customer agrees and represents to Bonfire that all personal information Customer collects, provides, or otherwise uses in any way in relation to the Bonfire Service is necessary for Customer’s legitimate interest and is not overridden by fundamental rights of the subject individual, and otherwise that Customer has all rights and obtained all necessary consents to collect, provide, manage, all personal information Customer provides to Bonfire for any purpose. Customer further represents and warrants that Customer will not collect, provide or otherwise use in any way in relation to the Bonfire Service any special category of personal data as described in GDPR.

9 TERM AND TERMINATION.

9.1 Term. The License and Support shall commence on the Plan Start Date (as outlined on the Order Form) and shall continue for the Term outlined on the Order Form (the “**Initial Term**”), unless earlier terminated in accordance with the provisions of this Agreement. At the end of the Initial Term this Agreement will auto-renew for further terms of 12 months, for up to 5 terms (each a “**Renewal**”) unless either party gives written notice of intention to terminate at least ninety (90) days prior to the end of the then current term (together the Initial Term and any Renewals constitute the “**Term**”).

9.2 Suspension of Service. Bonfire may, at its sole option, and in addition to any other right herein, notify the Customer that it has a Suspended Account effective immediately in the event of any breach of payment of Fees as outlined in Section 6.6 above, or a breach of any provisions related to intellectual property or confidential information.

9.3 Termination. This Agreement may be terminated as follows upon the occurrence of any of the following events:

- a. Immediately by Bonfire, if the Customer fails to make payment of undisputed Fees within 45 days of receiving written notice from Bonfire;
- b. Immediately by either party, if the other party breaches any of the obligations or provisions of this Agreement and fails to remedy such breach within 30 days of written notice from the party of such default;

- c. Immediately on written notice by either party if the other party (A) ceases or threatens to cease to carry on its business, commits an act of bankruptcy, makes an assignment or bulk sale of its assets, or proposes a compromise or arrangement to its creditors, or (B) is subject to any proceeding that is taken to (i) compromise or make an arrangement with that party's creditors, (ii) obtain an order to assign that party into bankruptcy or winding-up that party, or (iii) obtain an order to appoint a receiver over any part of that party's assets, and in each case, such proceeding is not dismissed within 60 days of such proceeding being initiated; and
- d. Immediately on written notice by either party if the other party breaches or threatens to breach any provision of Section 7 of this Agreement.

9.4 Effect of Termination. Upon the effective date of termination, the License and all Support shall terminate and:

- a. Each of the parties shall deliver or destroy, at the direction of the other party, all Confidential Information of the other party which is in its possession, care or control, provided that the Bonfire, on request by Customer, shall be permitted 10 business days to provide Customer with a backup copy of all Customer Data located on the Platform Services ;
- b. Customer shall pay to Bonfire all undisputed Fees accrued and owing up to the effective date of termination or Bonfire shall reimburse to Customer all pre-paid Fees on a pro rata basis for that portion of the Term following the effective date of termination;
- c. The provisions dealing with intellectual property, confidential information, liability and indemnification of this Agreement shall continue in force following effective termination; and
- d. Each of the parties shall have all remedies which are available to it at law or in equity.

10 INSURANCE.

Bonfire shall, at its own cost and expense, procure and maintain in full force and effect during the Term, policies of insurance from licensed and reputable insurance carriers covering the operations of Bonfire and its potential liabilities pursuant to this Agreement.

11 WARRANTIES AND DISCLAIMERS.

11.1 Software Limited Warranty. Bonfire warrants that the Platform Services will operate in substantial conformity with the applicable written documentation provided by Bonfire. For any breach of this warranty, Customer's remedy shall be that Bonfire will, at its expense, correct any errors identified by Customer in the Platform Services, in addition to any other remedy that might be available to Customer for such breach by Bonfire. Bonfire also warrants that it will maintain the Platform Services at reputable third party Internet service providers and hosting facilities. Bonfire warrants that it has implemented industry best practices security measures, including without limitation, technical, physical and procedural controls to protect Customer Data against destruction, loss, alteration, unauthorized disclosure to third parties or unauthorized access by employees or contractors employed by Bonfire, whether by accident or otherwise. However, the Customer acknowledges and agrees that, notwithstanding such security measures, use of or connection to the Internet provides the opportunity for unauthorized third parties to circumvent such precautions and illegally gain access to the Platform Services and Customer Data. Accordingly, Bonfire cannot and does not guarantee the privacy, security or authenticity of any information so transmitted over or stored in any

system connected to the Internet. For any breach of the foregoing warranties, Bonfire shall pay to Customer all damages the Customer suffers in connection with such breach, subject to the limitations set out in Section 11.3.

11.2 Exclusions. Except as expressly stated in this Section 11, there are no warranties or conditions (whether implied or arising by statute or otherwise in law or from a course of dealing or usage of trade) for the Platform Services or Support, and BONFIRE DISCLAIMS ALL STATUTORY OR IMPLIED WARRANTIES AND CONDITIONS INCLUDING WITHOUT LIMITATION THE CONDITIONS AND/OR WARRANTIES OF MERCHANTABILITY, MERCHANTABILITY QUALITY OR FITNESS FOR ANY PURPOSE, PARTICULAR, SPECIFIC OR OTHERWISE. Bonfire does not warrant that the functions contained in the Platform Services will meet the Customer's requirements or that the operation of the Platform Services will be uninterrupted.

11.3 Limitations of Liability. UNLESS PROHIBITED BY APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY OR THEIR RESPECTIVE AGENTS BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES OF ANY KIND, WHETHER OR NOT FORESEEABLE INCLUDING WITHOUT LIMITATION, LOSS OF BUSINESS, LOST PROFITS OR REVENUE, OR FAILURE TO REALIZE EXPECTED SAVINGS, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE TOTAL AGGREGATE LIABILITY OF BONFIRE FOR DIRECT DAMAGES UNDER THIS AGREEMENT SHALL BE LIMITED TO THE FEES PAID BY CUSTOMER IN THE TWELVE (12) MONTHS PRECEDING THE DATE ON WHICH THE CAUSE OF ACTION GIVING RISE TO THE LIABILITY AROSE.

12 INDEMNIFICATION.

12.1 Bonfire Indemnification. Bonfire shall, at its own expense, defend Customer in any action, suit or claim by a third party alleging that the Platform Services infringe any United States or Canadian patent, trademark, trade secret, copyright or any other proprietary right of such third party (an "IP Claim") and shall pay settlement amounts agreed by Bonfire and/or any losses, damages, liabilities, expenses, or costs (including but not limited to reasonable attorneys' fees) awarded to such third party against Customer by a court of competent jurisdiction in such IP Claim. As conditions for such defense and satisfaction by Bonfire, (i) Customer shall notify Licensor promptly in writing upon becoming aware of all pending IP Claims; (ii) Customer shall give Licensor sole control of the defense and settlement of such IP Claims; (iii) Customer shall cooperate fully with Licensor in the defense and/or settlement of such IP Claims; and (iv) Customer shall not settle any IP Claims without Licensor's consent, or compromise the defense of any such IP Claims.

12.2 Mitigation. Notwithstanding the foregoing, if Bonfire reasonably believes that use of any portion of the Platform Services is likely to be enjoined by reason of an IP Claim then Bonfire may, at its sole option and expense: (i) procure for the Customer the right to continue using the Platform Services, as the case may be, or any portion thereof; (ii) replace the same with other software, services or other material of equivalent functions and efficiency that is not subject to an action described in this section; or (iii) modify the applicable software or other material so that there is no longer any infringement or breach, provided that such modification does not adversely affect the functional capabilities of the Platform Services as set out herein. Bonfire shall have no liability respecting any IP Claim to the extent such Claim is based upon the combination, operation or use of the Platform Services, Support with other equipment, software, apparatus, devices or things not identified by Bonfire as compatible with the Platform

Services and/or Systems or in a manner inconsistent with Bonfire's specifications and instructions.

12.3 Procedure. Bonfire's defense and indemnity obligations in this Section 12 are subject to the following: (i) Customer promptly notifying Bonfire in writing of the Claim on becoming aware of any pending Claim; (ii) Bonfire having sole control of the defense and all related settlement negotiations with respect to the Claim, provided that no settlement shall be accepted without the prior written consent of the aggrieved party, such consent not to be unreasonably withheld, conditioned or delayed; and (iii) Customer shall cooperate fully to the extent necessary in the defense or settlement of such Claim, and execute all documents necessary for the defense of such Claim and (iv) shall not settle any Claim without Bonfire's written consent, or compromise the defense of any such Claim.

This section states the entire liability of Bonfire for any type of infringement or breach whatsoever of intellectual property rights of third parties resulting from or relating to the provision by Bonfire of the Platform Services or Support.

13 GENERAL PROVISIONS.

13.1 Entire Agreement. This Agreement, and any amendments or additions thereto from time to time, constitute the entire agreement and set forth the entire understanding between the parties hereto with respect to the subject matter hereof and supersede all prior or other agreements, covenants, arrangements and discussions with respect thereto. In the event of an inconsistency between the terms and conditions of this Agreement and any other document or agreement between the parties with respect to the subject matter hereof, the terms and conditions of this Agreement shall prevail and govern to the extent necessary to remedy such inconsistency.

13.2 Relationship of Customer and Bonfire. Nothing contained in this Agreement shall be deemed or construed as creating a joint venture or partnership between the parties; no party is by virtue of this Agreement authorized as an agent, employee or agent representative of the other.

13.3 Export and control restrictions. The Customer acknowledges that this Agreement and the provision of all products hereunder shall be subject to the export control laws and regulations of Canada as are in force from time to time and the Customer shall comply with all such laws and regulations.

13.4 Non-Exclusivity. Nothing in this Agreement will be construed to prevent Bonfire from marketing, licensing, selling or otherwise providing the Platform Services, Support or Systems, or any aspects of Bonfire's technology or services to any third party. Nothing in this Agreement will be construed to prevent the Customer from obtaining services similar to the Platform Services from a third party.

13.5 Modifications and Waiver. No modification of, amendment or addition to this Agreement is valid or binding unless set forth in writing and fully executed by both parties hereto. Any waiver of any right or remedy under this Agreement must be in writing and signed by each party. No delay in exercising any right or remedy shall operate as a waiver of such right or remedy or any other right or remedy. The exercise or failure to exercise any remedy shall not preclude the exercise of that remedy at any time. The waiver of any breach hereof or default in any payment shall not be deemed to constitute a waiver of any succeeding breach or default.

13.6 No Assignment. This Agreement and any rights or obligations hereunder, shall not be assigned, sublicensed or otherwise transferred by the Customer by a change of control of the Customer or by operation of law. Bonfire may transfer or assign its rights and obligations

hereunder without prior written approval of the Customer. This Agreement shall be binding upon and shall inure to the benefit of Bonfire and the Customer and each of their successors and permitted assigns.

13.7 Governing Law. The rights and obligations of the parties and all interpretations and performance of this Agreement shall be governed by and construed in accordance with the laws of Washington County, Arkansas, without regard to conflicts of laws principles. The parties agree that the provisions of the United Nations Convention on Contracts for the International Sale of Goods do not apply to this Agreement. The parties irrevocably and unconditionally attorn to the exclusive jurisdiction of the courts of the Commonwealth of Massachusetts, and all courts competent to hear appeals therefrom.

13.8 Notices. Any notices, demands and other communications hereunder shall be in writing and shall be delivered, sent by electronic transmission, or by mail, registered or certified, return receipt requested, postage prepaid, and addressed to the parties as outlined on the Order Form. All notices shall be effective and deemed to be delivered (i) if mailed, on the fifth business day following such mailing, unless there is an interruption in the mail, in which case it shall be deemed to have been given when received; or (ii) if delivered or sent by facsimile, on the business day following the date of dispatch or the date of transmission, as the case may be. Either party may change the address for notice by giving written notice of such change to the other party in the manner provided in this Section.

13.9 Severability. If any provision of this Agreement is held to be unenforceable or illegal by a court of competent jurisdiction, such provision shall be modified to the extent necessary to render it enforceable, or shall be severed from this Agreement, and all other provisions of this Agreement shall remain in full force and effect.

13.10 Force Majeure. Neither party to this Agreement shall be liable to the other for any failure or delay in performance by circumstances beyond its control, including but not limited to, acts of God, fire, labour difficulties, governmental action or terrorism, provided that the party seeking to rely on such circumstances gives written notice of such circumstances to the other party hereto and uses reasonable efforts to overcome such circumstances.

SCHEDULE A – SERVICE DESCRIPTIONS AND DEFINITIONS

All capitalized terms used in this Schedule shall have the meanings ascribed thereto in the Agreement. This Schedule may be amended from time to time in accordance with the terms of the Agreement, and is deemed incorporated into the Agreement, as amended.

1. PLATFORM SERVICES.

a. **Description of Platform Services.** Platform Services include the following functionality:

- i. Public portal for file upload / submission.
- ii. Project creation and management.
- iii. User account creation and management.
- iv. Evaluation criteria and scorecard creation and management.
- v. Scoring summary creation and management.
- vi. General file management.
- vii. Dashboards and activity reports.
- viii. Data exports.

2. **CUSTOM DEVELOPMENT AND SERVICES.** The following optional custom development services are available to the Customer, the terms of which shall be negotiated by the parties.

- a. **Data Migration Service:** Importing Customer's legacy data and files into Platform Services. Exporting Customer's historical data in a structured manner out of Platform Services.
- b. **Custom Development Service:** Includes any additional development that the Customer would like done for integrating custom data formats, the creation of custom report formats, and any other development required to fill Customer needs.

3. BUSINESS DAYS.

- a. Business Days are defined as Monday – Friday.
- b. Business Days do not include holidays, which include:
 - i. New Year's Day (January 1)
 - ii. President's Day / Family Day (Third Monday in February)
 - iii. Good Friday (Friday before Easter Sunday)
 - iv. Victoria Day (Monday before May 25)
 - v. Labor Day (First Monday in September)
 - vi. Columbus Day / Thanksgiving Day (Second Monday in October)
 - vii. Christmas Day (December 25)
 - viii. Boxing Day (December 26)

SCHEDULE B – SERVICE LEVEL AGREEMENT

Bonfire understands the importance and centrality the Platform Services plays in supporting an organization's business processes. We value and appreciate the trust that each customer places in us.

This Service Level Agreement ("SLA") is a policy governing the use of the Platform Services between Bonfire ("us" or "we") and users of Platform Services ("you"). This SLA applies separately to each Customer using the Platform Services. Any amendments or revisions to this SLA will be in writing and agreed to by both parties.

Bonfire is committed to providing reliable high-performance managed services to our customers. Our SLA has been designed to ensure the highest quality service and to provide compensation to the Customer in the event of failure to achieve the specified metrics herein.

1. SERVICE COMMITMENT.

- a. **Service Availability.** Bonfire will use commercially reasonable efforts to make the Platform Services available with a Monthly Uptime Percentage (defined below) of at least 99.5% during any monthly billing period. In the event Bonfire does not meet the Service Commitment, you will be eligible to receive a Service Credit as described below.
- b. **Data Redundancy.** Bonfire will use commercially reasonable efforts to provide at a minimum one (1) redundant data store for Customer Data, updated on a daily basis, during the period of the Term.
- c. **Data Storage Term.** While there exists an SLA in place between the Customer and Bonfire, Bonfire will use commercially reasonable efforts to store all Customer Data for a period of nine (9) years from its creation date.
- d. **Data Exportation.** Bonfire will use commercially reasonable efforts to provide (i) the access or means for the Customer to export the Customer Data out of the Platform Services or (ii) a comprehensive export of all Customer Data in downloadable Excel and ZIP formats upon request.

2. SERVICE AVAILABILITY DEFINITIONS.

- a. **Server Outage.** A "**Server Outage**" is defined as an instance in which no traffic can pass in or out of the Bonfire managed server(s) for more than 15 consecutive minutes ("**Service Unavailable**"). We will calculate the Service Unavailable for each Customer as a percentage for each fifteen-minute period in the monthly billing cycle. The calculation of the number of Server Outages will not include outages that arise directly or indirectly as a result of any of the SLA Exclusions (as defined below).
- b. **Monthly Uptime Percentage.** The "**Monthly Uptime Percentage**" is calculated by subtracting from 100% the average of the Service Outage from each fifteen-minute in the monthly cycle.

3. SERVICE CREDITS. "Service Credits**" are calculated as a percentage of the total charges paid by you to Bonfire for the billing cycle in which the error occurred in accordance with the schedule below.**

- a. Service Credit Percentages:

- i. For Monthly Uptime Percentage equal to or greater than 99.0% but less than 99.5% - Service Credit of 1%
- ii. For Monthly Uptime Percentage less than 99% - Service Credit Percentage of 5%.

We will apply any Service Credits against future Bonfire payments otherwise due from you unless there are none, in which case Service Credits will be refunded. A Service Credit will be applicable and issued only if the credit amount for the applicable monthly billing cycle is greater than one dollar (\$1 United States Dollar). Service Credits may not be transferred or applied to any other Customer.

4. **SERVICE CREDIT PROCEDURE.** To receive a Service Credit, you must submit a request by sending an e-mail message to support@gobonfire.com. To be eligible, the credit request must (i) include your account URL in the subject of the e-mail message; (ii) include, in the body of the e-mail, the dates and times of each incident of each outage; and (iii) be received by us within ten (10) business days after the end of the billing cycle in which the errors occurred. If the Monthly Uptime Percentage applicable to the month of such request is confirmed by us, we will issue the Service Credit to you within one billing cycle following the month in which the error occurred. Your failure to provide the request and other information as required above will disqualify you from receiving a Service Credit.
5. **SERVICE COMMITMENT EXCLUSIONS.** The Service Commitment does not apply to any unavailability, suspension, termination of Platform Services, or any other Platform Services performance issues (i) that result from Downtime and Service Suspensions as defined below. “**Service Suspensions**” means, collectively, Bonfire’s right to suspend access to any portion or all of the Platform Services at any time, on a Service-wide basis: (a) for scheduled Downtime to permit us to conduct maintenance or make modifications to any Platform Service; (b) in the event of a denial of service attack or other attack on the Platform Service or other event that we determine, in our sole discretion, may create a risk to the applicable Platform Service, to you or to any of our other customers if the Platform Service were not suspended; or (c) in the event that we determine that any Platform Service is prohibited by law or we otherwise determine that it is necessary or prudent to do so for legal or regulatory reasons. To the extent we are able, we will endeavour to provide you email notice of any Service Suspension and email notice regarding resumption of Platform Services following any such suspension; (ii) caused by factors outside of our reasonable control, including any force majeure event or Internet access or related problems beyond the demarcation point of the Platform Services; (iii) that result from any actions or inactions of you or any third party; (iv) that result from your equipment, software or other technology and/or third party equipment, software or other technology (other than third party equipment within our direct control); or (v) arising from our suspension and termination of your right to use Platform Services in accordance with the terms of the Agreement. If availability is impacted by factors other than those used in our calculation of the Server Outage, we may issue a Service Credit considering such factors in our sole discretion.