

## **AGREEMENT**

**THIS AGREEMENT** is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2014, by and between

**THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA**

(hereinafter referred to as "SBBC"),  
a body corporate and political subdivision of the State of Florida,  
whose principal place of business is  
600 Southeast Third Avenue, Fort Lauderdale, Florida 33301

and

**Dean Evans and Associates, LLC**

(hereinafter referred to as "DEA"),  
whose principal place of business is  
6465 Greenwood Plaza Blvd., #600  
Centennial, CO 80111

**WHEREAS**, SBBC issued a Request for Proposal identified RFP 15-050E, Event Management System (hereinafter referred to as "RFP"), dated June 18, 2014 and amended by Addendum No. 1, dated July 2, 2014 which is incorporated by reference herein, for the purpose of receiving proposals for an Event Management System (EMS) solution; and

**WHEREAS**, SBBC is desirous to procure the services for the implementation of and Event Management System (EMS) Enterprise and a Virtual EMS to manage the District's space and resources at its 250 school sites and district offices; and

**WHEREAS**, DEA submitted a proposal and offer, including a Cost Proposal in response to the RFP, on July 3, 2014 (hereinafter collectively referred to as "PROPOSAL") which is incorporated herein by reference.

**NOW, THEREFORE**, in consideration of the premises and of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

### **ARTICLE 1 - RECITALS**

1.01 **Recitals.** The parties agree that the foregoing recitals are true and correct and that such recitals are incorporated herein by reference.

## **ARTICLE 2 – SPECIAL CONDITIONS**

2.01 **Term of Agreement.** Unless terminated earlier pursuant to Section 3.05 of this Agreement, the term of this Agreement shall commence upon execution by all parties and conclude on June 30, 2017.

2.02 **Priority of Document.** In the event of a conflict between documents, the following priority of documents shall govern.

First:	This Agreement; then
Second:	Appendix A – Software License Agreement
Second:	Addendum No.1; then
Third:	RFP 15-050E – Event Management System: then
Fourth:	Proposal submitted by DEA in response to RFP 15-050E

2.03 **Pricing.** SBBC shall make payment of \$97,415.00 to DEA as a fixed cost for Option Two. SBBC reserves the right to acquire additional products and services and shall pay for the product according to the detailed pricing listed in the PROPOSAL.

2.04 **Services.** DEA shall provide SBBC Professional Services Consultant to fulfill the requirement of the RFP to implement and configure an EMS Solution.

2.05 **Provided by SBBC.** SBBC will provide a project manager and the required hardware for the implementation and installation of the EMS Solutions

2.06 **Inspection of DEA's Records by SBBC.** DEA shall establish and maintain books, records and documents (including electronic storage media) sufficient to reflect all income and expenditures of funds provided by SBBC under this Agreement. All DEA's Records, regardless of the form in which they are kept, shall be open to inspection and subject to audit, inspection, examination, evaluation and/or reproduction, during normal working hours, by SBBC's agent or its authorized representative to permit SBBC to evaluate, analyze and verify the satisfactory performance of the terms and conditions of this Agreement and to evaluate, analyze and verify any and all invoices, billings, payments and/or claims submitted by DEA or any of DEA's payees pursuant to this Agreement. DEA's Records subject to examination shall include, without limitation, those records necessary to evaluate and verify direct and indirect costs (including overhead allocations) as they may apply to costs associated with this Agreement. DEA's Records subject to this section shall include any and all documents pertinent to the evaluation, analysis, verification and reconciliation of any and all expenditures under this Agreement without regard to funding sources.

(a) **DEA's Records Defined.** For the purposes of this Agreement, the term "DEA's Records" shall include, without limitation, accounting records, payroll time sheets, cancelled payroll checks, W-2 forms, written policies and procedures, computer records, disks and software, videos, photographs, executed subcontracts, subcontract files (including proposals of successful and unsuccessful bidders), original estimates, estimating worksheets,

correspondence, change order files (including sufficient supporting documentation and documentation covering negotiated settlements), and any other supporting documents that would substantiate, reconcile or refute any charges and/or expenditures related to this Agreement.

(b) Duration of Right to Inspect. For the purpose of such audits, inspections, examinations, evaluations and/or reproductions, SBBC's agent or authorized representative shall have access to DEA's Records from the effective date of this Agreement, for the duration of the term of this Agreement, and until the later of five (5) years after the termination of this Agreement or five (5) years after the date of final payment by SBBC to DEA pursuant to this Agreement.

(c) Notice of Inspection. SBBC's agent or its authorized representative shall provide DEA reasonable advance notice (not to exceed two (2) weeks) of any intended audit, inspection, examination, evaluation and or reproduction.

(d) Audit Site Conditions. SBBC's agent or its authorized representative shall have access to DEA's facilities and to any and all records related to this Agreement, and shall be provided adequate and appropriate work space in order to exercise the rights permitted under this section.

(e) Failure to Permit Inspection. Failure by DEA to permit audit, inspection, examination, evaluation and/or reproduction as permitted under this Section shall constitute grounds for termination of this Agreement by SBBC for cause and shall be grounds for the denial of some or all of any DEA's claims for payment by SBBC.

(f) Overcharges and Unauthorized Charges. If an audit conducted in accordance with this Section discloses overcharges or unauthorized charges to SBBC by DEA in excess of two percent (2%) of the total billings under this Agreement, the actual cost of SBBC's audit shall be paid by DEA. If the audit discloses billings or charges to which DEA is not contractually entitled, DEA shall pay said sum to SBBC within twenty (20) days of receipt of written demand under otherwise agreed to in writing by both parties.

(g) Inspection of Subcontractor's Records. DEA shall require any and all subcontractors, insurance agents and material suppliers (hereafter referred to as "Payees") providing services or goods with regard to this Agreement to comply with the requirements of this section by insertion of such requirements in any written subcontract. Failure by DEA to include such requirements in any subcontract shall constitute grounds for termination of this Agreement by SBBC for cause and shall be grounds for the exclusion of some or all of any Payee's costs from amounts payable by SBBC to DEA pursuant to this Agreement and such excluded costs shall become the liability of DEA.

(h) Inspector General Audits. DEA shall comply and cooperate immediately with any inspections, reviews, investigations, or audits deemed necessary by the Florida Office of the Inspector General or by any other state or federal officials.

2.07 Notice. When any of the parties desire to give notice to the other, such notice must be in writing, sent by U.S. Mail, postage prepaid, addressed to the party for whom it

is intended at the place last specified; the place for giving notice shall remain such until it is changed by written notice in compliance with the provisions of this paragraph. For the present, the Parties designate the following as the respective places for giving notice:

To SBBC: Superintendent of Schools  
The School Board of Broward County, Florida  
600 Southeast Third Avenue  
Fort Lauderdale, Florida 33301

With a Copy to: Chief Portfolio Services Officer  
The School Board of Broward County, Florida  
600 Southeast Third Avenue  
Fort Lauderdale, Florida 33301

To DEA: Dean Evans and Associates, LLC  
6465 Greenwood Plaza Blvd #600  
Centennial, CO 80111

2.08 **Background Screening:** DEA agrees to comply with all requirements of Sections 1012.32 and 1012.465, Florida Statutes, and all of its personnel who (1) are to be permitted access to school grounds when students are present, (2) will have direct contact with students, or (3) have access or control of school funds, will successfully complete the background screening required by the referenced statutes and meet the standards established by the statutes. This background screening will be conducted by SBBC in advance of DEA or its personnel providing any services under the conditions described in the previous sentence. DEA shall bear the cost of acquiring the background screening required by Section 1012.32, Florida Statutes, and any fee imposed by the Florida Department of Law Enforcement to maintain the fingerprints provided with respect to DEA and its personnel. The parties agree that the failure of DEA to perform any of the duties described in this section shall constitute a material breach of this Agreement entitling SBBC to terminate immediately with no further responsibilities or duties to perform under this Agreement. DEA agrees to indemnify and hold harmless SBBC, its officers and employees from any liability in the form of physical or mental injury, death or property damage resulting from DEA's failure to comply with the requirements of this Section or with Sections 1012.32 and 1012.465, Florida Statutes.

2.09 **Liability.** This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

A. By SBBC: SBBC agrees to be fully responsible up to the limits of Section 768.28, Florida Statutes, for its acts of negligence, or its employees' acts of negligence when acting within the scope of their employment and agrees to be liable for any damages resulting from said negligence.

B. By DEA: DEA agrees to indemnify, hold harmless and defend SBBC, its agents, servants and employees from any and all claims, judgments, costs, and expenses

including, but not limited to, reasonable attorney's fees, reasonable investigative and discovery costs, court costs and all other sums which SBBC, its agents, servants and employees may pay or become obligated to pay on account of any, all and every claim or demand, or assertion of liability, or any claim or action founded thereon, arising or alleged to have arisen out of the products, goods or services furnished by DEA, its agents, servants or employees; the equipment of DEA, its agents, servants or employees while such equipment is on premises owned or controlled by SBBC; or the negligence of DEA or the negligence of DEA's agents when acting within the scope of their employment, whether such claims, judgments, costs and expenses be for damages, damage to property including SBBC's property, and injury or death of any person whether employed by DEA, SBBC or otherwise.

### **ARTICLE 3 – GENERAL CONDITIONS**

3.01 **No Waiver of Sovereign Immunity.** Nothing herein is intended to serve as a waiver of sovereign immunity by any agency or political subdivision to which sovereign immunity may be applicable or of any rights or limits to liability existing under Section 768.28, Florida Statutes. This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

3.02 **No Third Party Beneficiaries.** The parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Agreement. None of the parties intend to directly or substantially benefit a third party by this Agreement. The parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against any of the parties based upon this Agreement. Nothing herein shall be construed as consent by an agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of any contract.

3.03 **Independent Contractor.** The parties to this agreement shall at all times be acting in the capacity of independent contractors and not as an officer, employee or agent of one another. Neither party or its respective agents, employees, subcontractors or assignees shall represent to others that it has the authority to bind the other party unless specifically authorized in writing to do so. No right to SBBC retirement, leave benefits or any other benefits of SBBC employees shall exist as a result of the performance of any duties or responsibilities under this Agreement. SBBC shall not be responsible for social security, withholding taxes, contributions to unemployment compensation funds or insurance for the other party or the other party's officers, employees, agents, subcontractors or assignees.

3.04 **Equal Opportunity Provision.** The parties agree that no person shall be subjected to discrimination because of age, race, color, disability, gender identity, gender expression marital status, national origin, religion, sex or sexual orientation in the performance of the parties' respective duties, responsibilities and obligations under this Agreement.

3.05 **Termination.** This Agreement may be canceled with or without cause by SBBC during the term hereof upon thirty (30) days written notice to the other parties of its desire to terminate this Agreement. SBBC shall have no liability for any property left on SBBC's property by any party to this Agreement after the termination of this Agreement. Any party

contracting with SBBC under this Agreement agrees that any of its property placed upon SBBC's facilities pursuant to this Agreement shall be removed within ten (10) business days following the termination, conclusion or cancellation of this Agreement and that any such property remaining upon SBBC's facilities after that time shall be deemed to be abandoned, title to such property shall pass to SBBC, and SBBC may use or dispose of such property as SBBC deems fit and appropriate.

3.06 **Default.** The parties agree that, in the event that either party is in default of its obligations under this Agreement, the non-defaulting party shall provide to the defaulting party (30) days written notice to cure the default. However, in the event said default cannot be cured within said thirty (30) day period and the defaulting party is diligently attempting in good faith to cure same, the time period shall be reasonably extended to allow the defaulting party additional cure time. Upon the occurrence of a default that is not cured during the applicable cure period, this Agreement may be terminated by the non-defaulting party upon thirty (30) days notice. This remedy is not intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or future exercise thereof. Nothing in this section shall be construed to preclude termination for convenience pursuant to Section 3.05.

3.07 **Annual Appropriation.** The performance and obligations of SBBC under this Agreement shall be contingent upon an annual budgetary appropriation by its governing body. If SBBC does not allocate funds for the payment of services or products to be provided under this Agreement, this Agreement may be terminated by SBBC at the end of the period for which funds have been allocated. SBBC shall notify the other party at the earliest possible time before such termination. No penalty shall accrue to SBBC in the event this provision is exercised, and SBBC shall not be obligated or liable for any future payments due or any damages as a result of termination under this section.

3.08 **Excess Funds.** Any party receiving funds paid by SBBC under this Agreement agrees to promptly notify SBBC of any funds erroneously received from SBBC upon the discovery of such erroneous payment or overpayment. Any such excess funds shall be refunded to SBBC with interest calculated from the date of the erroneous payment or overpayment. Interest shall be calculated using the interest rate for judgments under Section 55.03, Florida Statutes, applicable at the time the erroneous payment or overpayment was made by SBBC.

3.09 **Public Records.** Pursuant to Section 119.0701, Florida Statutes, any party contracting with SBBC is required to (a) keep and maintain available for public inspection any records that pertain to services rendered under this Agreement; (b) provide the public with access to public records on the same terms and conditions that SBBC would provide such records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law; (c) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and (d) meet all requirements for retaining public records and transfer, at no cost to SBBC, all public records in that party's possession upon termination of its Agreement with SBBC and destroy any duplicate public records that are exempt or confidential and exempt from public records

disclosure requirements. All of such party's records stored electronically must be provided to SBBC in a format that is compatible with SBBC's information technology systems. Each party shall maintain its own respective records and documents associated with this Agreement in accordance with the records retention requirements applicable to public records. Each party shall be responsible for compliance with any public documents request served upon it pursuant to Section 119.07, Florida Statutes, and any resultant award of attorney's fees for non-compliance with that law. Each party acknowledges that this Agreement and all attachments thereto are public records and do not constitute trade secrets.

3.10 **Student Records:** Notwithstanding any provision to the contrary within this Agreement, any party contracting with SBBC under this Agreement shall fully comply with the requirements of Sections 1002.22 and 1002.221, Florida Statutes; FERPA, and any other state or federal law or regulation regarding the confidentiality of student information and records. Each such party agrees, for itself, its officers, employees, agents, representatives, contractors or subcontractors, to fully indemnify and hold harmless SBBC and its officers and employees for any violation of this section, including, without limitation, defending SBBC and its officers and employees against any complaint, administrative or judicial proceeding, payment of any penalty imposed upon SBBC, or payment of any and all costs, damages, judgments or losses incurred by or imposed upon SBBC arising out of a breach of this covenant by the party, or an officer, employee, agent, representative, contractor, or sub-contractor of the party to the extent that the party or an officer, employee, agent, representative, contractor, or sub-contractor of the party shall either intentionally or negligently violate the provisions of this section or of Sections 1002.22 and/or 1002.221, Florida Statutes.

3.11 **Compliance with Laws.** Each party shall comply with all applicable federal and state laws, codes, rules and regulations in performing its duties, responsibilities and obligations pursuant to this Agreement.

3.12 **Place of Performance.** All obligations of SBBC under the terms of this Agreement are reasonably susceptible of being performed in Broward County, Florida and shall be payable and performable in Broward County, Florida.

3.13 **Governing Law and Venue.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida.

3.14 **Entirety of Agreement.** This document incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

3.15 **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

3.16 **Assignment.** Neither this Agreement or any interest herein may be assigned, transferred or encumbered by any party without the prior written consent of the other party. There shall be no partial assignments of this Agreement including, without limitation, the partial assignment of any right to receive payments from SBBC.

3.17 **Incorporation by Reference.** Exhibits attached hereto and referenced herein shall be deemed to be incorporated into this Agreement by reference.

3.18 **Captions.** The captions, section designations, section numbers, article numbers, titles and headings appearing in this Agreement are inserted only as a matter of convenience, have no substantive meaning, and in no way define, limit, construe or describe the scope or intent of such articles or sections of this Agreement, nor in any way effect this Agreement and shall not be construed to create a conflict with the provisions of this Agreement.

3.19 **Severability.** In the event that any one or more of the sections, paragraphs, sentences, clauses or provisions contained in this Agreement is held by a court of competent jurisdiction to be invalid, illegal, unlawful, unenforceable or void in any respect, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect as if such invalid, illegal, unlawful, unenforceable or void sections, paragraphs, sentences, clauses or provisions had never been included herein.

3.20 **Preparation of Agreement.** The parties acknowledge that they have sought and obtained whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to herein expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

3.21 **Amendments.** No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by each party hereto.

3.22 **Waiver.** The parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. Any party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement unless the waiver is in writing and signed by the party waiving such provision. A written waiver shall only be effective as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver.

3.23 **Force Majeure.** Neither party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall a lack of funds on the part of either party be deemed Force Majeure.



3.24 **Survival.** All representations and warranties made herein, indemnification obligations, obligations to reimburse SBBC, obligations to maintain and allow inspection and audit of records and property, obligations to maintain the confidentiality of records, reporting requirements, and obligations to return public funds shall survive the termination of this Agreement.

3.25 **Contract Administration.** SBBC has delegated authority to the Superintendent of Schools or his/her designee to take any actions necessary to implement and administer this Agreement.

3.26 **Authority.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

**IN WITNESS WHEREOF**, the Parties hereto have made and executed this Agreement on the date first above written.

**FOR SBBC**

(Corporate Seal)

THE SCHOOL BOARD OF BROWARD  
COUNTY, FLORIDA

ATTEST:

By \_\_\_\_\_  
Donna P. Korn Chair

\_\_\_\_\_  
Robert W. Runcie, Superintendent of Schools

Approved as to Form and Legal Content:

 11/14/14  
Office of the General Counsel

**FOR DEA**

(Corporate Seal)

ATTEST:

Dean Evans and Associates, LLC

By \_\_\_\_\_

\_\_\_\_\_, Secretary

-or-

Witness

Witness

**The Following Notarization is Required for Every Agreement Without Regard to Whether the Party Chose to Use a Secretary's Attestation or Two (2) Witnesses.**

STATE OF Colorado

COUNTY OF Arapahoe

The foregoing instrument was acknowledged before me this 12th day of September, 2014 by Dean Evans of Dean Evans and Associates LLC, on behalf of the corporation/agency.

Name of Corporation or Agency

He/She is personally known to me or produced known to me as identification and did/did not first take an oath. Type of Identification

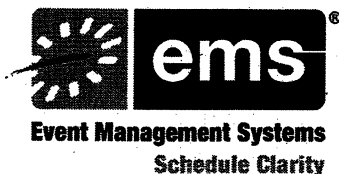
My Commission Expires: 5/29/16



Rebecca VanHousen  
Signature - Notary Public

Rebecca VanHousen  
Printed Name of Notary

20084008647  
Notary's Commission No.



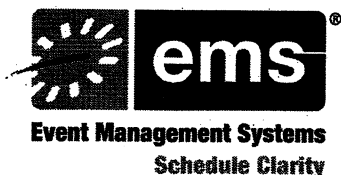
## **Appendix A - SOFTWARE LICENSE AGREEMENT**

### **DEFINITIONS:**

- (a). The term "Documentation" means any system documentation and user manuals provided by DEA to LICENSEE. Documentation may be in electronic or hardcopy format, although DEA typically only provides it in electronic format.
- (b). The term "Enhancements" means changes to the Software or Documentation, including but not limited to, any patches, revisions, updates, upgrades, substitutions, replacements, enhancements, improvements and modifications thereof.
- (c). The term "Harmful Code" means any computer code, programming instruction or set of instructions that is intentionally and specifically constructed to damage, interfere with or otherwise adversely affect computer programs, data files, or hardware without the consent or intent of the computer user. This definition includes, but is not limited to, self-replicating and self-propagating programming instructions commonly called viruses and worms.
- (d). The term "Maintenance and Support" means the modifications, revisions or improvements to the Software and Documentation and the technical support provided by DEA to LICENSEE upon payment of the Annual Maintenance Fee (as defined in Section 5.a). Such "Maintenance and Support" is more fully described in Exhibit A attached hereto.
- (e). The term "Software" shall mean any and all computer programs, user and technical Documentation, in whatever form, which are named and/or actually delivered by DEA pursuant to and/or during this Agreement, including any Enhancements thereof.

THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

- 1. **Grant of License.** DEA hereby grants to LICENSEE the perpetual, irrevocable, non-exclusive right to use any and all Software and Documentation supplied pursuant to this Agreement. DEA hereby agrees that LICENSEE's use of the Software may involve preparation of data and reports for LICENSEE and for other affiliated and related organizations, and such use by LICENSEE is authorized hereby, provided that the processing is done by LICENSEE's employees, faculty, staff or other personnel or by LICENSEE's consultants on LICENSEE's computers or temporary substitute computers. The Software may not be used by third parties other than by consultants engaged by LICENSEE to use the SOFTWARE for LICENSEE's internal purposes. LICENSEE is allowed to create as many copies of the Software and Documentation as are reasonably necessary for LICENSEE's use of the Software and Documentation and to create additional EMS server installations for back-up, testing, or disaster recovery purposes. LICENSEE agrees not to remove from source version of the Software any statements appearing therein concerning copyrights and proprietary agreements. LICENSEE further agrees to take such other commercially reasonable steps as deemed reasonably necessary by DEA to protect DEA and LICENSEE's rights in the Software, provided however that such steps will not require LICENSEE to affix labels or statements to any external document.
- 2. **Restrictions on Use.** Except as provided for in this Agreement, LICENSEE may not sell, lease, transfer, assign or license the Software to a third party without receiving prior written permission from DEA. LICENSEE shall not reverse engineer, decompile or disassemble the Software and shall not use the Software, except as authorized herein.

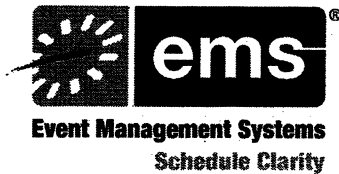


3. Title to Software. No title or ownership of Software is transferred to LICENSEE by way of this Agreement, and LICENSEE's right to use the Software shall be as set forth in this Agreement.
4. Rights to Enhancements. DEA shall own all Enhancements to the Software and Documentation, but grants to LICENSEE a license to use such Enhancements under the terms set forth in Section 1 of this Agreement.
5. Confidentiality.
  - a. DEA's Obligations. DEA agrees not to disclose or to use, directly or indirectly for any purpose other than the design, programming, installation and configuration of the Software as outlined in this Agreement, and to hold confidential and to protect any and all proprietary or confidential data, trade secrets or other information relating to the affairs of LICENSEE which may be received from LICENSEE or disclosed to DEA in connection with DEA's activities hereunder.
  - b. LICENSEE's Obligations. LICENSEE agrees to confine access to the Software to LICENSEE's employees or contractors, and to advise all persons who use the Software that it contains confidential information which is not to be disclosed to any other persons and that the copying of the Software by any means is prohibited except in accordance with Section 1 hereof. LICENSEE agrees that it will not provide or make available any of the Software to any other persons without prior consent in writing from DEA.
6. Compliance with Laws. LICENSEE agrees to comply with all applicable local, municipal, state and federal laws pertaining to LICENSEE's operation of the Software.
7. Representations and Warranties. DEA makes the following representations and warranties for the benefit of LICENSEE:
  - a. Ownership and Authority. DEA represents and warrants that: (i) it is the sole owner of or has full and sufficient right to assign or grant the rights and/or licenses granted to LICENSEE in this Agreement; and (ii) that no Software or Documentation infringes any patent, copyright, trademark or other intellectual property rights (including trade secrets), and no claim (whether or not embodied in an action, past or present) of such infringement has been threatened or asserted, or is pending, against DEA or against any entity from which DEA has obtained such rights (insofar as DEA is aware).
  - b. Harmful Code. DEA certifies that to the best of DEA's knowledge and belief that no Software contains or will contain any Harmful Code; and agrees to notify LICENSEE immediately if DEA subsequently suspects that any Software contains Harmful Code, and to take commercially reasonable efforts to ensure that it is removed.
  - c. No Electronic Repossession. Following delivery of any Software, DEA shall not electronically or otherwise disable, block, impair, erase, encrypt, move, remove or otherwise alter the Software or any portion thereof, either intentionally or through automated means, without the express prior approval of LICENSEE. LICENSEE acknowledges that software has an expiration date that will disable use of the software and that DEA will remove expiration date upon receipt of payment for software.
  - d. Limited Warranty of Conformity. DEA represents and warrants that all Software (i) has been or shall be prepared by DEA with professional diligence and skill; and (ii) that such Software will function on the machines and with operating systems for which they are designed.

- e. Remedy for Breach of Conformity Warranty. For any breach of the limited warranty of conformity set forth above, DEA shall use commercially reasonable efforts to replace defective media or material and/or to provide Maintenance and Support to correct any material error in the Software reported to DEA during the period of warranty. If, after repeated efforts, DEA is unable to make the Software operate during the period of warranty as warranted, LICENSEE shall be entitled to a refund of the license fee paid for such Software. The limited warranty of conformity set forth above shall not apply to errors or other problems arising out of (i) disaster, accident, or LICENSEE's negligence or misuse, or (ii) modifications made to any Software other than by DEA or a contractor, consultant or agent thereof.
- f. Exclusive Remedy for Breach of Infringement Warranty. If a claim is made or an action brought asserting (i) that DEA did not have the right to assign or sublicense the rights and/or licenses granted or sublicensed to LICENSEE in this Agreement, or (ii) that the Software or Documentation infringes any patent, copyright, trademark or other intellectual property rights (including trade secrets), DEA will defend LICENSEE against such claim and will pay resulting costs, damages and attorneys' fees finally awarded or agreed to in settlement, provided that (1) LICENSEE promptly notifies DEA in writing of the claim, and (ii) DEA has sole control of the defense and all related settlement negotiations. DEA's obligations under this Section are conditioned on LICENSEE's agreement that if the Software, or the use or operation thereof, becomes, or in DEA's opinion is likely to become, the subject of such a claim, DEA may at its expense, either procure the right for LICENSEE to continue using the Software or, at its option, replace or modify the same so that it becomes non-infringing (provided such replacement or modification does not materially adversely affect LICENSEE's intended use of the Software as contemplated hereunder). If neither of the foregoing alternatives is available on terms which are reasonable in DEA's reasonable judgment, LICENSEE may return the Software and DEA will credit or refund (at LICENSEE's option) the price paid for such Software. DEA shall have no liability for any claim based upon the combination, operation or use of any Software with equipment, other software or data not supplied by DEA if such claim would have been avoided by use of other equipment, software or data, whether or not capable of achieving the same results, or based upon modification of any Software.
- g. DISCLAIMER OF OTHER WARRANTIES. EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, NEITHER PARTY PROVIDES ANY WARRANTIES TO THE OTHER, EITHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

## 8 Payment of Fees and Taxes.

- a. License Fee. The software license provided and the fees paid are based on the configured number of users expressed in the order form or invoice for the Software to which this Agreement and Proposal submitted to SBBC. LICENSEE will pay DEA within thirty (30) days of receipt of DEA's invoice for the Software. Should this Software configuration be upgraded, there will be a charge associated which will be based on the then current rate for the desired configuration.
- b. Taxes. LICENSEE agrees to conform to all local, municipal, state and federal laws pertaining to the operation of the Software and to pay any and all taxes (excluding any excise, franchise or other taxes based on DEA's income) involved with the use and licensing of the Software. DEA agrees to conform to all local, municipal, state and federal laws pertaining to the licensing, delivery and operation of the Software and when providing services to LICENSEE.



## **Exhibit A**

### **Maintenance and Support – Premium Level**

Capitalized terms not otherwise defined in this Exhibit shall have the meaning ascribed to them in the Agreement to which this Maintenance and Support Exhibit is attached.

So long as LICENSEE remains current with respect to payment of any Annual Maintenance Fee that is due and payable, DEA shall provide to LICENSEE maintenance support consisting of the following (as more fully described below):

- Unlimited access to DEA's Technical Support via e-mail (support@dea.com), and telephone (800-288-4565) from 6:00AM-6:00PM Mountain Time (UTC-07:00) Monday through Friday excluding standard US business holidays.
- 24/7 access to the "Online Support Center" section of DEA's website (located at www.dea.com).
- Technical support for EMS Software in multiple environments (e.g. production, test, development, etc.).
- Ability to submit and track support tickets in the Online Support Center.
- Scheduled weekend or after hours support for planned upgrades/maintenance (48 hour advance notice required).
- Priority phone line with immediate access to second tier resources as needed.
- Access to all Enhancements that DEA makes to the Software owned by LICENSEE.
- Invitations to special webinar previews of new product releases.
- Discounted registration to DEA's annual Users Conference and other special offers.

#### **Technical Support.**

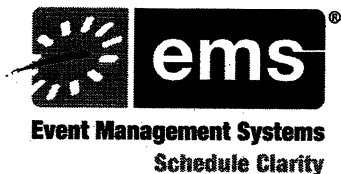
Technical support is part of the Maintenance and Support services, and begins the day that DEA receives an order from LICENSEE. DEA guarantees that all requests for technical support will be responded to within two (2) hours of receipt of the request, with most technical support requests being responded to immediately. The DEA technical support representative(s) will remain engaged with LICENSEE (either on the phone, via e-mail or through DEA's website) until the technical support issue is satisfactorily resolved, and will bring in a members of DEA's development team on an as-needed basis. DEA shall use commercially reasonable efforts to satisfactorily resolve all technical support issues as soon as commercially practicable.

For each technical support issue submitted by LICENSEE to DEA, DEA shall maintain a record of such request and shall report to LICENSEE the status of such technical support issue until resolved. DEA shall provide LICENSEE with a unique ticket number for each such technical support request.

If DEA is unable to satisfactorily resolve a technical support issue within twenty-four (24) hours of the initial receipt of a request for technical support, then DEA shall escalate such technical support issue to its Director of Professional Services.

#### **Enhancements.**

To the extent that DEA periodically makes available to its licensees Enhancements, DEA simultaneously shall make such Enhancements available to LICENSEE at no additional cost. LICENSEE shall have the right, in its sole discretion, to accept any Enhancement and to install, or have installed by DEA, such Enhancement on LICENSEE's computer system. The failure of LICENSEE to include any Enhancement in its Software shall not affect DEA's Maintenance and Support



obligations as set forth herein. DEA shall provide to LICENSEE, at no additional cost, an appropriate conversion utility for each Enhancement delivered hereunder if such conversion utility is required to migrate data and/or files in a format compatible with the new Enhancement.

At the time of delivery of an Enhancement, DEA shall prepare and deliver to LICENSEE without additional cost any Documentation revisions, additions or updates necessitated by such Enhancement. All Enhancements to the Software and/or the Documentation shall be deemed part of the Software and/or Documentation governed by the Agreement and this Maintenance and Support Exhibit, and shall be maintained in accordance with the terms of the Agreement and this Maintenance and Support Exhibit.