

**SOFTWARE MAINTENANCE AGREEMENT**  
**BETWEEN THE STATE OF WYOMING, LEGISLATIVE SERVICE OFFICE**  
**AND AFFINITY GLOBAL SOLUTIONS**

1. **Parties.** The parties to this Agreement are Affinity Global Solutions (Licensor, Contractor or AGS), a corporation, whose address is 812 Burlington Drive, Suite 300, Bismarck, North Dakota 58504, and the State of Wyoming, Legislative Service Office (Licensee, Agency or LSO), whose address is 200 West 24<sup>th</sup> Street, Cheyenne, Wyoming 82002.

2. **Purpose of Agreement.** The Licensor agrees to continue to provide maintenance for the Internet Budget Analysis and Reporting System (IBARS) software as detailed in the IBARS Software Maintenance Agreement (Attachment A) and the Wyoming LSO IBARS Custom Development Maintenance (Attachment B), provide new development as described in the Wyoming LSO IBARS New Development (Attachment C), and to provide hosting services in accordance with the Hosting Services Agreement (Attachment D), which are attached to and incorporated into this Agreement by this reference.

3. **Umbrella Agreement.** Software Maintenance as described in this Agreement are provided to the LSO under the umbrella of the State of Wyoming, Wyoming State Budget Department's Software Program End-User License Agreement with Affinity Global Solutions, effective on March 2000, which is attached to and incorporated into this Agreement by this reference (Attachment E). This Software Maintenance Agreement depends on this umbrella agreement being in force.

4. **Term of Agreement.** This Agreement is effective when all parties have executed it through June 30, 2024. This Agreement can be extended with the mutual agreement of both parties. Each extension shall include the same terms as this Agreement and shall be reduced to writing and signed by both parties. Affinity Global Solutions provides Licensee with Software Maintenance for the IBARS System in exchange for payment of the applicable Software Maintenance fees. Licensor has no right or expectation that this Agreement will be renewed.

5. **Payment.** The Agency agrees to pay the Contractor for services described herein and in Attachment A through Attachment E. Total payment under this Agreement shall not exceed eighty-nine thousand two hundred twenty dollars (\$89,220.00). Any increase for maintenance upon contract extension shall not exceed five percent (5%) of the previous period's maintenance fee, as provided in Paragraph 9 of Attachment A. In addition, in the event new modules are added to the IBARS System, Licensor shall provide maintenance for those new modules at a rate calculated at twenty percent (20%) of sixty percent (60%) of the new module's cost.

Payment shall be made within forty-five (45) days of receipt of invoice from Licensor. No payment shall be made for work performed before the date upon which the last required signature is affixed to this Agreement.

6. **Responsibilities of Contractor.** The Contractor agrees to provide the services as described in Paragraphs 2 through 4 above and as stated in Attachments A through E.

7. **Responsibilities of Agency.** The Agency agrees to pay the Contractor in accordance with Section 5 above and perform those duties described in Attachments A through E.

8. **General Provisions.**

A. **Amendments.** Any changes, modifications, revisions or amendments to this Agreement which are mutually agreed upon by the parties to this Agreement shall be incorporated by written instrument, executed and signed by all parties to this Agreement.

B. **Americans with Disabilities Act.** The Licensor shall not discriminate against a qualified individual with a disability and shall comply with the Americans with Disabilities Act, P.L. 101-336, 42 U.S.C. 12101, *et seq.*, and/or any properly promulgated rules and regulations related thereto.

C. **Applicable Law/Venue.** The construction, interpretation and enforcement of this Agreement shall be governed by the laws of the State of Wyoming. The Courts of the State of Wyoming shall have jurisdiction over this Agreement and the parties, and the venue shall be the First Judicial District, Laramie County, Wyoming.

D. **Assignment/Agreement Not Used as Collateral.** Neither party shall assign or otherwise transfer any of the rights or delegate any of the duties set forth in this Agreement without the prior written consent of the other party. The Licensor shall not use this Agreement, or any portion thereof, for collateral for any financial obligation, without the prior written permission of the Agency.

E. **Audit/Access to Records.** The Agency and any of its representatives shall have access to any books, documents, papers, and records of the Licensor, which are pertinent to this Agreement.

F. **Availability of Funds.** Each payment obligation of the Agency is conditioned upon the availability of government funds, which are appropriated or allocated for the payment of this obligation. If funds are not allocated and available for the continuance of the services performed by the Licensor, the Agreement may be terminated by the Agency at the end of the period for which the funds are available. The Agency shall notify the Licensor at the earliest possible time of the services, which will or may be affected by a shortage of funds. No penalty shall accrue to the Agency in the event this provision is exercised, and the Agency shall not be obligated or liable for any future payments due or for any damages as a result of termination under this section. This provision shall not be construed to permit the Agency to terminate this Agreement in order to acquire similar services from another party.

G. **Award of Related Agreements.** The Agency may undertake or award supplemental or successor Agreements for work related to this Agreement. The Licensor shall cooperate fully with other contractors and the Agency in all such cases.

**H. Compliance with Laws.** The Licensor shall keep informed of and comply with all applicable federal, state and local laws and regulations in the performance of this Agreement.

**I. Confidentiality of Information.** All documents, data compilations, reports, computer programs, photographs, and any other work provided to or produced by the Licensor in the performance of this Agreement shall be kept confidential by the Licensor unless written permission is granted by the Agency for its release.

**J. Disputes/Remedies.** In seeking to resolve any dispute relating to this Agreement, the Agency does not waive its sovereign immunity. Any dispute or claim arising out of or relating to this Agreement may be assigned to non-binding mediation upon mutual agreement of the parties, in accordance with the Wyoming Supreme Court's rules for alternative dispute resolution. The parties to the dispute shall bear their respective costs for the mediation. The rights and remedies of the parties provided for in these clauses are in addition to any other rights and remedies provided by law or under this Agreement.

**K. Entirety of Agreement.** This Agreement, consisting of twenty-one (21) pages, including Attachments A through E, represents the entire Agreement between the parties and supersedes all prior negotiations, representations, and agreements, whether written or oral. The following order of precedence will control in the event of any conflict in terms and conditions:

- 1) This Software Maintenance Agreement;
- 2) Amendments to this Software Maintenance Agreement (if any).

**L. Force Majeure.** Neither party shall be liable for failure to perform under this Agreement if such failure to perform arises out of causes beyond the control and without the fault or negligence of the nonperforming party. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This provision shall become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event, and takes all reasonable steps to minimize delays. This provision shall not be effective unless the failure to perform is beyond the control and without the fault or negligence of the nonperforming party.

**M. Indemnification.** The Licensor shall hold harmless the State of Wyoming, the Agency and their officers, agents, employees, successors and assignees from any personal injury or property damage resulting from the performance of the Licensor or any of its employees or agents under this Agreement. Neither party to this Agreement shall be liable to any third party for personal injury or property damage caused by the negligence of the other party to this Agreement; rather, each party shall be liable in accordance with law for damages caused by its own negligence.

**N. Independent Contractor.** The Licensor shall function as an independent contractor for the purposes of this Agreement, and shall not be considered an employee of the Legislative Service Office for any purpose. The Licensor shall assume sole responsibility for any debts or liabilities that may be incurred by the Licensor in fulfilling the terms of this Agreement, and shall be solely responsible for the payment of all federal, state and local taxes which may accrue because of this Agreement. Nothing in this Agreement shall be interpreted as authorizing the Licensor or its agents and/or employees to act as an agent or representative for or on behalf of the State of Wyoming or the Agency, or to incur any obligation of any kind on the behalf of the State of Wyoming or the Agency. The Licensor agrees that no health/hospitalization benefits, workers' compensation and/or similar benefits available to State of Wyoming employees will inure to the benefit of the Licensor or the Licensor's agents and/or employees as a result of this Agreement.

**O. Kickbacks.** The Licensor certifies and warrants that no gratuities, kickbacks or contingency fees were paid in connection with this Agreement, nor were any fees, commissions, gifts, or other considerations made contingent upon the award of this Agreement. If the Licensor breaches or violates this warranty, the Agency may, at its discretion, terminate this Agreement without liability to the Agency, or deduct from the Agreement price or consideration, or otherwise recover, the full amount of any commission, percentage, brokerage, or contingency fee.

**P. Nondiscrimination.** The Licensor shall comply with Presidential Executive Order 11246 entitled, "Equal Employment Opportunity," as amended by Presidential Executive Order 11375, and as supplemented in the Department of Labor Regulations (41 CFR Part 60), the Civil Rights Act of 1964, the Wyoming Fair Employment Practices Act (Wyo. Stat. § 27-9-105 *et seq.*), and the Americans With Disabilities Act (ADA), 42 U.S.C. 12101, *et seq.* The Licensor shall assure that no person is discriminated against based on the grounds of sex, race, religion, national origin or disability in connection with the performance of this Agreement.

**Q. Notices.** All notices arising out of, or from, the provisions of this Agreement shall be in writing and given to the parties at the address provided under this Agreement, either by regular mail, e-mail, or delivery in person.

**R. Notice and Approval of Proposed Sale or Transfer of the Licensor.** The Licensor shall provide the Agency with the earliest possible advance notice of any proposed sale or transfer or any proposed merger or consolidation of the assets of the Licensor. Such notice shall be provided in accordance with the notice provision of this Agreement.

**S. Ownership of Documents/Work Product.** All documents, reports, records, field notes, materials, and data of any kind resulting from performance of this Agreement are at all times the property of the Agency. All software related, developed or modified as a result of this Agreement are the property of Licensor, with Licensee having a perpetual non-exclusive right of use.

**T. Patent or Copyright Protection.** The Licensor recognizes that certain proprietary matters or techniques may be subject to patent, trademark, copyright, license or other

similar restrictions, and warrants that no work performed by the Licensor will violate any such restriction. The Licensor shall defend and indemnify the Agency for any violation or alleged violation of such patent, trademark, copyright, license or other restrictions.

**U. Publicity.** Any publicity given to the program or services provided herein, including, but not limited to, notices, information, pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Licensor, shall identify the Agency as the sponsoring agency and shall not be released without prior written approval from the Agency.

**V. Sovereign Immunity.** The State of Wyoming and the Agency do not waive sovereign immunity by entering into this Agreement and specifically retain all immunities and defenses available to them as sovereigns pursuant to Wyo. Stat. § 1-39-104(a) and all other applicable law. Designations of venue, choice of law, enforcement actions, and similar provisions should not be construed as a waiver of sovereign immunity. The parties agree that any ambiguity in this Agreement shall not be strictly construed, either against or for either party, except that any ambiguity as to sovereign immunity shall be construed in favor of sovereign immunity.

**W. Taxes.** The Licensor shall pay all taxes and other such amounts required by federal, state and local law, including but not limited to federal and social security taxes, workers' compensation, unemployment insurance and sales taxes.

**X. Termination of Agreement.** This Agreement may be terminated, without cause, by the Agency upon thirty (30) days written notice, or by declining to renew the annual subscription by not paying the annual fee. This Agreement may be terminated immediately for cause if the Licensor fails to perform in accordance with the terms of this Agreement.

**Y. Performance Breach.** Should Licensor fail to provide services as described in Attachment A and E, Licensor agrees to reach resolution of those issues within thirty (30) days from receipt of written notice from the Agency itemizing issues leading to the performance breach. After this thirty (30) day period, if the issues remain unresolved, the Agency may terminate this Agreement by further written notice. The date of receipt of the performance breach termination notice will be used to calculate a prorated maintenance refund for that year.

**Z. Third Party Beneficiary Rights.** The parties do not intend to create in any other individual or entity the status of third party beneficiary, and this Agreement shall not be construed so as to create such status. The rights, duties and obligations contained in this Agreement shall operate only between the parties to this Agreement, and shall inure solely to the benefit of the parties to this Agreement. The provisions of this Agreement are intended only to assist the parties in determining and performing their obligations under this Agreement. The parties to this Agreement intend and expressly agree that only parties signatory to this Agreement shall have any legal or equitable right to seek to enforce this Agreement, to seek any remedy arising out of a party's performance or failure to perform any term or condition of this Agreement, or to bring an action for the breach of this Agreement.

**AA. Titles Not Controlling.** Titles of paragraphs are for reference only, and shall not be used to construe the language in this Agreement.

**BB. Waiver.** The waiver of any breach of any term or condition in this Agreement shall not be deemed a waiver of any prior or subsequent breach.

**9. Signatures.** In witness thereof, the parties to this Agreement, either personally or through their duly authorized representatives, have executed this Agreement on the days and dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this Agreement.

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

**AGENCY**

Legislative Service Office



Matt Obrecht, LSO Director



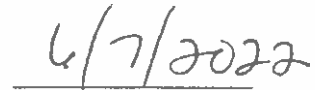
Date

**Licensors**

Affinity Global Solutions



Trish Levinson  
President



Date

# IBARS SOFTWARE MAINTENANCE AGREEMENT

## ATTACHMENT A

### 1. Software Maintenance

Affinity Global Solutions will periodically issue the following technical and functional improvements to Software:

- a) Fixes to Errors;
- b) Updates; and
- c) Enhancements.

This maintenance agreement covers the baseline Internet Budget Analysis and Reporting System (IBARS) enhancements made for the State of Wyoming by Affinity Global Solutions. Enhancements made by the State of Wyoming may be covered if the enhancement design and integration test results are pre-approved by Affinity Global Solutions.

### 2. Telephone Support

Affinity Global Solutions provides telephone support concerning Software installation and usage. Minimum telephone support will be available weekdays during the hours of 8:00 a.m. to 5:00 p.m. (Central Time). Calls are returned within one hour. Provision will be made for extended support and emergencies during critical budgeting periods that may occur beyond the minimum telephone support hours at no additional cost.

### 3. Affinity Global Solutions' Services

- a) Software Updates, Enhancements, and Fixes may be delivered to Licensee through Affinity Global Solutions' FTP site, or by mail from Affinity Global Solutions on Licensee's written request. Affinity Global Solutions information is confidential and proprietary and shall only be used in connection with Licensee's use of the Software.
- b) To diminish exposure to software viruses, Affinity Global Solutions tests and scans all information entered by Affinity Global Solutions for software viruses prior to submitting it to the FTP site. Licensee shall also use a reliable virus detection system on any software or information posted to Affinity Global Solutions' site, utilize back-up procedures, promptly notify Affinity Global Solutions of any virus detected within Licensee's systems associated with Affinity Global Solutions and generally exercise a reasonable degree of caution when utilizing information from Affinity Global Solutions' site. Affinity Global Solutions does not warrant that its FTP site will operate without interruption or without errors. Affinity Global Solutions reserves the right to modify or suspend the FTP service in connection with its Support Services. Affinity Global Solutions will provide a minimum of 30-day notice prior to any modifications or suspension of the FTP site for actions within our control. Affinity Global Solutions assumes no responsibility for anything posted by anyone other than Affinity Global Solutions, including, but not limited to, information about Affinity Global Solutions software, modification code, or portions thereof.

#### **4. Fees**

- a) Affinity Global Solutions agrees to provide support services provided maintenance fees are paid current and the contract has not been materially breached by the Licensee.
- b) Maintenance Fees are billed on an annual basis, payable in advance prior to the first day of the support period. The cost of any maintenance period not commencing on July 1<sup>st</sup>, shall be appropriately pro-rated to match the State of Wyoming fiscal year.
- c) Unless Licensee has provided proof of tax-exempt status, Licensee is responsible for all taxes associated with Support Services, excluding taxes based on Affinity Global Solutions' income.
- d) Licensee's payment shall be due within forty-five (45) days of receipt of the Affinity Global Solutions invoice.
- e) Should Licensee elect not to renew Maintenance Services and subsequently requests Maintenance Services, Affinity Global Solutions shall reinstate Maintenance Services only after Licensee pays Affinity Global Solutions the annual then-current fee plus all cumulative fees that would have been payable had Licensee not suspended Maintenance Services.

#### **5. Term and Termination**

- a) Unless otherwise expressly set forth in the Agreement or Schedule, Support Services shall be provided for a period of two (2) years from the Schedule Effective Date, and shall be extended on a year by year basis. Each two (2) year term shall commence on the July 1<sup>st</sup> of each year. The term of any maintenance period not commencing on July 1<sup>st</sup>, shall be appropriately adjusted and pro-rated to match the State of Wyoming fiscal year.
- b) There is no automatic rollover of the maintenance agreement; a pro-active renewal is required, evidenced by payment of the annual invoice and a proper amendment.
- c) If Licensee fails to make payment pursuant to the section titled "Fees", or Licensee breaches the Support Services provisions and such breach has not been cured within forty-five (45) days of receipt of written notice of breach, Affinity Global Solutions may suspend or cancel Maintenance Services.

#### **6. Exclusions**

Affinity Global Solutions shall have no obligation to support:

- a) Substantially altered, damaged or modified Software (this means software that has been substantially modified and Affinity Global Solutions has not pre-approved modification specifications in writing);
- b) Errors caused by Licensee's negligence, hardware malfunction, operating system malfunction, web server malfunction, or other causes beyond Affinity Global Solutions' reasonable control;



- c) Software installed in a hardware or operating environment not supported by Affinity Global Solutions; and
- d) Third party software not licensed through Affinity Global Solutions.

Software releases will be supported for up to five years. Extended support beyond the five (5) year minimum may be provided at Affinity Global Solutions' option.

## 7. General

All Updates, Enhancements and Fixes provided to Licensee are subject to the terms and conditions of the Agreement. Affinity Global Solutions may modify Maintenance Services on an annual basis to reflect current market conditions upon reasonable notice. If Affinity Global Solutions modifies or suspends maintenance services during the relevant term to delete provisions of any of the core elements described in Section 1 of this Agreement, and if Licensee is current with support services fees, Affinity Global Solutions shall be in performance breach of its obligations to provide software support services.

## 8. Definitions

**"Enhancement"** means a technical or functional addition to IBARS not specifically developed for Licensee. Enhancements are delivered in a Software Release to Licensee at the discretion of Affinity Global Solutions only on, "an if and when available basis".

**"Error"** means a Software malfunction that degrades the use of the Software.

**"Fix"** means the repair or replacement of source, object or executable code Software versions to remedy an Error.

**"Update"** means all published revisions to the Documentation and one (1) copy of the new Software release not designated by Affinity Global Solutions as new products or functionality for which it charges separately.

**"Custom Development"** means a technical or functional addition to IBARS specifically developed for Licensee at Licensee's request. Custom Development may result from separate services contract or may be billed monthly using Affinity Global Solutions timesheets to track task time. Software design tasks are billed at rate of one hundred thirty dollars (\$130.00) per hour and programming tasks are billed at rate of one hundred ten dollars (\$110.00) per hour.

## 9. Payment Schedule

All maintenance fees are rounded to the nearest ten dollars (\$10.00). No annual increase shall exceed five percent (5%) of the previous year's maintenance fee unless there has been custom development work. Custom development work will be billed in addition to the core software and at the percentage and rate indicated.

| Year      | Effective Dates              | Fee   |
|-----------|------------------------------|---|
| This Year | July 1, 2022 – June 30, 2023 | <ul style="list-style-type: none"> <li>• IBARS umbrella maintenance paid by the State Budget Department as detailed in Attachment E</li> <li>• \$17,010 for year 1 (prior one year contract fee of \$16,200 plus a 5% increase)</li> <li>• Plus \$0, 20 percent (20%) of the sum of 60 percent (60%) of cost of Wyoming LSO Custom Development in the year as referenced on Attachment B</li> <li>• Plus \$27,600 for year 1, hosting services agreement detailed on Attachment D</li> <li>• Year 1 = <b>\$17,010 + \$0 + \$27,600</b></li> </ul> |
| Next Year | July 1, 2023 – June 30, 2024 | <ul style="list-style-type: none"> <li>• \$17,010 for year 2</li> <li>• Plus \$0, 20 percent (20%) of the sum of 60 percent (60%) of cost of Wyoming LSO Custom Development in the prior year as referenced on Attachments B &amp; C</li> <li>• Plus, \$27,600 for year 2, hosting services agreement detailed on Attachment D</li> <li>• Year 2 = <b>\$17,010 + \$0 + \$27,600</b></li> </ul>  |

## WYOMING LSO IBARS CUSTOM DEVELOPMENT MAINTENANCE

### ATTACHMENT B

**Prior Years** (July 1, 2020 – June 30, 2022): Custom development completed in the prior years is included in the software maintenance fee calculation starting *July 1, 2022*:

| <b>Customization</b>     | <b>Amount</b> | <b>Date Billed</b> | <b>Date Operational</b> | <b>Maintenance Increase</b> |
|--------------------------|---------------|--------------------|-------------------------|-----------------------------|
| N/A                      | \$0           | N/A                | N/A                     | \$0                         |
| <b>Total<sup>1</sup></b> |               |                    |                         | <b>\$0</b>                  |

<sup>1</sup> Customizations marked for inclusion in fiscal maintenance period starting July 1, 2022 are \$0 rounded to the nearest \$10 for a total of \$0.

**Next 2 Years** (July 1, 2022 – June 30, 2024): *Projected* custom development completed this period to be included in the software maintenance fee calculation starting *July 1, 2023 or July 1, 2024*:

| <b>Customization</b>     | <b>Amount</b> | <b>Date Billed</b> | <b>Date Operational</b> | <b>Maintenance Increase</b> |
|--------------------------|---------------|--------------------|-------------------------|-----------------------------|
| N/A                      | \$0           | n/a                | n/a                     | \$0                         |
| <b>Total<sup>2</sup></b> |               |                    |                         | <b>\$0</b>                  |

<sup>2</sup> Customizations marked for inclusion in fiscal maintenance period starting July 1, 2023 or July 1, 2024 are \$0 rounded to the nearest \$10 for a total of \$0.

**WYOMING LSO IBARS NEW DEVELOPMENT**

**ATTACHMENT C**

Planned custom development for the contract term is as follows:

| <b>Item</b> | <b>Description</b> | <b>Cost</b> | <b>Due Date</b> |
|-------------|--------------------|-------------|-----------------|
| 1           | N/A                | \$0         | n/a             |
|             | <b>Total</b>       | <b>\$0</b>  | <b>n/a</b>      |

# HOSTING SERVICE AGREEMENT

## ATTACHMENT D

### 1. Purpose

To provide Hosting services and monitor and maintain the State of Wyoming, Legislative Service Office, IBARS (Internet Budget Analysis and Reporting System) Servers, for the Agency at its location in Bismarck, ND.

- a) Production Oracle database and related production ready application.
- b) Test instance of the production database.
- c) Training instance of the production database on an as needed basis.

### 2. Equipment

Equipment needed to fulfill this Contract will be purchased and maintained by the Contractor.

- a) Production Oracle database and related production ready application.
- b) Equipment changes will be made with the agreement of the Wyoming State Budget Department.
- c) A production and backup (test) system will be provided.
- d) One server upgrade will be done at least every two (2) years.

### 3. Monitor & Maintenance

A structured policy and practice is to be documented and developed by AGS for the monitoring and maintenance of the system as follows:

- a) Equipment list.
- b) Backup method and schedule.
- c) Network architecture.
- d) Remote access.
- e) Firewall policy.
- f) System & database recovery testing.
- g) Disaster recovery plan.

### 4. Security

The LSO will provide IP addresses for IBARS users. AGS will adjust the system firewall to only allow IBARS users authorized to access the system:

- a) For users within the State network (those addresses starting with 159.238), address ranges of two hundred fifty-five (255) addresses. For example, 159.238.78.0 through 159.238.78.255.
- b) For users within higher education networks using non-NATed DHCP assigned IPs, address ranges of 255 addresses.

*LSO IBARS SOFTWARE MAINTENANCE AGREEMENT BETWEEN  
THE LEGISLATIVE SERVICE OFFICE AND AFFINITY GLOBAL SOLUTIONS*

- c) For all other users, their system's specific IP address.

The LSO will provide IP addresses for Query/Admin users. AGS will adjust the system firewall to only allow Query/Admin users authorized to access the system:

- a) For all other users, their system's specific IP address.

AGS continuously monitors server system's firewall status. AGS will undertake a monthly external port scan in order to verify the firewall is operating as expected. Irregular activity or alerts will be the responsibility of the Contractor to correct and notify the Legislative Service Office. These port scan reports will be provided to the Legislative Service Office on request.

## **5. Documentation**

Documentation is provided in MS Word via email and updated at least one (1) time per year as follows:

- a) Backup procedures.
- b) Database recovery procedures.
- c) System recovery procedures.
- d) Firewall procedures.

## **6. Support**

Affinity Global Solutions will provide telephone support concerning the application and database usage. Telephone support will be available weekdays during the hours of 8:00 a.m. to 5:00 p.m. (Central Time). Calls are returned within one (1) hour. Provision will be made for extended support and emergencies during critical budgeting periods that may occur beyond the minimum telephone support hours at no additional charge.

## **7. Disaster Recovery**

Affinity Global Solutions will follow the disaster recovery procedures as outlined in the revised 2014 "Affinity Global Solutions Hosting Policies" Section 8. The "Cheyenne Wyoming Plan -- 'All Out Disaster'" will be tested at a minimum annually. Current oracle database and application will be downloaded from the Affinity Global Solutions FTP server to the State equipment on a weekly basis, at a minimum. Affinity Global Solutions will assist the State in upgrading the State equipment to the correct software required to operate the database and application.

## 8. Pricing

| <b>IBARS Hosting Pricing</b>                |  |
|---|--|
| <b>Hosting Services</b>                     | <b>Details</b>   |
| Application/System Monitoring               | Via weekday daily checklist and after-hours email heartbeat  |
| Backups                                     | Daily backup to tape, plus copy to 2 <sup>nd</sup> internal storage & AGS hardened storage service, AGS offsite server and to Wyoming FTP site |
| <b>Hardware</b>                             |  |
| Production Application & Database Server    | Supermicro CSE826 w/ASUS Z9PE-D16 mainboard & dual 800W power supplies<br>2 Intel Eight Core 3.1GHz CPU, 256GB RAM                             |
| Test & Backup Application & Database Server | Supermicro SC745 w/ASUS X8PE-D18 mainboard & dual 800W power supplies<br>2 Intel Six Core 3.33GHz CPU, 144GB RAM                               |
| Uninterruptable Power Supply                | 2X APC SUA2200, system monitored with automatic generator backups. The hosting service is designed to be available during a power outage.      |
| <b>Software Licenses</b>                    |  |
| Operating System                            | Linux – Rocky Linux 8  |
| Oracle License                              | Wyoming licensing  |
| Application Server                          | Tomcat   |
| PrinceXML                                   | AGS supplied   |
| <b>Networking</b>                           |  |
| Internet Access                             | Midco Fiber 25 Mb, Midco Fiber 25 Mb   |
| Firewall                                    | Iptables w/FWBuilder   |
| <b>Monthly Hosting Cost</b>                 | <b>\$2,300</b>   |
| <b>Annual Host Cost</b>                     | <b>\$27,600</b>  |

No additional fees shall be paid under Attachment D. Total payment under this Agreement shall not exceed eighty-nine thousand two hundred twenty dollars (\$89,220.00).

**Attachment E**

**AFFINITY GLOBAL SOLUTIONS**

**Date: June 1, 2010**

**SOFTWARE PROGRAM END-USER  
LICENSE AGREEMENT**

**(Non-exclusive: Object Code)**

**between**

**Licensor: Affinity Global Solutions (AGS)  
919 S. 7<sup>th</sup> Street, Suite 305  
Bismarck, North Dakota 58504**

**and the**

**Licensee: State of Wyoming Budget Division (Client)  
Emersion Building  
Cheyenne, Wyoming 82002**

AGS' PROGRAM IS COPYRIGHTED. THIS LICENSE AGREEMENT PROVIDES THE CLIENT WITH A PERPETUAL NON-EXCLUSIVE AND NON-REVOCABLE RIGHT TO USE THE PROGRAM. AGS DOES NOT SELL OR TRANSFER TITLE TO THE CLIENT. THE CLIENT IS AUTHORIZED TO USE THE LICENSED PROGRAM ONLY AFTER THIS LICENSE AGREEMENT IS EXECUTED BY BOTH AGS AND THE CLIENT.

1. **License.** In consideration of the completion and payment of the license fees, AGS grants the Client a non-exclusive, non-revocable perpetual license to use the package of software programs and data in machine readable form and related materials, documentation and listings, identified in Exhibit A, which together constitutes the "Licensed Program," subject to the following terms and conditions. This License Agreement hereby incorporates by reference the Internet Budget Analysis and Reporting System (IBARS) Contract between AGS and Client, dated June 1, 2010.

2. **Scope of Rights.** The Client may:

- a. Install the Licensed Program in the Client's own Facility at the location specified in Exhibit A;
- b. Transmit it through, and display it on machines associated with the specified computer; and
- c. Make copies of the Licensed Program in machine-readable, object form, for use as needed by the Client in support of Client's business operations, provided that Client makes no attempt to remove or obscure AGS' proprietary legend.

3. **Client's Responsibilities.** Client is responsible for selecting a qualified operator to operate the Licensed Program who is familiar with the information, calculations, and reports that serve as input and output of the Licensed Program. Qualified operator(s) will be trained by AGS to utilize system features.



The Licensed Program is designed for use with the computer system specified in Exhibit A. Except as agreed otherwise in writing, AGS assumes no responsibility under this License Agreement for obtaining or providing such equipment. Client is responsible for ensuring a proper environment and proper utilities for the computer system on which the Licensed Program will operate.

Except as agreed otherwise in writing, AGS assumes no responsibility under this License Agreement for converting historical data files for use with the Licensed Program.

4. **Proprietary Protection and Restrictions.** AGS shall have sole and exclusive ownership of all right, title, and interest in and to the Licensed Program and any AGS' modifications that utilize existing program components, subject only to the rights and privileges expressly granted to the Client herein by AGS. This License Agreement does not provide Client with title or ownership of the Licensed Program, but only a right of use in accordance with this License Agreement. Client must keep the Licensed Program free and clear of all claims, liens and encumbrances.

Client's rights may not be transferred, leased, assigned, or sub-licensed. No service bureau work, multiple-user license, or time-sharing arrangement is permitted, except as expressly authorized by AGS.

Client authorizes AGS to enter Client's premises in order to inspect the Licensed Program in any reasonable manner during regular business hours to verify Client's compliance with the terms hereof.

Client acknowledges that, in the event of a material breach by Client of any of the foregoing provisions, AGS will not have an adequate remedy in money or damages. AGS shall therefore be entitled to seek an injunction against such breach from any court of competent jurisdiction immediately upon request. AGS' right to obtain injunctive relief shall not limit its right to seek further remedies.

If a third party claims that the Licensed Program infringes its patent, copyright, or trade secret, or any similar intellectual property right, AGS will, with the consent of counsel for the Client, defend and indemnify the Client, and hold it harmless against that claim at AGS' expense and pay all damages, claims, and expenses that a court awards, provided that Client promptly notifies AGS in writing of the claim, and allows AGS to cooperate with Client in the defense or any related settlement negotiations. If such a claim is made or appears possible, Client agrees to permit AGS to enable Client to continue to use the Licensed Programs, or to modify or replace them subject to Client approval. If AGS determines that none of these alternatives is reasonably available, Client agrees to return the Licensed Program on AGS' written request, and Client will then receive a credit equal to the entire fee for the Licensed Programs. However, AGS has no obligation for any claim based on Client's modification of the Licensed Program or its combination, operation, or use with any product, data, or apparatus not specified or provided by AGS, provided that such claim solely and necessarily is based on such combination, operation, or use, and such claim would be awarded by AGS if the combination, operation, or use with

products, data, or apparatus was specified or provided by AGS. THIS PARAGRAPH STATES AGS' ENTIRE OBLIGATION TO CLIENT WITH RESPECT TO ANY CLAIM OF INFRINGEMENT OF LICENSED PROGRAM.

**5. Liability and Indemnity.** As Client's exclusive remedy for any material defect in the Licensed Program for which AGS is responsible, AGS shall attempt through reasonable effort to correct or cure any reproducible defect by issuing corrected instructions, a restriction, or a bypass.

The cumulative liability of AGS to Client for all claims relating to the Licensed Program and this License Agreement, including any cause of action sounding in contract, tort, or strict liability, shall not exceed three times the total amount of the License Fee. This limitation of liability is intended to apply without regard to whether other provisions of this License Agreement have been breached or have proven ineffective. This limitation of liability shall not apply to the indemnification provided in Section 5 hereof. AGS shall have no liability for loss of data or documentation, it being understood that Client is responsible for reasonable backup precautions.

In no event shall either party be liable for any loss of profits, any incidental, special, or consequential damages, or any claims or demands brought against the other party, even if the party has been advised of the possibility of such claims or demands. This limitation upon damages and claims is intended to apply without regard to whether other provisions of this License Agreement have been breached or have proven ineffective.

Client may have additional rights under certain laws that do not allow the exclusion of implied warranties, or the exclusion or limitation of certain damages. If such laws apply, AGS exclusions or limitations do not apply to Client.

AGS agrees that it will indemnify the Client and hold it harmless from any and all claims, losses and expenses or injuries to properties or persons caused by any negligence or willful misconduct of the AGS, its agents, representatives, subcontractors or employees.

Subject to Wyoming's State law, Client shall take reasonable steps necessary to ensure Licensed Programs, or any portion thereof, are not made available or disclosed, without AGS' consent, by Client, its employees or contractors, to any third party not employed or retained by the Client. Client agrees that all those individuals having access to the Licensed Program included in this License Agreement shall observe and perform this non-disclosure covenant.

**6. Liaison.** AGS and Client will provide liaisons for management of this License Agreement. Written notices or complaints will first be directed to the liaison.

**AGS Liaison**  
**Brent Levinson**  
**Affinity Global Solutions**  
**919 S. 7<sup>th</sup> Street, #305**  
**Bismarck, ND 58504**  
**(701) 223-3565, ext. 17**

**Contract Management Liaison**  
**Mike Ogle**  
**State of Wyoming**  
**Emerson Building**  
**Cheyenne, WY 82002**  
**(307) 777-6048**

**7. Miscellaneous.**

This License Agreement shall be governed by and construed in accordance with the procedural and substantive laws of the State of Wyoming. The parties shall bring any and all legal proceedings arising under this License Agreement in the State of Wyoming.

No modification of this License Agreement shall be binding unless it is in writing and is signed by an authorized representative of the party against whom enforcement of the modification is sought.

Any notices required or permitted under this License Agreement shall be in writing and delivered in person or sent by United States mail with proper postage affixed.

AGS agrees to provide the Client or its authorized agent(s) reasonable access to any records concerning this License Agreement.

AGS agrees to create and retain all records supporting the services rendered (or goods delivered) for a period of three years after either the completion date of this License Agreement or the conclusion of any claim, litigation or exception relating to this License Agreement taken by the Client or a third party, whichever is longer.

AGS may not assign or transfer any portion of this License Agreement without the expressed written consent of the Client, which shall not be unreasonably withheld.

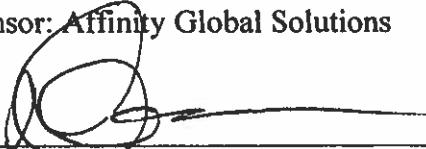
AGS must comply with all applicable federal and state law including the prevailing wage laws.

IN WITNESS WHEREOF, the parties have caused this License Agreement to be executed by their duly authorized representatives as set forth below.

Licensee: State of Wyoming Budget Division

Licensor: Affinity Global Solutions

\_\_\_\_\_  
**Mike Ogle**  
**Budget Division**  
**State of Wyoming**  
**Emerson Building**  
**Cheyenne, WY 82002**

  
\_\_\_\_\_  
**Brent Levinson**  
**Vice President**  
**Affinity Global Solutions**  
**919 S. 7<sup>th</sup> Street, Room 305**  
**Bismarck, ND 58504**

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

Date: 6/1/10

**SOFTWARE PROGRAM END-USER  
LICENSE AGREEMENT  
SPECIAL CONDITIONS**

1. Identification of Licensed Program and specifications. Internet Budget Analysis and Reporting System (IBARS) for statewide use. IBARS was developed by AGS.
2. Location of Client's Facility (installation site). Enterprise-wide use license for State of Wyoming.
3. Specification of computer system on which Licensed Program will execute. As designated by the Client for the use of its employees and contractors.
4. Necessary accessories. AGS will work with the Client to perform initial installation of the deployment kits on the project team computers, and will train Client personnel to perform this task. The Client must also have appropriate licenses for Oracle database, version 10.0 or higher.

**AMENDMENT NUMBER ONE TO THE CONTRACT  
BETWEEN THE STATE OF WYOMING, LEGISLATIVE SERVICE OFFICE  
AND AFFINITY GLOBAL SOLUTIONS**

1. **PARTIES.** The parties to this Amendment Number One (Amendment One) are Affinity Global Solutions (Licensor, Contractor or AGS), a corporation, whose address is 812 Burlington Drive, Suite 300, Bismarck, North Dakota 58504, and the State of Wyoming, Legislative Service Office (Licensee, Agency or LSO), whose address is 200 West 24<sup>th</sup> Street, Cheyenne, Wyoming 82002.

2. **PURPOSE OF AMENDMENT.** This Amendment shall constitute the first amendment to the Contract between the Agency and the Contractor which was duly executed and became effective on June 8, 2022. The purpose of this Amendment One is to increase the total Contract dollar amount by two thousand four hundred dollars (\$2,400.00) to ninety-one thousand six hundred twenty dollars (\$91,620.00) and to require additional duties of the Contractor as outlined in Section 4 of this Amendment.

The Original Contract, effective June 8, 2022, required the Contractor to continue to provide maintenance for the IBARS software for a total contract amount of eighty-nine thousand two hundred twenty dollars (\$89,220.00). The Original Contract authorizes contractual amendments and requires any extension or amendment be reduced to writing and executed by all Parties to be effective.

3. **TERM OF THE AMENDMENT.** This Amendment One is effective when all parties have executed it through June 30, 2024.

4. **AMENDED PAYMENT AND DUTIES.**

A. In addition to the services described in the Original Contract, the Contractor shall provide training, at a designated time and location mutually agreed upon by the Contractor and Agency, and written training materials to the Agency to ensure designated Agency staff have knowledge of the components, procedures, processes, and proper use of the Internet Budget Analysis and Reporting System (IBARS) software. This training and written training materials, also known as "operator's manual", shall include process explanations, at a minimum, for the following:

- i. Overview of administrative features including adding new users, modifying existing user security access, and creating or modifying user checklists;
- ii. Detailed explanation of the appropriate procedures and processes necessary to set up a new biennial budget and supplemental budget in IBARS;
- iii. Detailed explanation of appropriate procedures and processes necessary to setup or modify versions including how to roll-up from one version to another;

- iv. Detailed explanation of the appropriate procedures and processes necessary to add or modify subschedules and reporting levels including sections, agencies, divisions, units, object codes, or funds;
- v. Detailed explanation of the appropriate procedures and processes necessary to add or modify narratives including budget bill footnotes and status report notes;
- vi. Detailed explanation of the appropriate procedures and processes necessary to input additional or modify existing data manually;
- vii. Detailed explanation of the appropriate procedures and processes necessary to create reports including the budget bill, status report and SR03;
- viii. Overview of SQL queries, uses and functions;
- ix. Overview of reporting, monitoring, and responding to tracked issues.

B. Except for items explicitly delineated in this Amendment One, all terms and conditions of the Original Contract between the Agency and the Contractor, including but not limited to sovereign immunity, shall remain unchanged and in full force and effect.

C. The Agency agrees to pay the Contractor for services described herein. Total payment under this Amendment One shall not exceed two thousand four hundred dollars (\$2,400.00). Total payment under this Amendment One and the Original Contract shall not exceed ninety-one thousand six hundred twenty dollars (\$91,620.00). No payment shall be made for work, required under Amendment One, performed before the date upon which the last required signature is affixed to this Amendment One.

5. **ENTIRETY OF AGREEMENT.** This Amendment One, consisting of two (2) pages and the Original Contract, consisting of twenty-one (21) pages, including Attachments A through E, represents the entire and integrated Contract between the parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.

6. **SIGNATURES AND EFFECTIVE DATE.** In witness thereof, the parties to this Amendment, either personally or through their duly authorized representatives, have executed this Amendment on the days and dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this Amendment One.

The effective date of this Amendment One is the date of the signature last affixed to this page.

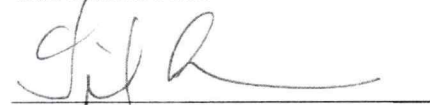
**AGENCY**



Matt Obrecht, Director  
Legislative Service Office

7/12/2022  
Date

**CONTRACTOR**



Trish Levinson, President  
Affinity Global Solutions

7/11/2022  
Date