MASTER SERVICES AGREEMENT #2019-028
DISASTER RECOVERY PLAN IMPLEMENTATION

THIS MASTER SERVICES AGREEMENT ("Agreement"), effective the last date of signed approval ("Effective Date"), is entered into by and between the North Central Texas Council of Governments ("NCTCOG"), a Texas political subdivision and non-profit corporation, with offices located at 616 Six Flags Drive, Arlington, TX 76011, and

Innovative Emergency Management, Inc. ("Contractor")
2801 Slater Road, Suite 110
Morrisville, NC 27560

ARTICLE I
RETENTION OF THE CONTRACTOR

1.1 This Agreement defines the terms and conditions upon which the Contractor agrees to provide Disaster Recovery Plan Implementation (hereinafter, "Services") to governmental entities participating in the North Texas SHARE program (hereinafter "Participating Entities"). The Contractor is being retained to provide services described below to Participating Entities based on the Contractor’s demonstrated competence and requisite qualifications to perform the scope of the services described herein and in the Request for Proposals #2019-028 (hereinafter, "RFP"). The Contractor demonstrated they have the resources, experience, and qualifications to perform the described services, which is of interest to Participating Entities and was procured via the RFP. NCTCOG agrees to and hereby does retain the Contractor, as an independent contractor, and the Contractor agrees to provide services to Participating Entities, in accordance with the terms and conditions provided in this Agreement and consistent with Contractor’s response to the RFP.

ARTICLE II
SCOPE OF SERVICES

2.1 The Contractor will provide Services described in a written Purchase Order issued by NCTCOG or a SHARE Participating Entity. Any such Purchase Order is hereby incorporated by reference and made a part of this Agreement and shall be subject to the terms and conditions in this Agreement. In the event of a conflict between any term or provision in this Agreement and any term or provision in a Purchase Order, the term or provision in this Agreement shall control unless the conflicting term or provision in this Agreement is referenced, and expressly stated not to apply, in such Purchase Order.

2.2 All Services rendered under this Agreement will be performed by the Contractor: i) with due care; ii) in accordance with generally prevailing industry standards; iii) in accordance with Participating Entities’ standard operating procedures and applicable policies, as may be amended from time to time; and iv) in compliance with all applicable laws, government regulatory requirements, and any other written instructions, specifications, guidelines, or requirements provided by NCTCOG and/or Participating Entities.
2.3 Any agreed-upon changes to a Purchase Order shall be set forth in a subsequent Purchase Order amendment. Contractor will not implement any changes or any new Services until a Purchase Order has been duly executed by Participating Entity. For the avoidance of doubt, the Contractor acknowledges that Participating Entity is under no obligation to execute a Purchase Order. Participating Entity shall not be liable for any amounts not included in a Purchase Order in the absence of a fully executed amendment of Purchase Order.

2.4 Pricing for items in Attachment 1 represent the maximum cost for each item offered by the Contractor. Contractor and Participating Entity may mutually agree to a lower cost for any item covered under this agreement.

2.5 NCTCOG Obligations

2.5.1 NCTCOG shall make available a contract page on its NorthTexasSHARE.org website which will include contact information for the Contractor(s).

2.6 Participating Entity Obligations.

2.6.1 In order to utilize the Services, Participating Entities must have executed a Master Interlocal Agreement for North Texas SHARE with NCTCOG. This agreement with the Participating Entity will define the legal relationship between NCTCOG and the Participating Entity.

2.6.2 In order to utilize the Services, Participating Entities must execute a Purchase Order with the Contractor. This agreement with the Participating Entity will define the Services and costs that the Participating Entity desires to have implemented by the Contractor.

2.7 Contractor Obligations.

2.7.1 Contractor must be able to conduct, instruct, and/or implement services with the requirements and intent of RFP #2019-028.

2.7.2 If applicable, Contractor shall provide all necessary material, labor and management required to perform this work. The scope of services shall include, but not be limited to, items listed in Attachment 1.

2.7.3 Contractor agrees to market and promote the use of the SHARE awarded contract whenever possible among its current and solicited customer base. Contractor shall agree to follow reporting requirements in report sales made under this Master Services Agreement in accordance with Section 4.2.

ARTICLE III
TERM

3.1 This Agreement will commence on the Effective Date and remain in effect for an initial term ending on April 30, 2020 (the "Term"), unless earlier terminated as provided herein. This Agreement may be renewed, at NCTCOG's sole discretion, for up to four (4) additional one (1) year terms through April 2024.

3.2 Termination. NCTCOG and/or Participating Entities may terminate this Agreement and/or any Purchase Order to which it is a signatory at any time, with or without cause, upon thirty (30) days' prior written notice to Contractor. Upon its receipt of notice of termination of this Agreement or Purchase Order, Contractor shall follow any instructions of NCTCOG respecting work stoppage. Contractor shall cooperate with NCTCOG and/or Participating Entities to provide for an orderly conclusion of the Services. Contractor shall use its best efforts to minimize the amount of any non-cancelable obligations and shall assign any contracts related thereto to NCTCOG or Participating Entity at its request. If
NCTCOG or Participating Entity elects to continue any activities underlying a terminated Purchase Order after termination, Contractor shall cooperate with NCTCOG or Participating Entity to provide for an orderly transfer of Contractor's responsibilities with respect to such Purchase Order to NCTCOG or Participating Entity. Upon the effective date of any such termination, the Contractor shall submit a final invoice for payment in accordance with Article IV, and NCTCOG or Participating Entity shall pay such amounts as are due to Contractor through the effective date of termination. NCTCOG or Participating Entity shall only be liable for payment of services rendered before the effective date of termination. If Agreement is terminated, certain reporting requirements identified in this Agreement shall survive termination of this Agreement.

3.2.1 **Termination for Cause:** Either party may immediately terminate this Agreement if the other party breaches its obligations specified within this Agreement, and, where capable of remedy, such breach has not been materially cured within thirty (30) days of the breaching party's receipt of written notice describing the breach in reasonable detail.

3.2.2 **Breach:** Upon any material breach of this Agreement by either party, the non-breaching party may terminate this Agreement upon twenty (20) days written notice to the breaching party. The notice shall become effective at the end of the twenty (20) day period unless the breaching party cures such breach within

**ARTICLE IV**
**COMPENSATION**

4.1 **Invoices.** Contractor shall submit an invoice to the ordering Participating Entity upon receipt of an executed Purchase Order and after completion of the work, with Net 30 payment terms. Costs incurred prior to execution of this Agreement are not eligible for reimbursement. There shall be no obligation whatsoever to pay for performance of this Agreement from the monies of the NCTCOG or Participating Entities, other than from the monies designated for this Agreement and/or executed Purchase Order. Contractor expressly agrees that NCTCOG shall not be liable, financial or otherwise, for Services provided to Participating Entities.

4.2 **Reporting.** NCTCOG intends to make this Agreement available to other governmental entities through its SHARE cooperative purchasing program. Contractor shall submit to NCTCOG on a calendar quarterly basis a report that identifies any new client Participating Entities, the date and order number, and the total contracted value of services that each Participating Entity has purchased and paid in full under this Master Service Agreement. Reporting and invoices should be submitted to:

NCTCOG
ATTN: North Texas SHARE
PO Box 5888
Arlington, TX 76005-5888
Email: NorthTexasSHARE@nctcog.org

**ARTICLE V**
**SERVICE FEE**

5.1 **Explanation.** NCTCOG will make this Master Service Agreement available to other governmental entities, Participating Entities, and non-profit agencies in Texas and the rest of the United States through its SHARE cooperative purchasing program. The Contractor is able to market the Services under this
Agreement to any Participating Entity with emphasis that competitive solicitation is not required when the Participating Entity purchases off of a cooperative purchasing program such as SHARE. However, each Participating Entity will make the decision that it feels is in compliance with its own purchasing requirements. The Contractor realizes substantial efficiencies through their ability to offer pricing through the SHARE Cooperative and that will increase the sales opportunities as well as reduce the need to repeatedly respond to Participating Entities' Requests for Proposals. From these efficiencies, Contractor will pay an administrative fee to SHARE calculated as a percentage of sales processed through the SHARE Master Services Agreement. This administrative fee is not an added cost to SHARE participants. This administrative fee covers the costs of solicitation of the contract, marketing and facilitation, as well as offsets expenses incurred by SHARE.

5.2 Administrative Fee. NTCOG will utilize an administrative fee, in the form of a percent of cost that will apply to all contracts between awarded contractor and NTCOG or participants resulting from this solicitation. The administrative fee will be remitted by the contractor to NTCOG on a quarterly basis, along with required quarterly reporting. The remuneration fee for this program will be 2% on sales.

5.3 Setup and Implementation. NTCOG will provide instruction and guidance as needed to the Contractor to assist in maximizing mutual benefits from marketing these Services through the SHARE purchasing program.

ARTICLE VI
RELATIONSHIP BETWEEN THE PARTIES

6.1 Contractual Relationship. It is understood and agreed that the relationship described in this Agreement between the Parties is contractual in nature and is not to be construed to create a partnership or joint venture or agency relationship between the parties. Neither party shall have the right to act on behalf of the other except as expressly set forth in this Agreement. Contractor will be solely responsible for and will pay all taxes related to the receipt of payments hereunder and shall give reasonable proof and supporting documents, if reasonably requested, to verify the payment of such taxes. No Contractor personnel shall obtain the status of or otherwise be considered an employee of NTCOG or Participating Entity by virtue of their activities under this Agreement.
ARTICLE VII

REPRESENTATION AND WARRANTIES

7.1 Representations and Warranties. Contractor represents and warrants that:

7.1.1 As of the Effective Date of this Agreement, it is not a party to any oral or written contract or understanding with any third party that is inconsistent with this Agreement and/or would affect the Contractor’s performance under this Agreement; or that will in any way limit or conflict with its ability to fulfill the terms of this Agreement. The Contractor further represents that it will not enter into any such agreement during the Term of this Agreement;

7.1.2 NCTCOG is prohibited from making any award or permitting any award at any tier to any party which is debarred or suspended or otherwise excluded from, or ineligible for, participation in federal assistance programs under Executive Order 12549, Debarment and Suspension. Contractor and its subcontractors shall include a statement of compliance with Federal and State Debarment and suspension regulations in all Third-party contracts.

7.1.3 Contractor shall notify NCTCOG if Contractor or any of the Contractor’s sub-contractors becomes debarred or suspended during the performance of this Agreement. Debarment or suspension of the Contractor or any of Contractor’s sub-contractors may result in immediate termination of this Agreement.

7.1.4 Contractor and its employees and sub-contractors have all necessary qualifications, licenses, permits, and/or registrations to perform the Services in accordance with the terms and conditions of this Agreement, and at all times during the Term, all such qualifications, licenses, permits, and/or registrations shall be current and in good standing.

7.1.5 Contractor shall, and shall cause its representatives to, comply with all municipal, state, and federal laws, rules, and regulations applicable to the performance of the Contractor’s obligations under this Agreement.

ARTICLE VIII

CONFIDENTIAL INFORMATION AND OWNERSHIP

8.1 Confidential Information. Contractor acknowledges that any information it or its employees, agents, or subcontractors obtain regarding the operation of NCTCOG or Participating Entities, its products, services, policies, customer, personnel, and other aspect of its operation ("Confidential Information") is proprietary and confidential, and shall not be revealed, sold, exchanged, traded, or disclosed to any person, company, or other entity during the period of the Contractor’s retention hereunder or at any time thereafter without the express written permission of NCTCOG or Participating Entity.

Notwithstanding anything in this Agreement to the contrary, Contractor shall have no obligation of confidentiality with respect to information that (i) is or becomes part of the public domain through no act or omission of Contractor; (ii) was in Contractor’s lawful possession prior to the disclosure and had not been obtained by Contractor either directly or indirectly from the NCTCOG or Participating Entity; (iii) is lawfully disclosed to Contractor by a third party without restriction on disclosure; (iv) is independently developed by Contractor without use of or reference to the NCTCOG’s Participating Entity's Confidential Information; or (v) is required to be disclosed by law or judicial, arbitral or governmental order or process, provided Contractor gives the NCTCOG or Participating Entity prompt written notice of such requirement to permit the NCTCOG or Participating Entity to seek a protective order or other appropriate relief. Contractor acknowledges that NCTCOG and Participating Entities
must strictly comply with applicable public information laws, in responding to any request for public information. This obligation supersedes any conflicting provisions of this Agreement.

8.2 **Ownership.** No title or ownership rights to any applicable software are transferred to the NCTCOG by this agreement. The Contractor and its suppliers retain all right, title and interest, including all copyright and intellectual property rights, in and to, the software (as an independent work and as an underlying work serving as a basis for any improvements, modifications, derivative works, and applications NCTCOG may develop), and all copies thereof. All final documents, data, reports, information, or materials are and shall at all times be and remain, upon payment of Contractor’s invoices therefore, the property of NCTCOG or Participating Entity and shall not be subject to any restriction or limitation on their future use by, or on behalf of, NCTCOG or Participating Entity, except otherwise provided herein. Subject to the foregoing exception, if at any time demand be made by NCTCOG or Participating Entity for any documentation related to this Agreement and/or applicable Purchase Orders for the NCTCOG and/or any Participating Entity, whether after termination of this Agreement of otherwise, the same shall be turned over to NCTCOG without delay, and in no event later than thirty (30) days after such demand is made. Contractor shall have the right to retain copies of documentation, and other items for its archives. If for any reason the foregoing Agreement regarding the ownership of documentation is determined to be unenforceable, either in whole or in part, the Contractor hereby assigns and agrees to assign to NCTCOG all rights, title, and interest that the Contractor may have or at any time acquire in said documentation and other materials, provided that the Contractor has been paid the aforesaid.

**ARTICLE IX**
**GENERAL PROVISIONS**

9.1 **Notices.** All notices from one Party to another Party regarding this Agreement shall be in writing and delivered to the addresses shown below:

**If to NCTCOG:**
North Central Texas Council of Governments  
P.O. Box 5888  
Arlington, TX 76005-5888  
Attn: Charlie Oberrender, CPPB  
(817) 695-9109  
coberrender@nctcog.org

**If to Contractor:**
Innovative Emergency Management  
Attn: Contract Administrator  
2801 Slater Road, Suite 110  
Morrisville, NC 27560  
(919) 990 - 8191  
contracts@iem.com

The above contact information may be modified without requiring an amendment to the Agreement.

9.2 **Tax.** NCTCOG and several participating entities are exempt from Texas limited sales, federal excise and use tax, and does not pay tax on purchase, rental, or lease of tangible personal property for the organization’s use. A tax exemption certificate will be issued upon request.

9.3 **Indemnification.** Contractor shall defend, indemnify, and hold harmless NCTCOG and Participating Entities, NCTCOG’s affiliates, and any of their respective directors, officers, employees, agents, subcontractors, successors, and assigns from any and all suits, actions, claims, demands, judgments,
liabilities, losses, damages, costs, and expenses (including reasonable attorneys' fees and court costs) (collectively, "Losses") arising out of or relating to: (i) Services performed and carried out pursuant to this Agreement; (ii) breach of any obligation, warranty, or representation in this Agreement, (iii) the negligence or willful misconduct of Contractor and/or its employees or subcontractors; or (iv) any infringement, misappropriation, or violation by Contractor and/or its employees or subcontractors of any right of a third party; provided, however, that Contractor shall have no obligation to defend, indemnify, or hold harmless to the extent any Losses are the result of NCTCOG's or Participating Entities' gross negligence or willful misconduct.

9.4 Limitation of Liability. In no event shall either party be liable for special, consequential, incidental, indirect or punitive loss, damages or expenses arising out of or relating to this Agreement, whether arising from a breach of contract or warranty, or arising in tort, strict liability, by statute or otherwise, even if it has been advised of their possible existence or if such loss, damages or expenses were reasonably foreseeable.

Notwithstanding any provision hereof to the contrary, neither party's liability shall be limited by this Article with respect to claims arising from breach of any confidentiality obligation, arising from such party's infringement of the other party's intellectual property rights, covered by any express indemnity obligation of such party hereunder, arising from or with respect to injuries to persons or damages to tangible property, or arising out of the gross negligence or willful misconduct of the party or its employees.

9.5 Insurance. At all times during the term of this Agreement, Contractor shall procure, pay for, and maintain, with approved insurance carriers, the minimum insurance requirements set forth below, unless otherwise agreed in a Purchase Order between Contractor and Participating Entities. Further, Contractor shall require all contractors and sub-contractors performing work for which the same liabilities may apply under this Agreement to do likewise. Contractor may cause the insurance to be effected in whole or in part by the contractors or sub-contractors under their contracts. NCTCOG reserves the right to waive or modify insurance requirements at its sole discretion.

9.5.1 Workers' Compensation: Statutory limits and employer's liability of $100,000 for each accident or disease.

9.5.2 Commercial General Liability:
   9.5.2.1 Required Limits:
   $1,000,000 per occurrence;
   $3,000,000 Annual Aggregate

9.5.2.2 Commercial General Liability policy shall include:
   9.5.2.2.1 Coverage A: Bodily injury and property damage;
   9.5.2.2.2 Coverage B: Personal and Advertising Injury liability;
   9.5.2.2.3 Coverage C: Medical Payments;
   9.5.2.2.4 Products: Completed Operations;
   9.5.2.2.5 Fire Legal Liability;

9.5.2.3 Policy coverage must be on an "occurrence" basis using CGL forms as approved by the Texas State Board of Insurance.

9.5.3 Business Auto Liability: Coverage shall be provided for all owned hired, and non-owned vehicles. Required Limit: $1,000,000 combined single limit each accident.

9.5.4 Professional Errors and Omissions liability:
   9.5.4.1 Required Limits:
   $1,000,000 Each Claim
$1,000,000 Annual Aggregate

9.6 **Conflict of Interest.** During the term of this Agreement, and all extensions hereto and for a period of one (1) year thereafter, neither party, shall, without the prior written consent of the other, directly or indirectly, whether for its own account or with any other persons or entity whatsoever, employ, solicit to employ or endeavor to entice away any person who is employed by the other party.

9.7 **Force Majeure.** It is expressly understood and agreed by both parties to this Agreement that, if the performance of any provision of this Agreement is delayed by force majeure, defined as reason of war, civil commotion, act of God, governmental restriction, regulation or interference, fire, explosion, hurricane, flood, failure of transportation, court injunction, or any circumstances which are reasonably beyond the control of the party obligated or permitted under the terms of this Agreement to do or perform the same, regardless of whether any such circumstance is similar to any of those enumerated herein, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the period of time applicable to such requirement shall be extended for a period of time equal to the period of time such party was delayed. Each party must inform the other in writing within a reasonable time of the existence of such force majeure.

9.8 **Ability to Perform.** Contractor agrees promptly to inform NCTCOG of any event or change in circumstances which reasonably can be expected to negatively affect the Contractor’s ability to perform its obligations under this Agreement in the manner contemplated by the parties.

9.9 **Availability of Funding.** This Agreement and all claims, suits, or obligations arising under or related to this Agreement are subject to and limited by the receipt and availability of funds which are received from the Participating Entities by NCTCOG dedicated for the purposes of this Agreement.

9.10 **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of Texas, United States of America. The mandatory and exclusive venue for the adjudication or resolution of any dispute arising out of this Agreement shall be in Tarrant County, Texas.

9.11 **Waiver.** Failure by either party to insist on strict adherence to any one or more of the terms or conditions of this Agreement, or on one or more occasions, will not be construed as a waiver, nor deprive that party of the right to require strict compliance with the same thereafter.

9.12 **Entire Agreement.** This Agreement and any attachments/addendums, as provided herein, constitutes the entire agreement of the parties and supersedes all other agreements, discussions, representations or understandings between the parties with respect to the subject matter hereof. No amendments hereto, or waivers or releases of obligations hereunder, shall be effective unless agreed to in writing by the parties hereto.

9.13 **Assignment.** This Agreement may not be assigned by either Party without the prior written consent of the other Party.

9.14 **Severability.** In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision(s) hereof, and this Agreement shall be revised so as to cure such invalid, illegal, or unenforceable provision(s) to carry out as near as possible the original intents of the Parties.
9.15 **Amendments.** This Agreement may be amended only by a written amendment executed by both Parties, except that any alterations, additions, or deletions to the terms of this Agreement, which are required by changes in Federal and State law or regulations or required by the funding source, are automatically incorporated into this Agreement without written amendment hereto and shall become effective on the date designated by such law or regulation.

9.16 **Dispute Resolution.** The parties to this Agreement agree to the extent possible and not in contravention of any applicable State or Federal law or procedure established for dispute resolution, to attempt to resolve any dispute between them regarding this Agreement informally through voluntary mediation, arbitration or any other local dispute mediation process, including but not limited to dispute resolution policies of NCTCOG, before resorting to litigation.

9.17 **Publicity.** Contractor shall not issue any press release or make any statement to the media with respect to this Agreement or the services provided hereunder without the prior written consent of NCTCOG.

9.18 **Survival.** Rights and obligations under this Agreement which by their nature should survive will remain in effect after termination or expiration hereof.

**IN WITNESS WHEREOF,** the parties have executed this Agreement as of the Effective Date.

**Innovative Emergency Management, Inc.**

**Kristine Needle**
Signature 05/14/2019
Date

Kristine Needle, Contracts Manager
Printed Name

**North Central Texas Council of Governments**

Signature
Date

Michael Eastland
Executive Director

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Attachment I
Pricing for SHARE

For Disaster Recovery Plan Implementation, Contractor shall quote participating SHARE Entities the number of hours and staff required for a custom implementation of the DRP toolkit created by the RFP, based upon the size and needs of each SHARE Entity. Contractor's maximal hourly rates for staff are included, below.

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Offered Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Corporate Liaison</td>
<td>$174.53 per hour</td>
</tr>
<tr>
<td>2</td>
<td>Program Manager</td>
<td>$130.92 per hour</td>
</tr>
<tr>
<td>3</td>
<td>Project Manager</td>
<td>$101.93 per hour</td>
</tr>
<tr>
<td>4</td>
<td>Senior Planner</td>
<td>$127.59 per hour</td>
</tr>
<tr>
<td>5</td>
<td>Planner</td>
<td>$84.93 per hour</td>
</tr>
<tr>
<td>6</td>
<td>Master Exercise Practitioner</td>
<td>$114.83 per hour</td>
</tr>
<tr>
<td>7</td>
<td>Local Recovery SME</td>
<td>$155.73 per hour</td>
</tr>
<tr>
<td>8</td>
<td>Editor</td>
<td>$89.32 per hour</td>
</tr>
<tr>
<td>9</td>
<td>Graphic Designer</td>
<td>$67.27 per hour</td>
</tr>
<tr>
<td>10</td>
<td>Senior Recovery Advisor</td>
<td>$250.00 per hour</td>
</tr>
</tbody>
</table>

Contractor shall provide additional Recovery goods or services at cost plus: **%

**All IEM services will be calculated based on determined hours for scope of work provided and hourly rates listed above. No additional percentage will be added.
MASTER SERVICES AGREEMENT
FOR
DISASTER RECOVERY SERVICES

THIS MASTER SERVICES AGREEMENT ("Agreement"), effective the last date of signed approval ("Effective Date"), is entered into by and between the North Central Texas Council of Governments ("NCTCOG" or "Client"), a State of Texas political subdivision and non-profit corporation, with offices located at 616 Six Flags Drive, Arlington, TX 76011, and Innovative Emergency Management, Inc. (hereinafter "Vendor"), with offices located at 2801 Slater Road, Suite 110, Morrisville, NC 27560.

ARTICLE I
RETENTION OF THE CONTRACTOR

1.1 The Contractor is being retained to provide services described below to NCTCOG based on the Contractor’s demonstrated competence and requisite qualifications to perform the scope of the services described herein. The Contractor has special knowledge and expertise that is of interest to NCTCOG. NCTCOG agrees to and hereby does retain the Contractor, as an independent contractor, and the Contractor agrees to provide the service to NCTCOG, in accordance with the terms and conditions provided in this Agreement.

ARTICLE II
SCOPE OF SERVICES

2.1 The Contractor will provide disaster recovery services described within the Scope of Work in Section 2 (collectively, “Services”) and consistent with the requirements of NCTCOG North Central Texas Disaster Recovery Plan RFP #NCT-2019-028. Any requested Services shall be documented in a written work order ("Statement of Work") describing the requested Services in detail, setting forth the projected price and expected minimum duration of Service. Any such Statement of Work is hereby incorporated by this reference and made a part of this Agreement and shall be subject to the terms and conditions in this Agreement. In the event of a conflict between any term or provision in this Agreement and any term or provision in a Statement of Work, the term or provision in this Agreement shall control unless the conflicting term or provision in this Agreement is referenced, and expressly stated not to apply, in such Statement of Work.

2.2 Any agreed-upon changes to a Statement of Work shall be set forth in an Amended Statement of Work. Contractor will not implement any changes or any new services until an Amended Statement of Work has been duly executed by NCTCOG. NCTCOG shall not be liable for any amounts not included in a duly executed Statement of Work or Amended Statement of Work.

2.3 All Services rendered under this Agreement will be performed by the Contractor: i) with due care; ii) in accordance with generally prevailing industry standards; and iii) in compliance with all applicable laws, government regulatory requirements.
ARTICLE III
TERM

3.1 This Agreement will commence on the Effective Date and remain in effect for an initial term ending on April 30, 2020 (the "Term"), unless earlier terminated as provided herein. This Agreement may be renewed, at NCTCOG's sole discretion, for up to four (4) additional one (1) year terms through April 2024.

3.2 Termination. Either Party may terminate this Agreement and/or any Statement of Work at any time, with or without cause, upon thirty (30) days' prior written notice. Upon its receipt of notice of termination of this Agreement or Statement of Work, Contractor shall follow any instructions of NCTCOG respecting work stoppage. Contractor shall cooperate with NCTCOG and NCTCOG's designees to provide for an orderly conclusion of the Services. Contractor shall use its best efforts to minimize the amount of any non-cancelable obligations and shall assign any contracts related thereto to NCTCOG, or NCTCOG's designee, at its request. If NCTCOG elects to continue any activities underlying a terminated Statement of Work after termination, Contractor shall cooperate with NCTCOG to provide for an orderly transfer of Contractor's responsibilities with respect to such Statements of Work to NCTCOG or its designee. Upon the effective date of any such termination, the Contractor shall submit a final invoice for payment in accordance with Article IV, and NCTCOG shall pay such amounts as are due to Contractor through the effective date of termination. NCTCOG shall only be liable for payment of services rendered before the effective date of termination. If Agreement is terminated, certain reporting requirements identified in this Agreement shall survive termination of this Agreement.

ARTICLE IV
COMPENSATION

4.1 Fees. In consideration for the Services rendered by Contractor to NCTCOG under this Agreement, and for each duly executed Statement of Work, NCTCOG will pay Contractor the fees outlined in each respective Statement of Work, in a total amount not to exceed $300,000.00 for the term of the Agreement, inclusive of any and all optional renewals. NCTCOG shall not be liable for Contractor's services, including related fees and expenses, that exceed the scope of an executed Statement of Work or that Contractor renders in support of an unexecuted Statement of Work. Except as otherwise provided in this Agreement, said compensation shall constitute full payment for all services, liaison, products, materials, and equipment required to provide and/or deliver the Services, including materials, training, equipment used, and overhead expenses.

4.2 Invoices. Contractor shall submit an invoice every month, or as otherwise stated in a Statement of Work, for Services provided. NCTCOG shall pay undisputed amounts in such invoice within forty-five (45) days of receipt. Invoices should be submitted to:

NCTCOG
ATTN: Accounts Payable
PO Box 5888
Arlington, TX 76005-5888
Email: APayable@nctcog.org
Courtesy Copy To: cjohnson@nctcog.org

Costs incurred prior to execution of this Agreement are not eligible for reimbursement. There shall be no obligation whatsoever to pay for performance of this Agreement from the monies of the NCTCOG, other than from the monies designated for this Agreement.

If NCTCOG disputes any invoice NCTCOG shall timely pay the undisputed portion and promptly notify Contractor in writing of the nature of the dispute as to the remainder, and the parties will use their best efforts to resolve the dispute expeditiously. In the event the dispute is not resolved within thirty (30) days after receipt by Contractor of the notice of such dispute, Contractor may suspend performance of the Services, without limitation or waiver of any other right or remedy available under this Agreement or at law.
ARTICLE V
RELATIONSHIP BETWEEN THE PARTIES

5.1 Independent Contractor. It is understood and agreed that the relationship described in this Agreement between the Parties is contractual in nature and is not to be construed to create a partnership or joint venture or agency relationship between the parties. Neither party shall have the right to act on behalf of the other except as expressly set forth in this Agreement. Contractor will be solely responsible for and will pay all taxes related to the receipt of payments hereunder. No Contractor personnel shall obtain the status of or otherwise be considered a NCTCOG employee by virtue of their activities under this Agreement. For the avoidance of doubt, in no event will NCTCOG pay, reimburse, or otherwise be responsible, financially or otherwise, for any insurance, health care, or similar costs or benefits relating to Contractor, its affiliates, or any of their employees, subcontractors, or agents. The rights and obligations of NCTCOG under this Agreement may be exercised or performed on its behalf by one or more of its affiliates.

ARTICLE VI
REPRESENTATION AND WARRANTIES

6.1 Representations and Warranties. Contractor represents and warrants that:

6.1.1 As of the Effective Date of this Agreement, it is not a party to any oral or written contract or understanding with any third party that is inconsistent with this Agreement and/or would affect the Contractor’s performance under this Agreement or that will in any way limit or conflict with its ability to fulfill the terms of this Agreement. The Contractor further represents that it will not enter into any such agreement during the Term of this Agreement;

6.1.2 NCTCOG is prohibited from making any award or permitting any award at any tier to any party which is debarred or suspended or otherwise excluded from, or ineligible for, participation in federal assistance programs under Executive Order 12549, Debarment and Suspension. Contractor and its subcontractors shall include a statement of compliance with Federal and State Debarment and suspension regulations in all Third-party contracts.

6.1.3 Contractor shall notify NCTCOG if Contractor or any of the Contractor’s contractors becomes debarred or suspended during the performance of this Agreement. Debarment or suspension of the Contractor or any of Contractor’s contractors may result in immediate termination of this Agreement.

6.1.4 Contractor will provide to NCTCOG, with each deliverable to be provided under this Agreement, a written summary sheet listing any third party software or other intellectual property contained within the deliverable, if any, together with licenses permitting NCTCOG to use such third-party software and intellectual property in connection with its use of the deliverable and the terms, conditions, and status of the license of such software and intellectual property. Except for the third party software and intellectual property described in the written summary provided to NCTCOG in connection with the preceding sentence, the Contractor warrants and represents that all work product created under this Agreement shall be original work of the Contractor or in the public domain and shall not infringe any copyright, trademark, trade secret, patent or other Intellectual Property right of any third party;

6.1.5 Contractor and its employees and subcontractors have all of the necessary qualifications, licenses, permits, and/or registrations to perform the Services in accordance with the terms and conditions of this Agreement, and at all times during the Term, all such qualifications, licenses, permits, and/or registrations shall be current and in good standing; and

6.1.6 Contractor shall, and shall cause its representatives to, comply with all municipal, state, and federal laws, rules, and regulations applicable to the performance of the Contractor’s obligations under this Agreement.

6.1.7 NCTCOG agrees, acknowledges and understands that Contractor’s performance of its Services under this Agreement is subject to and conditioned upon the timely cooperation, willingness, responsiveness and skill level of the NCTCOG and its applicable employees and the fulfillment of the responsibilities of the NCTCOG, if any, set forth in the Agreement or the applicable Statement of Work. THE WARRANTIES AND REPRESENTATIONS SET FORTH IN THIS AGREEMENT ARE IN LIEU OF, AND CONTRACTOR...
HEREBY DISCLAIMS, ANY AND ALL OTHER WARRANTIES AND REPRESENTATIONS, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Contractor cannot and does not warrant the products or services of third parties, except to the extent that said “third party” is an agent or subcontractor of Contractor.

ARTICLE VII
CONFIDENTIAL INFORMATION AND OWNERSHIP

7.1 Confidential Information. Contractor acknowledges that any information it or its employees, agents, or subcontractors obtain regarding the operation of NCTCOG, its products, services, data, policies, customers, personnel, and other aspect of its operation (“Confidential Information”) is proprietary and confidential, and shall not be revealed, sold, exchanged, traded, or disclosed to any person, company, or other entity during the period of the Contractor’s retention hereunder or at any time thereafter without the express written permission of NCTCOG. Contractor shall use commercially reasonable means to secure NCTCOG's Confidential Information.

Notwithstanding anything in this Agreement to the contrary, Contractor shall have no obligation of confidentiality with respect to information that (i) is or becomes part of the public domain through no act or omission of Contractor; (ii) was in Contractor’s lawful possession prior to the disclosure and had not been obtained by Contractor either directly or indirectly from the NCTCOG; (iii) is lawfully disclosed to Contractor by a third party without restriction on disclosure; (iv) is independently developed by Contractor without use of or reference to the NCTCOG’s Confidential Information; or (v) is required to be disclosed by law or judicial, arbitral or governmental order or process, provided Contractor gives the NCTCOG prompt written notice of such requirement to permit the NCTCOG to seek a protective order or other appropriate relief. Contractor acknowledges that NCTCOG must strictly comply with the Public Information Act, Chapter 552, Texas Government Code, in responding to any request for public information. This obligation supersedes any conflicting provisions of this Agreement. In the event a request for public information is made, a determination on whether information is confidential or proprietary will be made by the Office of the Attorney General of the State of Texas.

7.2 Ownership. All final documents, reports, information, or materials are and shall at all times be and remain, upon payment of Contractor’s invoices, the property of NCTCOG and shall not be subject to any restriction or limitation on their future use by, or on behalf of, NCTCOG, except otherwise provided herein.
ARTICLE VIII
GENERAL PROVISIONS

8.1 Notices. All notices from one Party to another Party regarding this Agreement shall be in writing and delivered to the addresses shown below:

If to NCTCOG: North Central Texas Council of Governments
P.O. Box 5888
Arlington, TX 76005-5888
Phone: (817) 695-9109
Attention: Craig Johnson
Email: cjohnson@nctcog.org

If to Contractor: IEM, Inc.
Attention: Contract Administration
2801 Slater Road, Suite 110
Morrisville, NC 27560.

Phone: (919) 990-8191
Email: contracts@iem.com

The above contact information may be modified without requiring an amendment to the Agreement.

8.2 Indemnification. Contractor shall defend, indemnify, and hold harmless NCTCOG, NCTCOG’s affiliates, and any of their respective directors, officers, employees, agents, subcontractors, successors, and assigns from any and all suits, actions, claims, demands, judgments, liabilities, losses, damages, costs, and expenses (including reasonable attorneys’ fees and court costs) (collectively, “Losses”) arising out of or relating to: (i) Services performed and carried out pursuant to this Agreement; (ii) breach of any obligation, warranty, or representation in this Agreement, (iii) the negligence or willful misconduct of Contractor and/or its employees or subcontractors; or (iv) any infringement, misappropriation, or violation by Contractor and/or its employees or subcontractors of any right of a third party; provided, however, that Contractor shall have no obligation to defend, indemnify, or hold harmless to the extent any Losses are the result of NCTCOG’s gross negligence or willful misconduct.

8.3 Limitation of Liability. In no event shall either party be liable for special, consequential, incidental, indirect or punitive loss, damages or expenses arising out of or relating to this Agreement, whether arising from a breach of contract or warranty, or arising in tort, strict liability, by statute or otherwise, even if it has been advised of their possible existence or if such loss, damages or expenses were reasonably foreseeable.

Notwithstanding any provision hereof to the contrary, neither party’s liability shall be limited by this Article with respect to claims arising from breach of any confidentiality obligation, arising from such party’s infringement of the other party’s intellectual property rights, covered by any express indemnity obligation of such party hereunder, arising from or with respect to injuries to persons or damages to tangible property, or arising out of the gross negligence or willful misconduct of the party or its employees.

8.5 Conflict of Interest. During the term of this Contract, and all extensions hereto and for a period of one (1) year thereafter, neither party, shall, without the prior written consent of the other, directly or indirectly, whether for its own account or with any other persons or entity whatsoever, employ, solicit to employ or endeavor to entice away any person who is employed by the other party.

8.6 Force Majeure. In the event that either party hereto is prevented from or delayed in the performance of any of its obligations hereunder by reason of force majeure, defined as acts of God, war, riots, storms, fires or any other cause whatsoever beyond the reasonable control of the party, the party so prevented or delayed shall be excused from the performance of any such obligation to the extent and during the period of such prevention or delay. The period of time applicable to such requirement shall be extended for a period of time equal to the period of time such Party was delayed. Each Party must inform the other in writing within reasonable time of the existence of such force majeure.
8.7 Ability to Perform. Contractor agrees promptly to inform NCTCOG of any event or change in circumstances which may reasonably be expected to negatively affect the Contractor's ability to perform its obligations under this Agreement in the manner contemplated by the parties.

8.8 Availability of Funding. This Agreement and all claims, suits, or obligations arising under or related to this Agreement are subject to and limited by the receipt and availability of funds which are received from the funding agencies by NCTCOG dedicated for the purposes of this Agreement.

8.9 Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of Texas, United States of America. The mandatory and exclusive venue for the adjudication or resolution of any dispute arising out of this Agreement shall be in Tarrant County, Texas.

8.10 Waiver. Failure by either party to insist on strict adherence to any one or more of the terms or conditions of this Agreement, or on one or more occasions, will not be construed as a waiver, nor deprive that party of the right to require strict compliance with the same thereafter.

8.11 Entire Agreement. This Agreement contains the entire agreement of the parties and supersedes all other agreements, discussions, representations or understandings between the parties with respect to the subject matter hereof. No amendments hereto, or waivers or releases of obligations hereunder, shall be effective unless agreed to in writing by the parties hereto.

8.12 Assignment. This Agreement may not be assigned by either Party without the prior written consent of the other Party.

8.13 Severability. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision(s) hereof, and this Agreement shall be revised so as to cure such invalid, illegal, or unenforceable provision(s) to carry out as near as possible the original intents of the Parties.

8.14 Amendments. This Agreement may be amended only by a written amendment executed by both Parties, except that any alterations, additions, or deletions to the terms of this Agreement, which are required by changes in Federal and State law or regulations or required by the funding source, are automatically incorporated into this Agreement without written amendment hereto and shall become effective on the date designated by such law or regulation.

8.15 Dispute Resolution. The parties to this Agreement agree to the extent possible and not in contravention of any applicable State or Federal law or procedure established for dispute resolution, to attempt to resolve any dispute between them regarding this Agreement informally through voluntary mediation, arbitration or any other local dispute mediation process before resorting to litigation.

8.16 Insurance. Contractor shall comply with the following insurance provisions:

At all times during the term of this Agreement, the Contractor shall procure, pay for, and maintain, with approved insurance carriers, the minimum insurance requirements set forth below, and shall require all contractors and sub-subcontractors performing work for which the same liabilities may apply under this Agreement to do likewise. The Contractor may cause the insurance to be effected in whole or in part by the contractors or sub-subcontractors under their contracts.

1. Workers’ Compensation: Statutory limits and employer’s liability of not less than $100,000 for each accident.
2. Commercial General Liability:
   a. Minimum Required Limits:
      $1,000,000 per occurrence;
      $3,000,000 General Aggregate
   b. Commercial General Liability policy shall include:
      i. Coverage A: Bodily injury and property damage;
      ii. Coverage B: Personal and Advertising Injury liability;
      iii. Coverage C: Medical payments
      iv. Products: Completed operations
v. Fire Legal Liability

c. Policy coverage must be on an “occurrence” basis using CGL forms as approved by the Texas State Board of Insurance

d. Attachment of Endorsement CG 20 10- additional insured

e. All other endorsements shall require prior approval by the NCTCOG.

3. Comprehensive Automobile/Truck Liability: Coverage shall be provided for all owned hired, and non-owned vehicles. Minimum Required Limit: $1,000,000 combined single limit.

4. Professional liability:
   a. Minimum Required Limits:
      $1,000,000 Each Claim
      $1,000,000 Policy Aggregate

Contractor shall defend, indemnify, and hold harmless NCTCOG, NCTCOG’s affiliates, and any of their respective directors, officers, employees, agents, subcontractors, successors, and assigns from any and all suits, actions, claims, demands, judgments, liabilities, losses, damages, costs, and expenses (including reasonable attorneys’ fees and court costs) (collectively, “Losses”) arising out of or relating to: (i) Services performed and carried out pursuant to the contract; (ii) breach of any obligation, warranty, or representation in the contract, (iii) the negligence or willful misconduct of contractor and/or its employees or subcontractors; or (iv) any infringement, misappropriation, or violation by contractor and/or its employees or subcontractors of any right of a third party; provided, however, that contractor shall have no obligation to defend, indemnify, or hold harmless to the extent any losses are the result of NCTCOG’s gross negligence or willful misconduct.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

North Central Texas Council of Governments

By: [Signature]

Name: Executive Director

Title: Director

Innovative Emergency Management, Inc.

By: Kristine Needle

Name: Kristine Needle

Title: Manager, Contract Administration

Date: 05/14/2019