

# APPLICATION HOSTING SERVICE AGREEMENT

This **Agreement** is entered into by and between **CLIENT** (Municipality):

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And **SERVICE PROVIDER:**

Seacoast Computer, Inc.  
dba Stone Hill Municipal Solutions  
25 Old Dover Rd, Suite M  
Rochester, NH 03867  
Ph – 603.749.6952

## REQUEST FOR **SERVICES:**

Application Hosting of the **NH-General Assistance Program (NH-GAP)**  
and associated Client Data as defined in section 9.2.

**EFFECTIVE DATE OF AGREEMENT:** \_\_\_\_\_

**DATE OF SATISFACTORY ACCEPTANCE:** November 1<sup>st</sup>, 2014.

## ANNUAL APPLICATION HOSTING SERVICE RENEWAL FEE:

Current Population Estimate: \_\_\_\_\_ as defined in section 3.1.1

Calculated Annual Hosting Renewal Fee: \_\_\_\_\_ as defined in section 3.1.1

2013 Population Estimate found at [www.nh.gov/oep/data-center/population-estimates.htm](http://www.nh.gov/oep/data-center/population-estimates.htm)

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## 1. TERMS AND CONDITIONS

**1.1** Service Provider agrees to supply its Services to the Client. Client agrees to pay Service Provider for use of the Services, as provided in this Agreement.

**1.2** Service Provider grants to Client remote access to Service Provider's data center via inbound Internet connectivity, for purposes of providing access to Client Data and hosted application provided by Service Provider.

## 2. TERM, RENEWAL, AND TERMINATION

**2.1** This Agreement shall continue in full force and effect for an Initial Term from the Effective Date of Agreement until the anniversary of the Date of Satisfactory Acceptance.

**2.2** Following the expiration of the Initial Term, this Agreement shall be automatically renewed for twelve (12) months every twelve (12) months, unless terminated by either party by giving ninety (90) calendar days written notice to the other party prior to the expiration of the Initial Term or any successive Term.

**2.3** Upon termination of Services by the terms of this Agreement, by Client or by Service Provider, Service Provider shall provide Client Data to Client in an ASCII delimited file

format within 30 calendar days of the termination of Services, unless otherwise agreed to in writing by both parties. All Client Data will thereafter be deleted from active file systems within 90-days and any archived data will be overwritten or purged through normal backup cycles.

**2.4 Termination Assistance Services.** Provided that this Agreement has not been terminated by Service Provider due to Client's failure to pay any undisputed amount due Service Provider, Service Provider may provide Termination Assistance. Provided that Service Provider and Client agree as to price and scope of Termination Assistance such assistance may include:

**2.4.1** developing a plan for the orderly transition of the terminated or expired Services from Service Provider to Client or the Successor Service Provider;

**2.4.2** using commercially reasonable efforts to assist Client, at Client's sole cost and expense, in acquiring any necessary rights to legally and physically access and use any third-party technologies and documentation then being used by Service Provider in connection with the Services;

**2.4.3** using commercially reasonable efforts to make available to Client, pursuant to mutually agreeable terms and conditions, any third-party services then being used by Service Provider in connection with the Services; and,

**2.4.4** such other activities upon which the parties may agree.

**2.4.5** The provisions of this Section shall survive the termination of this Agreement.

### **3. ANNUAL HOSTING SERVICE FEE**

**3.1** No Hosting Service Fee will be charged for one year following the Date of Satisfactory Acceptance. Beginning one year and one day following the Date of Satisfactory Acceptance, an annual Hosting Service Fee will be charged to provide for operating costs, bug fixes and reasonable annual updates and enhancements to accommodate functional requirements. The Hosting Service Fee shall be calculated as follows:

**3.1.1** Hosting Service Fee shall be calculated at **six cents (0.06) per capita per year** based on the Municipality's population as determined by the most current NH OEP Population Estimates as recorded at the New Hampshire Office of Energy and Planning website [www.nh.gov/oep/data-center/population-estimates.htm](http://www.nh.gov/oep/data-center/population-estimates.htm) or such reliable source as may supersede this source.

**3.1.2** The Hosting Service Fee will be a minimum of **\$50 fee per year**, should the above calculation be less than \$50.00.

**3.1.3** The Hosting Service Fee shall be a maximum of **\$1,500**, should the above calculation be greater.

**3.1.4** Should the Initial Term begin following the first anniversary of the Date of Satisfactory Acceptance, the Hosting Service Fee will be prorated based on the number of full months in the Initial Term.

**3.1.5** Beginning two years and one day following the Date of Satisfactory Acceptance, Service Provider reserves the right to increase the per capita rate and the minimum and maximum rates (as defined above) at no more than 5% per year.

**3.1.6** Should fewer than fifty municipalities contract for Hosting Services in any calendar year, Service Provider reserves the right to increase the Hosting Service Fee per capita rate, minimum rate and the maximum rate outside of the above stated parameters, with written notice to Client. Upon such notice, Client may elect, with 30 days written notice to the Service Provider, to terminate this Agreement at no cost to the Client. These

increased rates shall not exceed ten cents (.10) per capita, a minimum of \$175 and a maximum of \$2,750 during the period starting one year and one day after the Date of Satisfactory acceptance and shall not increase more than allowed for in paragraph 3.1.4.

**3.2** A comprehensive conversion service will be provided to all Clients that are converting from MAPS. This process will extract detailed data for all cases and import into the new GAP database. For Clients that are using another computerized database, the import file structure will be provided such that the Client can populate these files for importing into GAP. The initial conversion will be provided cost free. If a subsequent conversion is necessary, the Client may be charged for repeating the process. This charge would be based on the time required to reprocess, not to exceed \$350.

**3.3** Other services including, but not limited to, installation assistance, training, and custom programming, may be requested under this Agreement and will be provided at \$95 per hour fee separate from the fees outlined in 3.1.

**3.4** Hosting Service Fees shall be invoiced annually, and other charges due for services performed under this Agreement shall be invoiced upon completion at \$95 per hour. Invoices are due and payable upon receipt.

**3.5** All charges are exclusive of taxes. Taxes imposed by Government agencies, whether based upon the software, its use, or the Agreement, shall be paid by the Client.

**3.6** If charges are not paid within forty-five (45) days of the invoice date, a one and one half percent (1.5%) per month interest charge may be assessed against the Client until date of payment; If undisputed charges are not paid within sixty (60) days of the invoice date, Service Provider retains the right to disable the user account to prevent further use until payments for all undisputed charges on account have been received; Accounts with outstanding balances over ninety (90) days in arrears are subject to deletion of user account and all Client data by Service Provider, and may be referred for legal collection action.

**3.7** Service Provider reserves the right to increase the hourly rates, as defined in 3.3 above, by no more than 5% per year.

#### **4. AVAILABILITY/INTERRUPTION**

**4.1** Client may access the Services via its computer equipment when it is within the operating parameters of Service Provider's network and when connectivity is available through established telecommunication providers. Service is subject to interruption when telecommunication service is subject to transmission limitation and/or interruptions including access to the public Internet.

**4.2** Service shall be available during the following hours, excluding legal holidays:

- Monday through Friday, from 7AM – 8PM
- Saturday, from 7AM – 5PM

**4.3** Service shall not be available during the following times. These times are reserved for scheduled and emergency maintenance, and backup purposes.

- Monday – Friday from 8PM – 7AM

- Saturday from 5PM until Monday at 7AM

**4.4** Should emergency maintenance be necessary outside of the time prescribed in section 4.3, e-mail notification will be provided to Client's site administrator with a one-hour notice where possible.

**4.5** Service Provider shall provide Client with a copy of all fully executed and valid colocation agreement for the server(s) which host Client Data.

## **5. CLIENT SUPPORT**

Client support services will be available via telephone at (603) 749-6952 during the regular business hours of Monday - Friday, 8:00am-5:00pm, EST. Email support response is available within 24 hours, submit messages to [gapsupport@shms.us](mailto:gapsupport@shms.us).

## **6. AUTHORIZED USAGE**

**6.1** The Client acknowledges that it has been advised by Service Provider that any software, related documentation, or service delivery methods deployed or developed by Service Provider contain valuable trade secrets or proprietary information and products. The Client agrees to use reasonable efforts to preserve the confidential nature of the software by retaining and using the software, solely for its own internal use and not permitting the use of the software or disclosure of information relating to the software to unauthorized persons.

**6.2** Subject to the terms and conditions of the Agreement, the Service Provider grants to the Client a non-exclusive, non-transferable license to use the NH-GAP software. The Client may use the NH-GAP Software in executable format for its own use, and may not translate or modify the licensed programs or incorporate them into other software. Licensee may not, transfer or sublicense the NH GAP Software to any third party, in whole or in part, in any form, whether modified or unmodified

**6.3** The Service Provider reserves the right to interrupt or restrict Services without notice to Client if Service Provider suspects, with reasonable certainty, fraudulent or abusive activity. Client agrees to cooperate with Service Provider in any fraud investigation and to use and or implement any fraud prevention measures prescribed, within reason. Service Provider shall act diligently to investigate the suspected fraudulent or abusive activity and shall restore Service immediately upon discovering that no fraudulent or abusive activity occurred, or such activity has ceased. In the event of confirmed fraudulent or abusive activity outside of the Client's control, Service Provider shall cooperate with Client to protect and recover any lost or compromised Client Data. In the event of confirmed fraudulent or abusive activity due to gross negligence by Client, Client will be liable for all costs associated with such activity.

**6.4** The Service Provider reserves the right to intercept and disclose any sessions being served by Service Provider's facilities in order to protect Service Provider's rights or property. Intercepting will be used only to monitor use of the system in order to provide security and prevent/stop fraud/theft/criminal usage. Disclosure would occur only if there was any investigation by authorities (e.g. police department) associated with fraud/theft/criminal usage or concerns thereof.

**6.5** The Client acknowledges and agrees that it is their sole responsibility to determine who has access to login information and it is their sole responsibility to protect this information.

**6.6** Additionally, the Client acknowledges and agrees that the Client Data input into the system is the Client's sole responsibility and the Service Provider has no responsibility for the content or accuracy of the Client Data.

## **7. CONFIDENTIALITY AND PROPRIETARY NATURE OF CLIENT DATA**

**7.1** It is agreed that all information furnished to or utilized by the parties shall be regarded as confidential. Such items shall remain the sole property of the original owner/Client (as the case may be) and shall be held in confidence and safekeeping by all parties. Both Service Provider and Client further agree to exercise good business judgment and discretion in the disclosure of such information to any person and will take appropriate precautions to limit use or disclosure to those personnel in its organization who are directly concerned with performance of this Agreement.

**7.2** The specified Administrative Representative becomes responsible for any data in the file system managed by Client. Service Provider has no ability to provide access to parties other than those assigned by the Administrative Representative of the Client. The Client is the sole owner and authority governing data sets and user access rights provided. Service Provider cannot provide access to or copies of any data sets other than as communicated in writing by the designated Administrative Representative for the Client.

**7.3** Service Provider shall use reasonable efforts, to ensure the security of Client's data both on Service Provider's Servers and in transit over the Internet including encryption technology and a secure server environment, that meet industry standards and the requirements of any applicable law. In the event that Service Provider becomes aware of a breach of security of any system, database, equipment, storage medium or facility that results in unauthorized access to Client Data by any third party (including any employee or subcontractor of Service Provider that is not authorized to access such information), Service Provider shall notify Client within 24 hours and shall make best efforts to immediately secure its systems. Service Provider cannot and does not guarantee security with respect to the connection to the Service.

**7.4** In the event that Client becomes aware of a breach of security of any system, database, equipment, storage medium or facility that results in unauthorized access to the Service by any third party (including any employee or subcontractor of Client that is not authorized to access such information), Client shall notify Service Provider within 24 hours and shall make best efforts to immediately secure its systems.

**7.5** Service Provider hereby acknowledges that Client has a special responsibility under the law to keep certain electronic Protected Health Information ("ePHI") private and confidential. Service Provider acknowledges and understands that ePHI is subject to the privacy protections of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) as well as other applicable federal and state laws. To the extent that in connection with this Agreement, Service Provider accesses ePHI or any other information that is subject to HIPAA or such laws, it shall do so solely on behalf of Client pursuant to Service Provider's obligations hereunder and shall maintain the confidentiality of such data and shall treat it in accordance with applicable law and Client's then-applicable privacy policies and legal obligations.

## **8. MEMORANDUM OF UNDERSTANDING**

**8.1** Client acknowledges this agreement serves as a Memorandum of Understanding between all users of the NH-GAP system that limited access to the confidential data in the system will be provided to other municipalities. This access will be exercised if and only if

the municipality accessing the data has a signed authorization from the individual whose data is being accessed. Access to the confidential data, under this Memorandum of Understanding, will be restricted and tracked through the NH-GAP software as recommended by the NHLWAA and their legal counsel.

## **9. PROPRIETARY RIGHTS**

**9.1** Pre-existing Materials: Client acknowledges that, in the course of performing the Services, Service Provider may use software and related processes, instructions, methods, and techniques that have been previously developed by Service Provider and that same shall remain the sole and exclusive property of Service Provider.

**9.2** Client Data: Client Data shall be defined as electronic information that has been specifically provided by and/or entered into the Service Provider's repository by the Client. Client's information, or any derivatives thereof, contained in the Service Provider's repository, which shall also be known and treated by Service Provider as Confidential Information, shall be and remain the sole and exclusive property of Client. Service Provider is provided a license to Client Data hereunder for the sole and exclusive purpose of providing the Services, including a license to store, record, transmit, maintain, and display Client Data only to the extent necessary in the provisioning of the Services.

**9.3** No License: Except as expressly set forth herein, no license is granted by either party to the other with respect to the Confidential Information, Pre-existing Materials, or Client Data. Nothing in this Agreement shall be construed to grant to either party any ownership or other interest, in the Confidential Information, Pre-existing Materials, or Client Data, except as may be provided under a license specifically applicable to such Confidential Information, Pre-existing Materials, or Client Data.

**9.4** The provisions of this Section shall survive the termination of this Agreement.

## **10. NO WARRANTIES**

SERVICE PROVIDER MAKES NO EXPRESS WARRANTY REGARDING THE EQUIPMENT AND DISCLAIMS ANY IMPLIED WARRANTY, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. SERVICE PROVIDER DOES NOT AUTHORIZE ANYONE TO MAKE ANY WARRANTIES ON ITS BEHALF AND CLIENT SHOULD NOT RELY ON ANY SUCH STATEMENT. SERVICE PROVIDER IS NOT THE MANUFACTURER OF THE EQUIPMENT AND ANY STATEMENT REGARDING IT SHOULD NOT BE INTERPRETED AS A WARRANTY. THIS PARAGRAPH SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

## **11. LIMITATION ON LIABILITY**

IN NO EVENT WILL THE SERVICE PROVIDER BE LIABLE FOR ANY DAMAGES, INCLUDING, WITHOUT LIMITATION, INCIDENTAL OR CONSEQUENTIAL DAMAGES AND DAMAGES FOR LOST DATA OR PROFITS, ARISING OUT OF THE USE OF OR INABILITY TO USE THE SERVICE OR LICENSED PROGRAM(S), EVEN IF SERVICE PROVIDER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, UNLESS SUCH DAMAGES ARE THE RESULT OF THE SERVICE PROVIDER'S GROSS NEGLIGENCE.

## **12. CLIENT RESPONSIBILITIES**

**12.1** Client shall obtain and maintain, at its sole expense, equipment and appropriate telecommunication service adaptable to, compatible with, and suitable for communication

with Service Provider's network specifications. Service Provider shall provide such written network specifications, updated as necessary and as requested, to the Client.

**12.2** Client agrees to be responsible for the accuracy and adequacy of the Client Data which it furnishes or transmits to Service Provider for processing or storage. Commercially reasonable precautions have been taken by Service Provider to prevent the loss, alteration or improper access to the Client Data, but Service Provider does not guarantee the accuracy or security of the same.

**12.3** The use of some Services hereunder requires certain software to be installed on Client's premises. Client agrees to provide physical facilities and security as required for proper operation and maintenance.

### **13. GENERAL**

**13.1** Service Provider retains the right to subcontract without Client's consent the Services contracted for in this Agreement to third parties; however, no subcontract will relieve Service Provider of its obligations hereunder, and any subcontractor shall be required by Service Provider to comply with and adhere to the essential terms and conditions of this Agreement, including but not limited to access to Services, security, and confidentiality. Except as provided in the preceding sentence, neither this Agreement nor any rights hereunder may be assigned or otherwise transferred by either party, except to any corporation controlled by or under common control with the assigning party, or in connection with the acquisition of, or the sale of substantially all of, the assets of the business to which this Agreement pertains.

**13.2** This Agreement is the entire Agreement between the parties and it supersedes all prior agreements and understandings between the parties concerning the subject matter herein. It may be modified only by a written agreement signed by duly authorized persons for each party.

**13.3** This Agreement shall be governed by the laws of the State of New Hampshire, and exclusive jurisdiction for any legal proceeding regarding this Agreement shall be in the State of New Hampshire.

**13.4** Either party has the right to terminate this Agreement with 30 days written notice (from the date of default) if the other party breaches or is in default of any obligation hereunder which default is incapable of cure or which, being capable of cure, has not been cured within thirty (30) days after receipt of notice of such default.

**13.5** Any invalidation, in whole or in part, of any provision of this Agreement shall not affect the validity of any other provisions of this Agreement.

**13.6** No term or provision hereof shall be deemed waived and no breach excused unless such waiver or consent shall be in writing and signed by the parties.

### **14. AUTHORIZATION**

By submission of this Application Hosting Service Agreement to the Service Provider, you acknowledge that you are authorized to financially commit the subscribing organization to these services for the Client and wish to execute this Agreement with Service Provider according to the terms and conditions as stated above.

The Administrative Representatives for the Client shall be:

\_\_\_\_\_

(identify municipality representatives)

Executed on the dates set forth below by the undersigned, authorized representatives of the parties, to be effective as of the Effective Date.

Authorized by:

Signature: \_\_\_\_\_

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

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Accepted by Service Provider:

Signature: \_\_\_\_\_

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

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_