

CITY CLERK  
ORIGINAL

C-8654  
10/08/2013

AGREEMENT FOR  
MAP LABELING SOFTWARE

City of Glendale Sole Source Solicitation

This Agreement for Map Labeling Software ("Agreement") is effective and entered into as of the 5<sup>th</sup> day of October, 2013 between CITY OF GLENDALE, an Arizona municipal corporation ("City"), and MapText, Inc., a Delaware corporation, authorized to do business in Arizona, (the "Vendor"),

RECITALS

- A. City intends to undertake a project for the benefit of the public and with public funds that is more fully set forth in **Exhibit A** (the "Project");
- B. City desires to retain the services of Vendor to perform those specific duties and produce the specific work as set forth in the Project attached hereto;
- C. City and Vendor desire to memorialize their agreement with this document

AGREEMENT

In consideration of the Recitals, which are confirmed as true and correct and incorporated by this reference, the mutual promises and covenants contained in this Agreement, and other good and valuable consideration, City and Vendor agree as follows:

**1. Key Personnel; Sub-Vendors.**

1.1 Services. Vendor will provide all training services necessary to assure the Project is completed timely and efficiently consistent with Project requirements, including, but not limited to, working in close interaction and interfacing with City and its designated employees, and working closely with others, including other Vendors or consultants, retained by City. This provision applies solely to the training services provided to City by Vendor, and does not apply to any of the other goods or services provided to City by Vendor.

**2. Schedule.** The services will be undertaken in a manner that ensures the Project is completed timely and efficiently in accordance with the Project. The training services will be scheduled and completed within 30 days from the date of receipt of purchase order by the Vendor for the MapText software and training services.

**3. Vendor's Work.**

3.1 Standard. Vendor must perform services in accordance with the standards of due diligence, care, and quality prevailing among Vendors having substantial experience with the successful furnishing of services for projects that are equivalent in size, scope, quality, and other criteria under the Project and identified in this Agreement.

3.2 Licensing. Vendor warrants that:

- a. Vendor and Sub-Vendors will hold all appropriate and required licenses, registrations and other approvals necessary for the lawful furnishing of services ("Approvals"); and
- b. Neither Vendor nor any Sub-Vendor has been debarred or otherwise legally excluded from contracting with any federal, state, or local governmental entity ("Debarment").
  - (1) City is under no obligation to ascertain or confirm the existence or issuance of any Approvals or Debarments or to examine Vendor's contracting ability.
  - (2) Vendor must notify City immediately if any Approvals or Debarment changes during the Agreement's duration and the failure of the Vendor to notify City as required will constitute a material default under the Agreement.



**4. Compensation for the Project.**

4.1 Compensation. Vendor's compensation for the Project, including those furnished by its Sub-Vendors will not exceed \$20,006, as specifically detailed in **Exhibit B** (the "Compensation").

4.2 Agreement and Exhibits; conflict.

- a. Notwithstanding the incorporation of the Exhibits to this Agreement by reference, should any conflict arise between the provisions of this Agreement and the provisions found in the Exhibits and accompanying attachments, the provisions of this Agreement shall take priority and govern the conduct of the parties.

**5. Billings and Payment.**

5.1 Payment.

- a. After a full and complete invoice is received, City will process and remit payment within 30 days. The parties acknowledge and agree that Vendor will submit two invoices following the delivery and receipt of the goods and services described in the quotation attached as Exhibit A.

**6. Termination.**

6.1 For Convenience. City may terminate this Agreement for convenience, without cause, by delivering a written termination notice stating the effective termination date, which may not be less than 30 days following the date of delivery.

- a. Vendor will be equitably compensated for Service and Repair furnished prior to receipt of the termination notice and for reasonable costs incurred.
- b. Vendor will also be similarly compensated for any approved effort expended and approved costs incurred that are directly associated with project closeout and delivery of the required items to the City.

**7. Conflict.** Vendor acknowledges this Agreement is subject to A.R.S. § 38-511, which allows for cancellation of this Agreement in the event any person who is significantly involved in initiating, negotiating, securing, drafting, or creating the Agreement on City's behalf is also an employee, agent, or consultant of any other party to this Agreement.

**8. Insurance.**

8.1 Requirements. Vendor must obtain and maintain the following insurance ("Required Insurance"):

- a. Vendor and Sub-Vendors. Vendor, and each Sub-Vendor performing work or providing materials related to this Agreement must procure and maintain the insurance coverages described below (collectively referred to herein as the "Vendor's Policies"), until each Party's obligations under this Agreement are completed.
- b. General Liability.
  - (1) Vendor must at all times relevant hereto carry a commercial general liability policy with a combined single limit of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate for each property damage and contractual property damage.
  - (2) Sub-contractors must at all times relevant hereto carry a general commercial liability policy with a combined single limit of at least \$1,000,000 per occurrence.



- (3) This commercial general liability insurance must include independent Vendors' liability, contractual liability, broad form property coverage, XCU hazards if requested by the City, and a separation of insurance provision.
- (4) These limits may be met through a combination of primary and excess liability coverage.
- c. Workers' Compensation and Employer's Liability. A workers' compensation and employer's liability policy providing at least the minimum benefits required by Arizona law.
- d. Notice of Changes. Vendor's Policies must provide for not less than 30 days' advance written notice to City Representative of:
  - (1) Cancellation or termination of Vendor or Sub-Vendor's Policies;
  - (2) Reduction of the coverage limits of any of Vendor or and Sub-Vendor's Policies; and
  - (3) Any other material modification of Vendor or Sub-Vendor's Policies related to this Agreement.
- e. Certificates of Insurance.
  - (1) Within 10 business days after the execution of the Agreement, Vendor must deliver to City Representative certificates of insurance for each of Vendor and Sub-Vendor's Policies, which will confirm the existence or issuance of Vendor and Sub-Vendor's Policies in accordance with the provisions of this section, and copies of the endorsements of Vendor and Sub-Vendor's Policies in accordance with the provisions of this section.
  - (2) City is and will be under no obligation either to ascertain or confirm the existence or issuance of Vendor and Sub-Vendor's Policies, or to examine Vendor and Sub-Vendor's Policies, or to inform Vendor or Sub-Vendor in the event that any coverage does not comply with the requirements of this section.
  - (3) Vendor's failure to secure and maintain Vendor Policies and to assure Sub-Vendor policies as required will constitute a material default under the Agreement.
- f. Other Vendors or Vendors.
  - (1) Other Vendors or vendors that may be contracted with in connection with the Project must procure and maintain insurance coverage as is appropriate to their particular contract.
  - (2) This insurance coverage must comply with the requirements set forth above for Vendor's Policies (e.g., the requirements pertaining to endorsements to name the parties as additional insured parties and certificates of insurance).
- g. Policies. Except with respect to workers' compensation and employer's liability coverages, City must be named and properly endorsed as additional insureds on all liability policies required by this section.
  - (1) The coverage extended to additional insureds must be primary and must not contribute with any insurance or self insurance policies or programs maintained by the additional insureds.
  - (2) All insurance policies obtained pursuant to this section must be with companies legally authorized to do business in the State of Arizona and reasonably acceptable to all parties.

8.2 Sub-Vendors.

- a. Vendor must also cause its Sub-Vendors to obtain and maintain the Required Insurance.

- b. City may consider waiving these insurance requirements for a specific Sub-Vendor if City is satisfied the amounts required are not commercially available to the Sub-Vendor and the insurance the Sub-Vendor does have is appropriate for the Sub-Vendor's work under this Agreement.
- c. Vendor and Sub-Vendors must provide to the City proof of the Required Insurance whenever requested.

8.3 Indemnification.

- a. To the fullest extent permitted by law, Vendor must defend, indemnify, and hold harmless City and its elected officials, officers, employees and agents (each, an "Indemnified Party," collectively, the "Indemnified Parties"), for, from, and against any and all claims, demands, actions, damages, judgments, settlements, personal injury (including sickness, disease, death, and bodily harm), property damage (including loss of use), infringement, governmental action and all other losses and expenses, including attorneys' fees and litigation expenses (each, a "Demand or Expense"; collectively, "Demands or Expenses") asserted by a third-party (i.e. a person or entity other than City or Vendor) and that arises out of or results from the breach of this Agreement by the Vendor or the Vendor's negligent actions, errors or omissions (including any Sub-Vendor or other person or firm employed by Vendor), whether sustained before or after completion of the Project.
- b. This indemnity and hold harmless provision applies even if a Demand or Expense is in part due to the Indemnified Party's negligence or breach of a responsibility under this Agreement, but in that event, Vendor shall be liable only to the extent the Demand or Expense results from the negligence or breach of a responsibility of Vendor or of any person or entity for whom Vendor is responsible.
- c. Vendor is not required to indemnify any Indemnified Parties for, from, or against any Demand or Expense resulting from the Indemnified Party's sole negligence or other fault solely attributable to the Indemnified Party.

9. **Immigration Law Compliance.**

- 9.1 Vendor, and on behalf of any subVendor, warrants, to the extent applicable under A.R.S. § 41-4401, compliance with all federal immigration laws and regulations that relate to their employees as well as compliance with A.R.S. § 23-214(A) which requires registration and participation with the E-Verify Program.
- 9.2 Any breach of warranty under subsection 9.1 above is considered a material breach of this Agreement and is subject to penalties up to and including termination of this Agreement.
- 9.3 City retains the legal right to inspect the papers of any Vendor or subVendor employee who performs work under this Agreement to ensure that the Vendor or any subVendor is compliant with the warranty under subsection 9.1 above.
- 9.4 City may conduct random inspections, and upon request of City, Vendor shall provide copies of papers and records of Vendor demonstrating continued compliance with the warranty under subsection 9.1 above. Vendor agrees to keep papers and records available for inspection by the City during normal business hours and will cooperate with City in exercise of its statutory duties and not deny access to its business premises or applicable papers or records for the purposes of enforcement of this section.
- 9.5 Vendor agrees to incorporate into any subcontracts under this Agreement the same obligations imposed upon Vendor and expressly accrue those obligations directly to the benefit of the City. Vendor also agrees to require any subVendor to incorporate into each of its own subcontracts under this Agreement the same obligations above and expressly accrue those obligations to the benefit of the City.



- 9.6 Vendor's warranty and obligations under this section to the City is continuing throughout the term of this Agreement or until such time as the City determines, in its sole discretion, that Arizona law has been modified in that compliance with this section is no longer a requirement.
- 9.7 The "E-Verify Program" above means the employment verification program administered by the United States Department of Homeland Security, the Social Security Administration, or any successor program.

**10. Notices.**

- 10.1 A notice, request or other communication that is required or permitted under this Agreement (each a "Notice") will be effective only if:
- a. The Notice is in writing; and
  - b. Delivered in person or by overnight courier service (delivery charges prepaid), certified or registered mail (return receipt requested); and
  - c. Notice will be deemed to have been delivered to the person to whom it is addressed as of the date of receipt, if:
    - (1) Received on a business day, or before 5:00 p.m., at the address for Notices identified for the Party in this Agreement by U.S. Mail, hand delivery, or overnight courier service on or before 5:00 p.m.; or
    - (2) As of the next business day after receipt, if received after 5:00 p.m.
  - d. The burden of proof of the place and time of delivery is upon the Party giving the Notice; and
  - e. Digitalized signatures and copies of signatures will have the same effect as original signatures.

10.2 Representatives.

- a. Vendor. Vendor's representative (the "Vendor's Representative") authorized to act on Vendor's behalf with respect to the Project, and his or her address for Notice delivery is:  
  
MapText, Inc.  
c/o Shailesh Chanekar  
1100 Cornwall Road, Suite 113  
Monmouth Junction, NJ 08852
- b. City. City's representative ("City's Representative") authorized to act on City's behalf, and his or her address for Notice delivery is:  
  
City of Glendale  
c/o Police Chief Black  
6835 North 57<sup>th</sup> Drive  
Glendale, Arizona 85301  
623-930-3059

With required copy to:

City Manager  
City of Glendale  
5850 West Glendale Avenue  
Glendale, Arizona 85301

City Attorney  
City of Glendale  
5850 West Glendale Avenue  
Glendale, Arizona 85301



- c. Concurrent Notices.
  - (1) All notices to City's representative must be given concurrently to City Manager and City Attorney.
  - (2) A notice will not be deemed to have been received by City's representative until the time that it has also been received by City Manager and City Attorney.
  - (3) City may appoint one or more designees for the purpose of receiving notice by delivery of a written notice to Vendor identifying the designee(s) and their respective addresses for notices.
- d. Changes. Vendor or City may change its representative or information on Notice, by giving Notice of the change in accordance with this section at least ten days prior to the change.

**11. Entire Agreement; Survival; Counterparts; Signatures.**

- 11.1 Integration. This Agreement contains, except as stated below, the entire agreement between City and Vendor and supersedes all prior conversations and negotiations between the parties regarding the Project or this Agreement.
  - a. Neither Party has made any representations, warranties or agreements as to any matters concerning the Agreement's subject matter.
  - b. Representations, statements, conditions, or warranties not contained in this Agreement will not be binding on the parties.
  - c.
- 11.2 Interpretation.
  - a. The parties fairly negotiated the Agreement's provisions to the extent they believed necessary and with the legal representation they deemed appropriate.
  - b. The parties are of equal bargaining position and this Agreement must be construed equally between the parties without consideration of which of the parties may have drafted this Agreement.
  - c. The Agreement will be interpreted in accordance with the laws of the State of Arizona.
- 11.3 Survival. Except as specifically provided otherwise in this Agreement, each warranty, representation, indemnification and hold harmless provision, insurance requirement, and every other right, remedy and responsibility of a Party, will survive completion of the Project, or the earlier termination of this Agreement.
- 11.4 Amendment. No amendment to this Agreement will be binding unless in writing and executed by the parties. Any amendment may be subject to City Council approval. Electronic signature blocks do not constitute execution.
- 11.5 Remedies. All rights and remedies provided in this Agreement are cumulative and the exercise of any one or more right or remedy will not affect any other rights or remedies under this Agreement or applicable law.
- 11.6 Severability. If any provision of this Agreement is voided or found unenforceable, that determination will not affect the validity of the other provisions, and the voided or unenforceable provision will be deemed reformed to conform to applicable law.
- 11.7 Counterparts. This Agreement may be executed in counterparts, and all counterparts will together comprise one instrument.

- 12. **Term.** The term of this Agreement commences upon the effective date and continues for one (1) year period or until the goods and services described in Exhibit A are delivered to the City, whichever is earlier

13. **Dispute Resolution.** Each claim, controversy and dispute (each a "Dispute") between Vendor and City will be resolved in accordance with Exhibit C. The final determination will be made by the City.
14. **Exhibits.** The following exhibits, with reference to the term in which they are first referenced, are incorporated by this reference.

Exhibit A	Quotation
Exhibit B	Compensation
Exhibit C	Dispute Resolution
Exhibit D	MapText Inc. License Agreement

(Signatures appear on the following page.)



The parties enter into this Agreement as of the effective date shown above.

City of Glendale,  
an Arizona municipal corporation

  
\_\_\_\_\_  
By: Brenda S. Fischer  
Its. City Manager

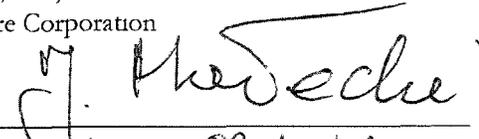
ATTEST:

  
\_\_\_\_\_  
City Clerk (SEAL)

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney

MapText, Inc.,  
a Delaware Corporation

  
\_\_\_\_\_  
By: Jaroslaw Malecki  
Its: President & CEO

**EXHIBIT A**  
**MAP LABELING SOFTWARE**

QUOTATION *[See attached]*



**MapText, Inc.**

1100 Cornwall Rd, Suite 113  
Monmouth Junction, NJ 08852 (USA)  
Tel: (732) 940-7100 Fax: (732) 940-7101  
Email: sales@maptext.com

Attn: Catherine York  
CAD – GIS Mapping  
Glendale Police Department  
6835 North 57th Drive  
Glendale, AZ 85301

## QUOTATION

Customer-ID: C-5127

No. <b>Q4138</b>	Date: <b>Jun 26, 2013</b>	Valid Until: <b>Oct 31, 2013</b>	Rep: <b>SC</b>	Currency: <i>US Dollars</i>
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Item	Quant.	Description	Unit Cost	Amount
1	1	Upgrade from node-locked GeoLabel Pro license to permanent single-seat floating license of Label-EZ v5.3 for use with GeoMedia including one permanent node-locked license of Label-Edit, and one year annual maintenance.	\$19,900.--	\$19,900.--
2	1	2-day onsite training on Label-EZ	\$4,000.--	\$4,000.--
3	1	Credit for upgrading from GeoLabel Pro license to Label-EZ.		(\$2,394.--)
4	1	Packaged purchase discount.		(\$1,500.--)
			<b>Total</b>	<b>\$20,006.--</b>

The quotation information is proprietary and may not be copied or released other than for the express purpose of system selection and purchase/license. This information may not be given to outside parties or used for other purpose without consent from MapText, Inc.

**EXHIBIT B**  
**MAP LABELING SOFTWARE**  
COMPENSATION

**NOT-TO-EXCEED AMOUNT**

The total amount of compensation paid to Vendor for full completion of all work required by the Project during the entire term of the Project must not exceed \$20,006 (including taxes).

**DETAILED PROJECT COMPENSATION**

See Exhibit A.

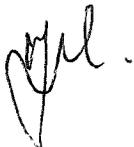
**EXHIBIT C**  
**MAP LABELING SOFTWARE**  
**DISPUTE RESOLUTION**

**1. Disputes.**

- 1.1 Commitment. The parties commit to resolving all disputes promptly, equitably, and in a good-faith, cost-effective manner.
- 1.2 Application. The provisions of this Exhibit will be used by the parties to resolve all controversies, claims, or disputes ("Dispute") arising out of or related to this Agreement-including Disputes regarding any alleged breaches of this Agreement.
- 1.3 Initiation. A party may initiate a Dispute by delivery of written notice of the Dispute, including the specifics of the Dispute, to the Representative of the other party as required in this Agreement.
- 1.4 Informal Resolution. When a Dispute notice is given, the parties will designate a member of their senior management who will be authorized to expeditiously resolve the Dispute.
- a. The parties will provide each other with reasonable access during normal business hours to any and all non-privileged records, information and data pertaining to any Dispute in order to assist in resolving the Dispute as expeditiously and cost effectively as possible;
  - b. The parties' senior managers will meet within 10 business days to discuss and attempt to resolve the Dispute promptly, equitably, and in a good faith manner, and
  - c. The Senior Managers will agree to subsequent meetings if both parties agree that further meetings are necessary to reach a resolution of the Dispute.

**2. Arbitration.**

- 2.1 Rules. If the parties are unable to resolve the Dispute by negotiation within 30 days from the Dispute notice, and unless otherwise informal discussions are extended by the mutual agreement, the parties may agree, in writing, that the Dispute will be decided by binding arbitration in accordance with Commercial Rules of the AAA, as amended herein. Although the arbitration will be conducted in accordance with AAA Rules, it will not be administered by the AAA, but will be heard independently.
- a. The parties will exercise best efforts to select an arbitrator within 5 business days after agreement for arbitration. If the parties have not agreed upon an arbitrator within this period, the parties will submit the selection of the arbitrator to one of the principals of the mediation firm of Scott & Skelly, LLC, who will then select the arbitrator. The parties will equally share the fees and costs incurred in the selection of the arbitrator.
  - b. The arbitrator selected must be an attorney with at least 10 years experience, be independent, impartial, and not have engaged in any business for or adverse to either Party for at least 10 years.
- 2.2 Discovery. The extent and the time set for discovery will be as determined by the arbitrator. Each Party must, however, within ten (10) days of selection of an arbitrator deliver to the other Party copies of all documents in the delivering party's possession that are relevant to the dispute.
- 2.3 Hearing. The arbitration hearing will be held within 90 days of the appointment of the arbitrator. The arbitration hearing, all proceedings, and all discovery will be conducted in Glendale, Arizona unless otherwise agreed by the parties or required as a result of witness location. Telephonic hearings and other reasonable arrangements may be used to minimize costs.



- 2.4 Award. At the arbitration hearing, each Party will submit its position to the arbitrator, evidence to support that position, and the exact award sought in this matter with specificity. The arbitrator must select the award sought by one of the parties as the final judgment and may not independently alter or modify the awards sought by the parties, fashion any remedy, or make any equitable order. The arbitrator has no authority to consider or award punitive damages
- 2.5 Final Decision. The Arbitrator's decision should be rendered within 15 days after the arbitration hearing is concluded. This decision will be final and binding on the Parties.
- 2.6 Costs. The prevailing party may enter the arbitration in any court having jurisdiction in order to convert it to a judgment. The non-prevailing party shall pay all of the prevailing party's arbitration costs and expenses, including reasonable attorney's fees and costs.

3. **Services to Continue Pending Dispute.** Unless otherwise agreed to in writing, Vendor must continue to perform and maintain progress of required services during any Dispute resolution or arbitration proceedings, and City will continue to make payment to Vendor in accordance with this Agreement.

4. **Exceptions.**

- 4.1 Third Party Claims. City and Vendor are not required to arbitrate any third-party claim, cross-claim, counter claim, or other claim or defense of a third-party who is not obligated by contract to arbitrate disputes with City and Vendor.
- 4.2 Liens. City or Vendor may commence and prosecute a civil action to contest a lien or stop notice, or enforce any lien or stop notice, but only to the extent the lien or stop notice the Party seeks to enforce is enforceable under Arizona Law, including, without limitation, an action under A.R.S. § 33-420, without the necessity of initiating or exhausting the procedures of this Exhibit
- 4.3 Governmental Actions. This Exhibit does not apply to, and must not be construed to require arbitration of, any claims, actions or other process filed or issued by City of Glendale Building Safety Department or any other agency of City acting in its governmental permitting or other regulatory capacity.



**EXHIBIT D**  
**MAP LABELING SOFTWARE**  
**END USER LICENSE AGREEMENT**

# MapText Inc. License Agreement

**IMPORTANT:** This Agreement contains the exclusive terms and conditions that govern your use of MapText software ("Software"). By clicking on the "Accept" button or entering "yes" in response to the electronic license acceptance query, or installing, electronically downloading, or using the Software after you have had an opportunity to read this Agreement, you are agreeing to the terms and conditions of this Agreement. If you do not agree to the terms of this Agreement, then do not use or copy the Software, and contact the place from which you obtained it (or contact MapText Technical Support) to obtain a full refund.

**1 GRANT OF LICENSE:** A Software product license permits the use of the Software (including its link-time and run-time modules) on computers controlled by you, as set forth below. All Software product licenses are subject to the terms of this Agreement and to payment of applicable license fees. Product licenses are perpetual (unless expressly time-limited), nonexclusive and non-transferable except as set forth in Section 3. In addition to your own employees, you may provide access to and permit the use of the Software by your third party contractors and consultants under your control, provided that such access or use is required for your own internal purposes, and such persons comply with the restrictions on the use and reproduction of the Software set forth in this Agreement. The software licenses are not enabled and cannot be used for the labeling of aeronautical features, such as airways, nav aids, waypoints, procedures, etc. Simple User/ Regular User Licenses. If the Software product license is a simple user license or regular user license, then each product license grants you (or, if you are a corporation or other entity, one designated individual within your organization) the foregoing right to use the Software. Each person accessing the Software must be the designated user pursuant to a respective license for the Software. Floating Licenses. If the Software product license is a floating license, then each product license authorizes the use of the Software by one individual user, identified by user-id, at a time. A license will become available for use by another user after the first user releases the license or a certain amount of time has passed since the first user stopped using or accessing objects or information in the software. Unless otherwise listed in the end user documentation for a particular product, this time-out period is 30 to 60 minutes for floating active user licenses. Floating licenses can be force released before the applicable time-out period has expired by an administrative command, but only a limited number of times.

**2 UPDATES:** The Software subject to this Agreement includes error corrections, bug fixes, patches, updates and other modifications that are provided by MapText as part of support and maintenance purchased by you ("Updates"). The Software and Updates are licensed as a single product, the Updates may not be separated from the Software for use by more than one user.

**3. OWNERSHIP AND RESTRICTIONS:** All Software and its accompanying end user and technical documentation ("Documentation") shall remain the exclusive property of MapText or its licensors and all rights not expressly granted are reserved. You may not modify, reverse engineer, disassemble or reverse compile any portion of the Software. You may not use the Software for timesharing, rental or service bureau purposes, or distribute, rent, lease, assign or otherwise transfer the Software or Documentation to any third party except as expressly provided herein. You are prohibited from creating any software program which links, embeds or makes direct function calls to run time components licensed by MapText from third parties and included in Software. You may not copy, in whole or in part, the Software or Documentation except as reasonably required for backup or archival purposes or as reasonably necessary for the uses expressly permitted under this Agreement, provided that you take reasonable measures to ensure that each copy is used only as allowed by the terms of this Agreement, and include MapText's and its licensors' copyright and other proprietary rights notices on all such copies. You may assign the Software to an entity that controls, is controlled by or is under common control with, you, or to a purchaser of or other successor in interest to all or substantially all of your assets, provided that you do not retain any copies of or license to the transferred Software (and any accompanying Documentation), and the assignee shall be subject to and comply with the terms and conditions of this Agreement.

**4 LIMITED WARRANTY.** MapText warrants that (1) the digital media on which the Software is recorded is free from defects in materials and workmanship under normal use for a period of sixty (60) days from the date of receipt; (2) the Software will perform substantially in accordance with the

accompanying written materials for a period of sixty (60) days from the date of receipt and (3) the Software and related documentation do not infringe on any patents, copyrights or trademarks or constitute misappropriation of third party proprietary information. MapText's entire liability and your exclusive remedy under any warranty or legal theory shall be replacement of the Software or return of the price paid. MAPTEXT DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

**5 LIMITATION OF LIABILITY.** MAPTEXT AND ITS LICENSORS' TOTAL LIABILITY, IF ANY (INCLUDING BUT NOT LIMITED TO LIABILITY ARISING OUT OF CONTRACT, TORT, BREACH OF WARRANTY OR OTHERWISE), SHALL BE LIMITED TO THE FEES PAID BY LICENSEE TO MAPTEXT FOR THE SOFTWARE UNDER THIS AGREEMENT. MAPTEXT AND ITS LICENSORS WILL NOT BE LIABLE IN ANY EVENT FOR LOSS OR INACCURACY OF DATA, LOSS OF PROFITS OR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION THE COST OF ANY SUBSTITUTE PROCUREMENT), WHETHER OR NOT FORESEEABLE AND EVEN IF MAPTEXT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**6. U S GOVERNMENT MATTERS.** The Software and documentation are provided with RESTRICTED AND LIMITED RIGHTS. Use, duplication or disclosure by the Government is subject to the terms of this MLA per FAR 12.212 or DFAR 227.7202-3 and, to the extent required under Federal law, the restrictions as set forth in FAR 52.227-14 (June 1987) Alternate III(g)(3) (June 1987), FAR 52.227-19 (June 1987), or DFARS 52.227-7013 (c)(1)(ii) (June 1988), as applicable. Contractor is MapText Inc., 1100 Cornwall Rd, Suite 113, Monmouth Junction, New Jersey 08852. The export and re-export of the Software and Documentation are subject to the Export Administration Act of the United States of America and the rules and regulations promulgated from time to time thereunder (collectively, the "Export Act"). The export or re-export of any of the Software or Documentation in violation of the Export Act or other applicable export control laws or regulations, is prohibited. Licensee certifies that the Software and Documentation will not be used in nuclear, chemical/biological warfare or missile activities, or in support of any such activities.

**7 MISCELLANEOUS.** Excepting price and shipping terms contained in the applicable invoice, this Agreement is the sole and exclusive agreement regarding the Software (including, without limitation, use of the Software and any and all warranties or liabilities with respect to the Software), and may not be modified except by a written instrument executed by authorized representatives of MapText and Licensee. If any provision of this Agreement is held illegal or unenforceable, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect, and enforceable. The failure to enforce any term of this Agreement on one occasion shall not prevent enforcement on any other occasion or the enforcement of any other term. Pre-printed and any other additional terms contained in any purchase order or other similar document, and any terms in conflict with this Agreement, shall be void and of no effect.

**8 INDEMNIFICATION FOR INFRINGEMENT.** MapText will defend, indemnify and hold you harmless against any claim that the Software infringes on or was created in whole or in part by violation of copyright, patent, trade secret or other intellectual property right, provided that (a) You promptly notify MapText of the claim, (b) MapText has exclusive control of the defense (provided that you shall have full right, at your own cost and expense, to participate in the litigation and in all settlement negotiations) and (c) You provide MapText with reasonable assistance, information and authority in the litigation at MapText expense. You shall have no right to settle any such claim without MapText's approval. MapText may at its option (i) obtain for you the right to continue using the Software, (ii) modify the Software so that it becomes non-infringing or (iii) terminate this Agreement with respect to the infringing Software if the first two options are not commercially reasonable and refund all fees paid.

MapText, Inc.  
1100 Cornwall Rd, Suite 113  
Monmouth Junction, NJ 08852 (USA)  
Tel (732) 940-7100 Fax (732) 940-7101  
sales@maptext.com  
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