

## Production Services Agreement

This Production Services Agreement (“Agreement”) is effective as of \_\_\_\_\_ (“Effective Date”) between NEUBUS, INC (hereinafter “Producer”), with its principal office at 2300 Greenhill Drive, Building 9, Round Rock, TX 78664, and \_\_\_\_\_ (“Customer”) with its principal office at \_\_\_\_\_ (each a “Party”; together the “Parties”).

### Purpose of This Agreement

- A. Producer is in the business of providing document imaging and data management services.
- B. Customer wishes to engage the services of Neubus, Inc. to deliver computer-generated images of aggregated, publicly-available records hosted and indexed by Neubus, Inc. for the Railroad Commission of Texas (includes images (refer to *Exhibit A: Pricing Table*) provided to Neubus by the client collectively, the “Data”), pursuant to the provisions of this Agreement. Refer to *Exhibit B: Project Specifications* for detailed specifications of the information agreed be provided, incorporated herein by reference.

In consideration of the mutual agreements set forth herein, Producer and Customer agree as follows:

### 1. Image Production

- 1.1. *Production.* Customer hereby engages the services of Producer to provide document image delivery services. Producer will carry out the production of the Data in substantial compliance with the terms of this Agreement.
- 1.2. *Production Timetable.* Producer will use commercially reasonable efforts to complete production of the Data in accordance with the production timetable set forth below. Producer will promptly notify Customer of any circumstances that may reasonably be anticipated to lead to a material delay.
- 1.3. *Change Orders.* Customer may request additional services or modifications to the production of the Data by delivering a written change order request to Producer. In the event that Producer receives a change order request, Producer will determine the cost and/or schedule impact, if any, of the requested change, and provide to Customer a proposal for a change order (“Change Order”). Each Change Order will be effective when signed by both Parties. Customer will not be liable for any charges under the Change Order, and Producer will not be obliged to perform the requested changes unless the applicable Change Order has been executed by the Parties.
- 1.4. *Use of Third-Party Consultants.* Producer may retain qualified third parties to furnish services to it in connection with production of the Data, provided that Producer will be responsible for the activities of such third parties as they relate to this Agreement.

### 2. Acceptance Testing and Access

- 2.1. *Access to Data for Review.* Producer will make the Data accessible to Customer for verification and acceptance testing.
- 2.2. *Acceptance Tests.* Customer shall have access to the Data in order to perform all tests necessary to determine whether the Data conforms to the specifications set forth in this Agreement. Customer will have thirty (30) days from the date upon which Producer delivers the Data for testing (the “Initial Test Period”) in which to evaluate conformity. In the event that the Data does not conform to the specifications set forth in this Agreement, Customer will deliver a written notice specifying each item of non-conformity in reasonable detail (a “Non-Conformity Notice”) to Producer on or before the expiration of the Initial Test Period.
- 2.3. *Corrective Action.* Producer will correct, on a time and materials basis, the non-conformities stated in the Non-Conformity Notice within a reasonable period of time. After Producer makes such corrections to the Data and makes the Data available to Customer for testing, then Customer will have fifteen (15) days to re-test the Data (“Additional Test Period”). If any non-conformities remain, the process stated above will be repeated.

2.4. *Deemed Acceptance.* Customer's failure to deliver a Non-Compliance Notice prior to the expiration of the applicable Initial Test Period or Additional Test Period will be deemed Customer's acceptance of the Data.

2.5. *Acceptance and Payment.* All fees arising under this agreement shall become due and will be invoiced immediately.

### 3. Compensation

3.1. *Fees.* Unless otherwise provided herein, all services hereunder deliverable will be billed at the rates set forth in Exhibit A: Pricing Tables, incorporated herein by reference.

3.2. *Expenses.* Producer will be entitled to reimbursement of its reasonable expenses incurred in connection with this Agreement for travel-related expenses and for such other items as the Parties may agree upon in writing. Expenses will be documented with receipts or other reasonable written evidence.

3.3. *Payment.* All fees arising under this agreement shall become due and will be invoiced immediately.

3.4. *Taxes.* The fees set forth herein are exclusive of taxes. Customer will be responsible for all taxes, levies, and assessments, excepting taxes based on the income of Producer.

3.5. *Records and Audit.* Producer will maintain books and records in connection with its services, billings, and expenses. Customer, by its independent certified public accountant, may audit Producer's records to determine whether Producer's billings charges and fees comply with the terms of this Agreement. Any such audits will be conducted during Producer's regular business hours at Producer's facilities subject to a reasonable confidentiality agreement, will not unreasonably interfere with Producer's business activities, and will take place not more than twice in every calendar year. In the event of any overpayment or over-billing or underpayment, appropriate adjustments will be made within thirty (30) days of receipt of the audit report.

4. Ownership. The records and other information comprising the Data are items of public work and/or public record made available by the Texas Railroad Commission and hosted by Producer. Producer makes no claim of authorship or ownership thereto and no such rights of authorship or ownership shall transfer to Customer by effect of the Agreement.

### 5. Warranty and Disclaimers

5.1. *Limited Warranty.* Producer warrants that for a period of thirty (30) days following the acceptance date, the Data will perform in accordance with the specifications set forth herein. Should the Data, during such warranty period, not perform as warranted herein, Producer will resolve the problem on a time and materials basis within a commercially reasonable period of time. The foregoing are Customer's sole and exclusive remedies.

5.2. *Exclusions from Warranty.* Producer will not be obligated under Section 5.1 to correct, cure, or otherwise remedy any nonconformity if (1) Customer has made any alteration to the Data without Producer's authorization; (2) the Data or its delivery media has been misused, damaged or corrupted other than by personnel of Producer; or (3) Producer has not been notified of the existence and nature of such nonconformity or defect within the warranty period.

5.3. *Disclaimer.* EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, PRODUCER DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, AND MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. PRODUCER SPECIFICALLY DISCLAIMS LIABILITY FOLLOWING FROM ERRORS CONTAINED WITHIN THE RECORDS AND OTHER INFORMATION TO BE DELIVERED. PRODUCER MAKES NO CLAIM AS TO THE VERACITY OR COMPLETENESS OF THE RECORDS AND CUSTOMER AGREES TO ACCEPT THE RECORDS "AS-IS".

5.4. *Limitation of Liability.* The cumulative liability of Producer to Customer for all claims whatsoever related to the Data, the services provided hereunder or this Agreement, including any cause of action sounding in contract, tort, or strict liability, will not exceed the total amount of all fees paid to Producer by Customer under this Agreement.

5.5. *Consequential Damages.* In no event will Producer be liable for any lost profits, incidental, exemplary, or consequential damages, even if Producer has been advised of the possibility of such damages.

5.6. *Third-Party Materials.* Producer may, pursuant to the terms of this Agreement, incorporate third party tools, software, code, content or materials (collectively, "Third Party Materials") to facilitate delivery of the Data; Producer makes no warranty with regard to Third Party Materials. Customer's sole and exclusive rights and remedies with respect to the Third Party Materials, including remedies in the event the presence of such a Third Party Material gives rise to an intellectual-property infringement claim, will be against the third party vendor of such materials and not against Producer.

5.7. *Authority.* Each Party warrants that it has all required authority to enter into this Agreement.

## 6. Intellectual Property Warranty and Indemnification

6.1. *Producer's Intellectual Property Warranty.* To the best of its knowledge (but without an obligation to make any investigation), Producer's Contribution (as defined below) does not and will not infringe or violate any third party patents, copyrights, trademarks, trade secrets or other intellectual property rights. "Producer's Contribution" means the Data except for Third Party Materials or Customer Materials which may be utilized in the transmission or delivery of the Data.

6.2. *Producer's Indemnification of Customer.* Producer will defend, indemnify, and hold harmless Customer with respect to any third party lawsuit or proceeding arising from Producer's breach of the warranty in Section 6.1 (each, a "Claim"). Indemnification under this Section is Customer's sole and exclusive remedy for the Claim and for breach of the warranty in Section 6.1.

7. Procedure for Indemnification. For any Claim that is subject to indemnification under this Agreement, the obligation to indemnify is subject to the Party entitled to indemnification (the "Indemnitee") providing the indemnifying Party (the "Indemnitor") reasonably prompt notice of the relevant Claim. Indemnitor shall defend and/or settle, at its own expense, any Claim subject to indemnification under this Agreement. The Indemnitee shall cooperate in good faith with the Indemnitor to facilitate the defense of any such Claim and shall tender the defense and settlement of the Claim to the Indemnitor. Claims may be settled without the consent of the Indemnitee, unless the settlement includes an admission of wrongdoing, fault or liability of the Indemnitee.

## 8. Term and Termination

8.1. *Term.* This Agreement will commence on the date first written above and will continue in effect until such time as all obligations (including services and the warranty period) hereunder are completed, unless terminated earlier in accordance with this Agreement.

8.2. *Material Breach.* Either Party may terminate this Agreement for a material breach which remains uncured for thirty (30) days after the breaching Party receives notice of such breach from the non-breaching Party.

8.3. *Termination for Convenience.* During the pendency of the Initial (or any Additional) Test Periods, Customer may terminate this Agreement for convenience upon ten (10) days' prior written notice to Producer and payment of an early termination fee of fifteen percent (15%) of the Fee Total (the "Total") evidenced by the Pricing Tables in Exhibit A. If Customer terminates before acceptance of the Data as described herein, all Data and Materials provided by Producer for purposes of verification and acceptance testing shall be promptly returned, deleted or destroyed from Customer's systems or other devices or systems under the control of Customer. Customer agrees to allow Producer or Producer's agent access to Customer's systems and records as reasonably necessary to confirm return, deletion or destruction of such Data and Materials. Customer's failure to promptly return, delete or destroy such Data and Materials shall constitute a material breach of this Agreement.

8.4. *Survival.* The following Sections will survive the termination of this Agreement as applicable: 3.5 (Audit), 4 (Ownership), 5 (Warranties and Disclaimers), 6 (Intellectual Property Warranty and Indemnification), 7 (Procedure for Indemnification), 8.4 (Survival), 9 (Confidentiality) and 10 (General), together with accrued payment obligations.

## 9. Confidentiality

9.1. *Use of Confidential Information.* The Parties, from time to time, may disclose Confidential Information (as defined below) to one another. Accordingly, each Party agrees as the recipient (the “Receiving Party”) to keep strictly confidential all Confidential Information provided by the other Party (the “Disclosing Party”). The Receiving Party further agrees to use the Confidential Information of the Disclosing Party solely for the purpose of exercising its rights and fulfilling its obligations under this Agreement. The Receiving Party may not use for its own benefit or otherwise disclose any of the Confidential Information of the Disclosing Party for any other purpose.

9.2. *Definition of Confidential Information.* “Confidential Information” means, subject to Section 9.3, information in any form, oral, graphic, written, electronic, machine-readable or hard copy consisting of (i) any non-public information provided by the Disclosing Party, including but not limited to, all of its inventions, designs, data, source and object code, programs, program interfaces, know-how, trade secrets, techniques, ideas, discoveries, marketing and business plans, pricing, profit margins, and/or similar information or (ii) any information which the Disclosing Party identifies as confidential information or the Receiving Party should understand from the context of the disclosure, to be confidential information.

9.3. *Exclusions.* The term “Confidential Information” will not include information that (a) is publicly available at the time of disclosure by the Disclosing Party; (b) becomes publicly available by publication or otherwise after disclosure by the Disclosing Party, other than by breach of this Section by the Receiving Party; (c) was lawfully in the Receiving Party's possession, without restriction as to confidentiality or use, at the time of disclosure by the Disclosing Party; (d) is provided to the Receiving Party without restriction as to confidentiality or use by a third party without violation of any obligation to the Disclosing Party, or (e) is independently developed by employees or agents of the Receiving Party who did not access or use the Confidential Information.

9.4. *Protection of Confidential Information.* The Receiving Party will inform those employees and consultants who have access to the Confidential Information of the Disclosing Party that such information is confidential and proprietary information of a third party. The Receiving Party agrees to disclose the Confidential Information of the Disclosing Party solely to its employees and consultants who need to know such information for the purpose of exercising the Receiving Party's rights and fulfilling the Receiving Party's obligations hereunder and who agree in writing to keep such information confidential. The Receiving Party will ensure compliance by its employees and consultants having access to the Confidential Information of the Disclosing Party and will be responsible for any breach by any such parties. The Receiving Party will notify the Disclosing Party without delay if it has reason to believe that any Confidential Information of the Disclosing Party has been used or disclosed in violation of this Section.

9.5. *Return of Confidential Information.* Promptly upon the written request of the Disclosing Party or upon termination of this Agreement, the Receiving Party will return to the Disclosing Party or destroy all copies of the Disclosing Party's Confidential Information.

9.6. *Legal Proceedings.* In the event that the Receiving Party becomes legally compelled to disclose any of the Confidential Information of the Disclosing Party, the Receiving Party will provide the Disclosing Party with prompt notice so that the Disclosing Party may seek a protective order or other appropriate remedy.

9.7. *Remedy.* Each Party acknowledges that the other Party will not have an adequate remedy in the event that it breaches the provisions of this Agreement regarding Confidential Information and that such Party may suffer irreparable damage and injury in such event. The breaching Party agrees that the non-breaching Party, in addition to seeking any other available rights and remedies as may apply, will be entitled to seek an injunction restraining the breaching Party from committing or continuing such violation.

## 10. General Provisions

10.1. *Transfer or Assignment.* A Party will not have the right to transfer or assign this Agreement or rights granted under it except in connection with (a) the sale of all or substantially all of the Party's assets or a line of business sale; (b) the sale of a majority of the capital stock of the Party or (c) the merger of the Party with another entity. In each such instance, the Party may transfer the Agreement to the acquirer or surviving company (in the case of a merger). Any such transfer or assignment will become effective only if and when the transferee or assignee agrees in writing to be bound by the terms of this Agreement.

10.2. *Force Majeure.* Neither Party will be responsible for any delay or failure in performance resulting from acts beyond such Party's control ("Force Majeure"). Force Majeure will include but not be limited to: acts of God, government or war, riots or strikes, epidemics, fires, floods, or disasters. Force Majeure may not extend any payment obligation by more than fifteen (15) days.

10.3. *Publicity.* All public announcements of the relationship of Producer and Customer under this Agreement shall be subject to the prior written approval of both Parties; provided, however, that Producer may list Customer as a customer of Producer on its web site and in marketing materials, press releases, and other promotional documents subject to Customer's approval.

10.4. *Non-Solicitation.* During the term of this Agreement and for a period of one (1) year thereafter, each Party agrees not to directly or indirectly solicit for employment any employee of the other Party who is or was materially involved in providing services pursuant to this Agreement unless the other Party consents in writing. This provision does not prevent general job solicitations, such as web and newspaper postings.

10.5. *No Agency.* Producer is an independent contractor and neither Party's employees will be considered employees of the other Party for any purpose. This Agreement does not create a joint venture or partnership, and neither Party has the authority to bind the other to any third Party.

10.6. *Notices.* Any notice to be given hereunder will be in writing and addressed to the Party and address stated below or such other address as the Party may designate from time to time by written notice. Except as otherwise expressly provided in this Agreement, notices hereunder will be deemed given and effective: (i) if personally delivered, upon delivery, (ii) if sent by overnight rapid-delivery service with tracking capabilities, upon receipt; (iii) if sent by fax or electronic mail, at such time as the Party that sent the notice receives confirmation of receipt by the applicable method of transmittal, or (iv) if sent by certified or registered United States mail, upon receipt.

For notice to Customer:

at

For notice to Producer: Chris Albury, CEO, Neubus Inc. at 2300 Greenhill Drive, Building 9, Round Rock, TX 78664

10.7. *Governing Law.* This Agreement will be governed and construed in accordance with the laws of the State of Texas without regard to the conflicts of laws or principles thereof and applicable US federal law. Any and all disputes, claims or litigation arising from or related in any way to this Agreement or any provisions herein will be resolved exclusively in the state and federal courts located in Travis County, Texas. The Parties hereby waive any objections against and expressly agree to submit to the personal jurisdiction and venue of such state or federal courts.

10.8. *Entire Agreement; Amendment.* This Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements and understandings, whether written or oral, relating to the subject matter of this Agreement. This Agreement may be amended or modified only by a written instrument executed by both Parties.

10.9. *Miscellaneous.* No delay or omission by either Party in exercising any right under this Agreement will operate as a waiver of that or any other right. A waiver or consent given by either Party on any one occasion will be effective only in that instance and will not be construed as a bar or waiver of any right on any other occasion. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original (a facsimile will be deemed an original), but all of which taken together will constitute one and the same instrument. If any provision of this Agreement is found to be invalid by any court or arbitrator having competent jurisdiction, the invalidity of such provision will not affect the validity of the remaining provisions.

IN WITNESS WHEREOF, the Parties have executed this Production Services Agreement on the date first above written.

Producer: \_\_\_\_\_

Customer: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

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

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

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

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

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

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

**EXHIBIT A: PRICING TABLE**

## **EXHIBIT B: PROJECT SPECIFICATIONS**

### **Introduction**

has requested that Neubus provide

documents based on:

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### **Specifications**

- Neubus will provide images in their existing format (PDF or TIFF)
- Neubus will continue to provide a monthly delivery of new images and data.
- will provide an FTP account for electronic delivery