

PUBLIC SERVICES CONTRACT
(ORS Chapter 279B)
by and between COLUMBIA COUNTY and Futurity IT, Inc.

This Agreement is made and entered into by and between COLUMBIA COUNTY, a political subdivision of the State of Oregon, hereinafter referred to as "County," and FUTURITY IT, INC., hereinafter referred to as "Contractor," for Orion Damage Assessment Software

WITNESSETH:

IT IS HEREBY AGREED by and between the parties above-mentioned, in consideration of the mutual promises hereinafter stated, as follows:

1. Effective Date. This Agreement is effective on the last date signed by the parties, below.
2. Contract Term. The Agreement shall be in effect for one (1) year from the effective date. Unless notice of termination is given at least sixty (60) days prior to the expiration of the initial term or any renewal term, or this Agreement is otherwise terminated pursuant to Section 17, below, this Agreement shall automatically renew for four (4) additional one (1) year terms.
3. Contractor's Services and Contract Documents. Contractor agrees to provide services consistent with this Agreement and Contractor's Scope of Work and Subscription Agreement, which is attached hereto as Exhibit A and incorporated herein by this reference. In case of conflict between the Contract Documents, this Agreement shall control over Exhibit A.
4. Consideration. County shall pay Contractor on a fee-for-service basis, an amount not to exceed \$6,750, said amount to be the complete compensation to Contractor for the services performed under this Agreement. These fees shall include all expenses. Unless otherwise agreed to in writing by the parties, payment shall be made as set forth in Exhibit A. Any increase in renewal fees shall not exceed 3% per year. This Agreement is subject to the appropriation of funds by County, and/or the receipt of funds from state and federal sources. In the event sufficient funds shall not be appropriated, and/or received, by County for the payment of consideration required to be paid under this Agreement, then County may terminate this Agreement in accordance with Section 16 of this Agreement.
5. Contract Representatives. Contract representatives for this Agreement shall be:

FOR COUNTY
Steve Pegram, Director
Emergency Management Department
Columbia County
230 Strand Street
St. Helens, OR 97051
(503)366-3964
steve.pegram@columbiacountyor.gov

FOR CONTRACTOR
Tim Krieger, Contracts Manager
Futurity IT, Inc.
201 Spear Street
Suite 1100
San Francisco, CA 94105
888-384-0970 ext. 809
tkrieger@FuturityIT.com

All correspondence shall be sent to the above addressees when written notification is necessary. Contract representatives can be changed by providing written notice to the other

party at the address listed.

6. Permits - Licenses. Unless otherwise specified, Contractor shall procure all permits and licenses, pay all charges and fees and give all notices necessary for performance of this Agreement prior to commencement of work.
7. Compliance with Codes and Standards. It shall be the Contractor's responsibility to demonstrate compliance with all applicable building, health and sanitation laws and codes, and with all other applicable Federal, State and local acts, statutes, ordinances, regulations, provisions and rules. Contractor shall engage in no activity which creates an actual conflict of interest or violates the Code of Ethics as provided by ORS Chapter 244, or which would create a conflict or violation if Contractor were a public official as defined in ORS 244.020.
8. Reports. Contractor shall provide County with periodic reports about the progress of the project at the frequency and with the information as prescribed by the County.
9. Independent Contractor. Contractor is engaged hereby as an independent contractor and shall not be considered an employee, agent, partner, joint venturer or representative of County for any purpose whatsoever. County does not have the right of direction or control over the manner in which Contractor delivers services under this Agreement and does not exercise any control over the activities of the Contractor, except the services must be performed in a manner that is consistent with the terms of this Agreement. County shall have no obligation with respect to Contractor's debts or any other liabilities of Contractor. Contractor shall be responsible for furnishing all equipment necessary for the performance of the services required herein. In addition:
 - A. Contractor will be solely responsible for payment of any Federal or State taxes required as a result of this Agreement.
 - B. This Agreement is not intended to entitle Contractor to any benefits generally granted to County employees. Without limitation, but by way of illustration, the benefits which are not intended to be extended by this Agreement to the Contractor are vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, social security, workers' compensation, unemployment compensation, or retirement benefits (except insofar as benefits are otherwise required by law if the Contractor is presently a member of the Public Employees Retirement System).
 - C. The Contractor is an independent contractor for purposes of the Oregon workers' compensation law (ORS Chapter 656) and is solely liable for any workers' compensation coverage under this Agreement. If the Contractor has the assistance of other persons in the performance of the Agreement, the Contractor shall qualify and remain qualified for the term of this Agreement as a carrier-insured or self-insured employer under ORS 656.407. If the Contractor performs this Agreement without the assistance of any other person, unless otherwise agreed to by the parties, Contractor shall apply for and obtain workers' compensation insurance for himself or herself as a sole proprietor under ORS 656.128.
10. Statutory Provisions. Pursuant to the requirements of ORS 279B.220 through 279B.235 and Article XI, Section 10 of the Oregon Constitution, the following terms and conditions are made a part of this Agreement:

- A. Contractor shall:
- (1) Make payment promptly, as due, to all persons supplying to Contractor labor or material for the performance of the work provided for in this Agreement. [ORS 279B.220 (1)]
 - (2) Pay all contributions or amounts due the Industrial Accident Fund from the Contractor or any subcontractor incurred in the performance of this Agreement. [ORS 279B.220 (2)]
 - (3) Not permit any lien or claim to be filed or prosecuted against County on account of any labor or material furnished. [ORS 279B.220 (3)]
 - (4) Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. [ORS 279.220 (4)]
- B. Contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation, furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness and injury, to the employees of Contractor, of all sums that Contractor agrees to pay for the services and all moneys and sums that Contractor collects or deducts from the wages of employees under any law, contract or agreement for the purpose of providing or paying for such services. [ORS 279B.230 (1)]
- C. Contractor shall pay employees at least time and a half pay for work the employees perform under this Agreement on the legal holidays specified in a collective bargaining agreement or in ORS 279B.020 (1)(b)(B) to (G) and for all time the employee works in excess of 10 hours in any one day or in excess of 40 hours in any one week, whichever is greater. [ORS 279B.235 (5)(a)]
- D. Contractor shall notify employees in writing, who work under this Agreement, either at the time of hire or before work begins on this Agreement, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the contractor may require the employees to work. [ORS 279A.235 (5)(b)]
- E. All subject employers working under this Agreement are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126. [ORS 279B.230 (2)]
- F. This Agreement is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10 of the Oregon Constitution, and is contingent upon funds being appropriated therefor. Any provisions herein which would conflict with law are deemed inoperative to that extent.
11. Non-Discrimination. Contractor agrees that no person shall, on the grounds of race, color, creed, national origin, sex, marital status, handicap or age, suffer discrimination in the performance of this Agreement when employed by Contractor. Contractor certifies that it has not discriminated and will not discriminate, in violation of ORS 279A.110, against a disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emerging small business enterprise that is certified under ORS 200.055 in awarding a subcontract.

12. Tax Compliance. As required by ORS 279B.045, Contractor represents and warrants that Contractor has complied with the tax laws of this state and all political subdivisions of this state, including but not limited to ORS 305.620 and ORS Chapters 316, 317, and 318. Contractor shall continue to comply with the tax laws of this state and all political subdivisions of this state during the term of the public contract. Contractor's failure to comply with the tax laws of this state or a political subdivision of this state before the Contractor executes this Agreement or during the term of this Agreement is a default for which County may terminate this Agreement and seek damages and other relief available under the terms of this Agreement or under applicable law. Contractor hereby certifies, under penalty of perjury, as provided in ORS 305.385(6), that to Contractor's knowledge, Contractor is not in violation of any of the tax laws of this state or political subdivision of this state, including but not limited to ORS 305.380(4).
13. Nonassignment; Subcontracts. Contractor shall not assign, subcontract or delegate the responsibility for providing services hereunder to any other person, firm or corporation without the express written permission of County, except as provided in Contractor's Proposal. If using subcontractors, as approved by County, Contractor shall be responsible for all of its subcontractors' acts and omissions to the same extent as if the subcontractors were employees of Contractor.
14. Nonwaiver. The failure of the County to enforce any provision of this Agreement shall not constitute a waiver by the County of that or any other provision of the Agreement.
15. Indemnity.
 - A. General Indemnification. Contractor shall indemnify, defend, save, and hold harmless County, its officers, agents and employees, from any and all claims, suits or actions of any nature, including claims of injury to any person or persons or of damage to property, caused directly or indirectly by reason of any error, omission, negligence, or wrongful act by Contractor, its officers, agents and/or employees arising out the performance of this agreement. This indemnity does not apply to claims, suits or actions arising solely out of the negligent acts or omissions of County, its officers, agents or employees.
 - B. Patents, Copyrights, and Proprietary Rights Indemnification. Without limiting the general indemnification, above, Contractor shall indemnify, defend, save and hold harmless County, its officers, agents, and employees, from any claim or suit brought against County arising from claims of violation of United States patents or copyrights resulting from the Contractor's or County's use of any equipment, technology, documentation, and/or data developed in connection with the services and products described in this Agreement. In the event County is required to pay monies defending such claims, resulting from Contractor's lack of cooperation or success in representing County's interest, or in the event County is ordered to pay damages as a result of a judgment arising out of an infringement of patents and/or copyrights, Contractor agrees to fully reimburse County for all monies expended in connection with these matters. County retains the right to offset against any amounts owed Contractor any such monies expended by County in defending itself against such claims.
16. Insurance. For the duration of the Agreement, Contractor shall, at its own expense, purchase and maintain, and shall ensure that its subcontractors purchase and maintain, from a company or companies licensed to do business in the State of Oregon, the following

insurance with limits not less than those indicated, or greater if required by law:

- A. Workers' Compensation and employer's liability insurance meeting statutory limits mandated by state and federal laws. Employer's liability insurance with coverage limits of not less than \$500,000 must be included.
 - B. Commercial General Liability Insurance covering bodily injury, death, and property damage in the amount of \$2,000,000 per occurrence (for all claimants for claims arising out of a single accident or occurrence). This insurance shall include personal injury liability, products and completed operations.
 - C. Cyber liability insurance in the amount of \$2,000,000 to cover network security, breach of data, and coverage for regulatory fines and fees imposed against County due to failures in products and services provided under this Contract. Cyber liability coverage must include errors, omissions, negligent acts, denial of service, media liability (including software copyright), dishonesty, fraudulent or criminal acts by a person or persons whether identified or not, intellectual property infringement, computer system attacks, unauthorized access and use of computer system, regulatory actions, and contractual liability.
 - D. The contractor or its insurer must provide thirty (30) days' written notice to County before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).
 - E. Contractor shall provide for itself and its subcontractors, if any, certificate(s) of insurance for all required insurance before the contractor performs under the contract. With the exception of errors and omissions insurance, the certificate(s) shall be accompanied by an Additional Insured Endorsement naming Columbia County, its officers, agents and employees as additional insureds.
 - F. The insurance requirements herein supersede those in any attached exhibit.
17. Termination. This Agreement may be terminated at any time in whole or in part by mutual consent of both parties. Either party may terminate this Agreement, with or without cause, upon sixty (60) days written notice prior to the end of any term of its intent not to renew. Notice must be delivered by registered or certified mail, or in person, to the other party. County may also terminate this Agreement, effective upon delivery of written notice to Contractor, or at such later date as may be established by County under the following conditions:
- A. If Contractor fails to perform the work in a manner satisfactory to County.
 - B. If any license or certificate required by law or regulation to be held by Contractor to provide the services required by this Agreement is for any reason denied, revoked, or not renewed.
 - C. If funding becomes inadequate to allow the work to continue in accordance with the project schedule.

In case of termination, Contractor shall be required to repay to County the amount of any funds advanced to Contractor which Contractor has not earned or expended through the provision of services in accordance with this Agreement. However, Contractor shall be

entitled to retain all costs incurred and fees earned by Contractor prior to that termination date, and any amounts remaining due shall be paid by County not to exceed the maximum amount stated above and decreased by any additional costs incurred by County to correct the work performed.

The rights and remedies of County related to any breach of this Agreement by Contractor shall not be exclusive, and are in addition to any other rights and remedies provided by law or under this Agreement. Any termination of this Agreement shall be without prejudice to any obligations or liabilities of either party already accrued before such termination.

18. Time of the Essence. The parties agree that time is of the essence in this Agreement. Failure of Contractor to complete the project within the time stated herein, will be a material breach of the Agreement unless such failure is due to the failure of the County to provide information or permit approvals in a timely manner which causes delay in the Contractor's performance.
19. Ownership of Documents. All documents of any nature and/or electronic data including, but not limited to, working papers, reports, material necessary to understand the documents and/or data, drawings, works of art and photographs, produced, prepared and/or compiled by Contractor pursuant to this Agreement are the property of County, and it is agreed by the parties that such documents are works made for hire. Contractor hereby conveys, transfers, and grants to County all rights of reproduction and the copyright to all such documents.
20. Confidential Information.
 - A. Access and Protection. Contractor understands that in performing this Agreement, Contractor may have access to and possession of confidential information. Furthermore, Contractor may have access to County information that is exempt or not subject to disclosure under Oregon Public Records Laws. Such information shall be considered confidential information for purposes of this Agreement. Contractor, and each of its officers, employees, and agents shall, subject to the applicable County, State, and Federal Government laws and regulations, maintain all confidential information in the strictest confidence and will not at any time use, publish, reproduce or disclose any confidential information, except as authorized in writing by County, or to perform its obligations as authorized in this Agreement. Contractor shall take all steps necessary to safeguard the confidential information against unauthorized disclosure, reproduction, publication, or use, and to satisfy its obligations under this Agreement. Such obligations shall survive the termination or expiration of this Agreement.
 - B. Security Requirements. Contractor and its officers, employees, subcontractors, and agents shall at all times comply with all County security standards, practices, and procedures with respect to information and materials that come into Contractor's possession and to which Contractor gains access under this Agreement.
 - C. Return. Contractor shall promptly return to County, upon its request, all of County's confidential information.
 - D. Injunctive Relief. Contractor will immediately report to County any and all unauthorized disclosure or use of County's confidential information of which it or its staff is aware or has knowledge. Contractor acknowledges that any publication or disclosure of County's confidential information to others may cause immediate and

irreparable harm to County and, if Contractor should publish or disclose County's confidential information to others, or threaten to publish or disclose County's confidential information, County shall immediately be entitled to injunctive relief. County shall be entitled to such injunctive relief without having to pursue its other remedies herein, including Termination and Dispute Resolution.

- E. Non-disclosure of Other County Information. The use or disclosure by Contractor of any County information not necessary for, nor directly connected with, the performance of this Agreement is prohibited, except upon the express written consent of County.
- F. Documentation. Contractor shall maintain up-to-date documentation indicating compliance with County security and confidentiality requirements governing data use and access.
- G. Subpoena. In the event that a subpoena or other legal process in any way concerning County's confidential information is served upon Contractor, then Contractor agrees to notify County in the most expeditious fashion possible following receipt of such subpoena or other legal process and to cooperate with County, at County's expense, in any lawful effort by County to contest the legal validity of such subpoena or other legal process.

21. Electronic Data.

- A. County Data. County reserves all right, title and interest in any and all electronic data, regardless of where the data is stored, which County has transferred to Contractor or entered into Contractor's system, including electronic data that has resulted from the conversion of County's original data. County retains the right to use Contractor's services to access and retrieve County's data stored on Contractor's infrastructure at County's sole discretion.
- B. Data Location. Contractor shall provide its services to the County and its end users solely from data centers in the United States. Storage of County data at rest shall be located solely in the United States. Contractor shall not allow its personnel or subcontractors to store County data on portable devices, including personal computers, except for devices that are used and kept only at its United States data centers. Contractor shall permit its personnel and subcontractors to access County data remotely only as required to provide technical support.
- C. Transition. Upon termination or expiration of this Agreement, Contractor shall in a timely manner make available to County all of County's data that is in Contractor's possession. Contractor shall cooperate with County and assist in the transfer and conversion of County's data to an accessible, vendor-neutral electronic format that County specifies. If County has a replacement service provider, Contractor agrees to assist with a timely transition to the new service provider. In the event of a termination for cause, Contractor shall provide at no cost to County reasonable transition and termination services, including but not limited to necessary extraction and conversions services required for import of data into new service provider's system.
- D. Loss or Compromise of Data. Contractor shall immediately notify County in writing of any use or disclosure of County data not authorized by this Agreement, including any

reasonable belief that an unauthorized individual has accessed County data. Contractor's notice shall identify the nature of the breach and what the Contractor has done or will do to mitigate the effect of the unauthorized use or disclosure. Furthermore, Contractor agrees to investigate the breach and cooperate with County's investigation, if any. Contractor shall perform a root cause analysis of the breach and submit such analysis to County. Contractor shall be responsible for all costs incurred as a result of the unauthorized use or disclosure of County data due to any act, error or omission, negligence, misconduct or breach on the part of Contractor. In addition to the foregoing, the following applies:

- (1) Personally Identifiable Information (PII) and Personal Health Information (PHI). Contractor shall notify County as soon as practicable but no later than 24 hours of becoming aware of any unauthorized use or disclosure of PII or PHI. Contractor shall comply with all County, State, and Federal Government laws and regulations, including but not limited to the Oregon Identity Theft Protection Act, codified at ORS 646A.600 et seq., regarding the protection of PII and PHI.
- (2) Reserved.

E. The provisions of this section survive the termination or expiration of this Agreement.

22. Reserved.

23. Mandatory Updates. Contractor shall provide at no cost to County any updates that are mandated by changes to State or Federal law, rule or regulation.

24. Warranty.

- A. Contractor represents and warrants that it has the right to grant the licenses set forth under this Agreement. Contractor further represents and warrants that it has good and marketable title to the software and any equipment sold hereunder free and clear from all liens, encumbrances, and claims of infringement of patent, copyright, trade secret or other proprietary rights of third parties. Contractor further represents and warrants that neither the software in the form delivered by Contractor to County, nor any modifications, enhancements, updates or upgrades thereto, nor the normal use by County, will infringe on any patent, copyright, trademark, trade secret or other proprietary right of any third party.
- B. In the event that any third party makes a claim or files a lawsuit challenging County's right to use the software or equipment, Contractor shall defend and indemnify County and hold it harmless for any and all losses, liabilities, judgments, damages, awards and costs (including legal fees and expenses) arising out of the claim or lawsuit, and for any monies paid in settlement. In resolving any such infringement claim, Contractor shall, in its reasonable discretion, either procure a license to enable County to continue to use the software or develop or obtain a non-infringing substitute acceptable to the County at Contractor's cost.
- C. Contractor represents and warrants that the software and related products described with this Agreement will perform in accordance with all documentation, Contract Documents, Contractor marketing literature, and any other communication attached to or referenced in this Agreement.

25. Disaster Recovery/Business Continuity. Throughout the term of this Agreement and at all times in connection with its actual or required performance of the services under this Agreement, Contractor shall maintain a Business Continuity and Disaster Recovery Plan and implement such plan in the event of any unplanned interruption of hosted services. Contractor will actively test, review and update the plan on at least an annual basis using industry best practices as guidance. Contractor will provide County with copies of all such updates to the plan within fifteen (15) days of its adoption by Contractor.
26. Reserved.
27. Effect of Contractor Bankruptcy. All rights and licenses granted by Contractor under this Agreement are and shall be deemed to be rights and licenses to “intellectual property,” and the subject matter of this Agreement is and shall be deemed to be “embodiments” of “intellectual property” for the purposes of and as such terms are used in and interpreted under section 365(n) of the United States Bankruptcy Code (the “Code”) (11 U.S.C. § 365(n) (2010)). County has the right to exercise all rights and elections under the Code and all other applicable bankruptcy, insolvency and similar laws with respect to this Agreement. Without limiting the generality of the foregoing, if Contractor or its estate becomes subject to any bankruptcy or similar proceeding, subject to the County’s rights of election, all rights and licenses granted to the County under this Agreement will continue subject to the respective terms and conditions of this Agreement, and will not be affected, even by Contractor’s rejection of this Agreement.
28. Mediation. In the event of a dispute between the parties arising out of or relating to this Contract, the parties agree to submit such dispute to a mediator agreed to by both parties as soon as practicable after the dispute arises, and preferably before commencement of litigation or any permitted arbitration. The parties agree to exercise their best efforts in good faith to resolve all disputes in mediation.
29. Choice of Law. This Agreement shall be governed by the laws of the State of Oregon.
30. Venue. Venue relating to this Agreement shall be in the Circuit Court of the State of Oregon for Columbia County, located in St. Helens, Oregon.
31. Attorneys’ Fees. In the event an action, suit or proceeding, including appeal therefrom, is brought for failure to observe any of the terms of this Agreement, each party shall be responsible for its own attorneys’ fees, expenses, costs and disbursements for said action, suit, proceeding or appeal.
32. Severability. If any provision of this Agreement is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holdings shall not affect the validity of the remaining portions hereof.
33. No Third-Party Rights. This Agreement is solely for the benefit of the parties to this Agreement. Rights and obligations established under this Agreement are not intended to benefit any person or entity not a signatory hereto.
34. Counterparts. This Agreement may be executed in several counterparts (facsimile or otherwise), all of which when taken together shall constitute an agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each

copy of this Agreement so executed shall constitute an original.

35. ENTIRE AGREEMENT. THIS AGREEMENT (INCLUDING THE CONTRACTOR'S PROPOSAL) CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES. NO WAIVER, CONSENT, MODIFICATION OR CHANGE OF TERMS OF THIS AGREEMENT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH PARTIES. SUCH WAIVER, CONSENT, MODIFICATION OR CHANGE, IF MADE, SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS AGREEMENT. CONTRACTOR, BY THE SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE(S) BELOW, HEREBY ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

CONTRACTOR:

OWNER:

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

By: 

By: _____
Alex Tardif, Chair

Name: Heidi Hessler

By: _____
Margaret Magruder, Commissioner

Date: 2/18/2020

By: _____
Henry Heimuller, Commissioner

Approved as to form

Date: _____

By: _____
Office of County Counsel

STATEMENT OF WORK

Effective _____

To the SaaS Subscription Agreement Between

Futurity IT, Inc. ("Futurity")

And

COLUMBIA COUNTY EMERGENCY MANAGEMENT ("Customer"), Dated _____ ("Agreement")

1. **Software Subscription.** Futurity shall provide access to the customer to the Orion Damage Assessment Software subject to the terms and conditions of the Agreement. A detailed description of the software is attached hereto as **Appendix 1**.

2. **Services and Support.**

2.1. Futurity Setup Services: the subscription shall include up to four (4) hours of phone/online setup/implementation support services for the Program. Additional training is available separately at an additional cost.

2.2. Online Training: up to four (4) hours of web-based administrator training for the Program. Additional training is available separately for an additional cost.

2.3. Emergency Technical Support: twenty-four (24) hour daily support during Emergency Operations Center activations.

2.4. Coverage Area: the license coverage area shall be limited to the geographic boundaries of **COLUMBIA COUNTY**,

OR

3. **Term.** The initial term of this agreement shall be one (1) year, commencing on the effective date listed above in the attached agreement.

4. **Fees.**

4.1 **Software License Subscription Fee:**

Price:	\$6,750
Number of Permitted Users:	1000
Amount Payable:	\$6,750

4.2 **Services Fee:**

4.2.1 Futurity Setup Services: included in the amount of the Subscription Fee for the Initial Term at no additional cost.

4.2.2 Online Training: up to four (4) hours of web-based administrator training for the Program. Additional training is available separately for an additional cost.

4.2.3 Emergency Technical Support: included in the amount of the Subscription Fee for the Initial Term at no additional cost.

5. **Renewal Terms.** This SOW agreement shall automatically renew at the following Renewal Fee for successive one-year terms unless either party gives the other written notice of termination at least sixty (60) days prior to expiration of the then-current term.

Price:	\$3,750
Number of Permitted Users:	1000
Amount Payable:	\$3,750

5.1. Online Training: Up to two (2) hours of web-based administrator training for the Program. Additional training is available separately for an additional cost.

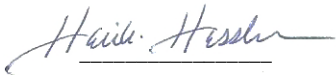
5.2. Emergency Technical Support: included in the amount of the Subscription Fee for the Initial Term at no additional cost.

6. General.

Any change to this Statement of Work shall be subject to mutual written agreement of the parties. Additional Statements of Work may be added to this Agreement by mutual agreement of the parties.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives to be effective as of the Effective Date.

Futurity IT, Inc.

By: 
Name: Heidi Hessler
Title: CEO
Date: 2/19/2020

Columbia County Emergency Management

By: _____
Name: Steve Pegram
Title: Emergency Management Director
Date: _____

Appendix 1

Detailed Description of Orion Damage Assessment Software: “see Orion Flyer 2019”



The flyer features a background image of a person in a dark jacket holding a tablet displaying the Orion logo. The background shows a damaged house with debris. The Orion logo is a blue shield with a white starburst pattern and the word "ORION" in red. Below the logo, the text reads "Disaster Pre-Planning & Damage Assessment Solution".

ORION
Disaster Pre-Planning &
Damage Assessment Solution

MOBILE DAMAGE ASSESSMENT

DISASTER PREPLANNING

AUTO-FILL FEMA FORMS

Streamline Damage Assessment & Pre-Planning

- 1 BETTER DOCUMENTATION WITH MOBILE APP**
 - Inventory pictures and details of critical public infrastructure before the disaster.
 - Conduct damage assessments that integrate property assessor data and geo-location technology.
- 2 SITUATIONAL AWARENESS**
 - Dashboard provides real time GIS mapping and auto-aggregates all information from the field.
 - FEMA reports are instantly generated and auto-filled.
 - Project manager tracks labor and equipment costs with FEMA cost codes.
- 3 INSTANTANEOUS REPORTING**
 - Create auto-filled FEMA reports with one click – including: IA Summary, Public Assistance, FEMA PDA, SBA Summary, Special Needs Households, FEMA 90-49, and more.

GO MOBILE
Instant field data capture
sync with team & EOC

**CLOUD-BASED
DASHBOARD & GIS MAP**
Means you have
real-time situational
awareness anywhere

AUTO-FILL FEMA FORMS
Save time and increase
reimbursements with
better documentation

+ 888.384.0970

**201 Spear Street, Ste. 1100
San Francisco, CA 94105**

www.OrionProtected.com

Contact us:
For an online demonstration or free trial of Orion.
See how we can save you valuable staff time and
help increase your reimbursements after a disaster!

Sales@OrionProtected.com



FUTURITY IT, INC SAAS SUBSCRIPTION AGREEMENT

This SaaS Subscription Agreement (the “**Agreement**”) is entered into and made effective as of _____ (the “**Effective Date**”), by and between Futurity IT, Inc. a Delaware Corporation having its principal place of business located at 201 Spear Street, Suite 1100, San Francisco, California 94105 (“**Futurity**”), and Columbia County Emergency Management, a department of Columbia County, a political subdivision in the State of Oregon, having its principal place of business located 230 Strand Street, St. Helens, OR 97051 (the “**Customer**”) (each, a “**Party**”, and together, the “**Parties**”).

WHEREAS, Futurity is the developer and provider of certain software programs and makes said programs available for its customers to use on a Software-as-a-Service (“**SaaS**”) basis; and

WHEREAS, Customer wishes to: (i) subscribe to access and use the Futurity software program that is described in the corresponding Statement of Work (“**SOW**”) (including any utility, application program interface or tools related thereto), whether or not such software is locally installed on Customer’s systems or accessed by the Customer online or by any remote means (the “**Program**”) on a SaaS basis; and (ii) receive the related services from Futurity that are described in the SOW (the “**Services**”); and Futurity wishes to provide a subscription to the Program and the Services to Customer, all subject to the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement, the sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Subscription

1.1. **Program**. Subject to the terms and conditions of this Agreement, Futurity hereby grants Customer a non-exclusive, non-transferable right to access and use the Program, during the Term (as defined below), solely for Customer’s internal business purposes, subject to Customer’s compliance with any and all of the terms and conditions set forth in this Agreement, including without limitation, the full payment of the SaaS subscription fee for the Programs set forth in the SOW attached hereto (the “**Subscription Fee**”).

1.2. **Documentation**. Futurity may make available certain Documentation to Customer to be used by Customer for its internal business purposes and solely in connection with Customer’s use of the Program during the Term (the “**Purpose**”). Customer may print or copy the Documentation as needed for the Purpose, provided that all applicable copyright notices are included therein. The Documentation shall be considered part of Futurity’s Confidential Information (as defined below). Unless context otherwise requires, the term “**Program**” shall include the Documentation. “**Documentation**” means Futurity’s standard user documentation, whether in hard copy, or in any electronic form or other media (generally made available by Futurity to its Program customers), describing the use, features and operation of the Program.

2. Services

2.1. Futurity shall provide Customer with the Services listed in the SOW.

2.2. Customer hereby agrees to cooperate with Futurity to enable the provision of the Services, and comply with instructions provided by Futurity to Customer in connection with Futurity’s provision of Services hereunder; and acknowledges that the

provision of certain Services by Futurity may be dependent on Customer providing the foregoing cooperation.

3. Use of Customer Account. A Customer account will be created in connection with Customer’s use of the Program (the “**Account**”), to be accessed and/or used solely by employees, agents and independent contractors of the Customer who are explicitly authorized by Customer to use the Program and for whom subscriptions to a Program have been authorized (each a “**Permitted User**”). Customer acknowledges and agrees: (i) to keep, and ensure that Permitted Users keep all Account login details and passwords secure at all times; (ii) to remain solely responsible and liable for the activity that occurs in Customer’s Account, (iii) that the login details for each Permitted User may only be used by that Permitted User, and that multiple people may not share the same login details, all in accordance with the number of Permitted Users specified in the SOW and (iv) to promptly notify Futurity in writing if Customer becomes aware of any unauthorized access or use of Customer’s Account or the Program. Customer shall ensure that the Permitted Users comply with the terms of this Agreement and shall be solely responsible for any breach of this Agreement by a Permitted User.

4. Restrictions on Use. Customer shall only access the Program via the Futurity-designated web portal and in connection with Customer’s Account. Customer must not, and shall not allow any Permitted User or any other third party to: (i) circumvent, disable or otherwise interfere with security-related features of the Program or features that enforce limitations on use of the Program; (ii) violate or abuse password protections governing access to the Program; (iii) allow any third party to use the Program; (iv) sell, rent, lease, license or timeshare the Program or use it in any service bureau arrangement; (v) copy, modify, reverse engineer, decompile, disassemble or derive, or attempt to derive, the source code of, the Program or any components thereof; (vi) use the Program to develop a competing service or product; (vii) use any automated means to access the Program; (viii) except during emergencies, take any action that imposes or may impose a disproportionately large load on Futurity’s infrastructure; (ix) knowingly interfere or attempt to interfere with the integrity or proper working of the Program; (x) remove, deface, obscure, or alter Futurity’s, or any third parties, copyright notices, trademarks, or other proprietary rights affixed to or provided as part of the Program, or use or display logos of the Program differing from those of Futurity; (xi) access, store, distribute, or transmit during the course of its use of the Services any Malicious Code or unlawful, threatening, obscene or infringing material; (xii) use the Program and/or the Services in a manner that would violate applicable data privacy laws or for any other unlawful purpose; (xiii) unlawfully use the Services and/or the Program to track or collect personally identifiable information of the Customers’ data subjects; and/or (xiv) use the Program in any other unlawful manner or in breach of this Agreement. For the purposes of this Agreement, “**Malicious Code**” means software viruses, Trojan horses, worms, malware or other computer instructions, devices, or techniques that erase data or programming, infect, disrupt, damage, disable, or shut down a computer system or any component of such computer system. Customer’s breach of Sections 3-4 shall be deemed a material breach of this Agreement.

5. Customer Data

5.1. License. While using the Program, Customer may choose to provide, upload, import, transmit, post, or make accessible (collectively, “**Provide**”) to Futurity certain Customer data or software (the “**Customer Data**”). Customer grants Futurity a non-exclusive license to use, process, display, copy and store the Customer Data in order to provide the Program to Customer or provide the Services hereunder.

5.2. Representations. Customer represents and warrants that: (i) Customer owns or has obtained the rights to all of the Intellectual Property Rights underlying the Customer Data, and Customer has the right and has obtained all rights required under any applicable laws (including but not limited to privacy laws) to provide Futurity the license granted in Section 5.1 to use such Customer Data in accordance with its terms; and (ii) the Customer Data does not infringe or violate any Intellectual Property Rights, privacy or publicity rights of any third party; and (iii) Customer will use the Program and Services in compliance with any applicable laws, including without limitation privacy protection laws, including any applicable laws relating to the collection of information from Customer's data subjects (among others, the Customer acknowledge that, as applicable, the database of the Customer Data has been duly registered in the applicable governmental authorities) and (iv) it has received any consent required by applicable laws from its data subjects (including but not limited to its employees) with respect to any monitoring of Customer Data collected relating to them. In addition, the Customer has received from its data subjects (including but not limited to its employees) any applicable required consents that such Customer Data will be used, processed, displayed, copied and stored by Futurity for the purpose of providing the Customer the Program and Services. Customer shall remain solely responsible and liable for the Customer Data and expressly releases Futurity from any and all liability arising from Futurity's use of the Customer Data as permitted herein. For the purposes of the Agreement, “**Intellectual Property Rights**” means: (i) patents and patent applications throughout the world, including all reissues, divisions, continuations, continuations-in-part, extensions, renewals, and re-examinations of any of the foregoing; (ii) common law and statutory trade secrets and all other confidential or proprietary or useful information that has independent value, and all know-how, in each case whether or not reduced to a writing or other tangible form; (iii) all copyrights, whether arising under statutory or common law, whether registered or not; (iv) all trademarks, trade names, corporate names, company names, trade styles, service marks, certification marks, collective marks, logos, and other source of business identifiers, whether registered or not; (v) moral rights in those jurisdictions where such rights are recognized; and (vi) all other intellectual property and proprietary rights, and all rights corresponding to the foregoing throughout the world.

5.3. Security. Futurity IT Inc. agrees to implement reasonable security measures, but no less than industry standard security procedures, to protect Customer Data during the Term.

6. Rights and Title

6.1. Program. The Program is licensed and not sold to Customer. All Intellectual Property Rights and all other rights, title and interest of any nature in and to the Program, and any related content, Documentation and Services provided or made available by Futurity IT Inc. hereunder, including all modifications, upgrades, customizations and derivative works (whether or not permitted under this Agreement) thereof, are and shall remain the exclusive property of Futurity and its

licensors. Except as expressly set forth herein, nothing in this Agreement shall be construed as transferring any rights, title or interests to Customer or any third party. Futurity IT Inc. and its licensors reserve any and all rights not expressly granted in this Agreement.

6.2. Customer Data. As between the Customer and Futurity, the Intellectual Property Rights and all other rights, title and interest of any nature in and to the Customer Data are and shall remain the exclusive property of Customer and its licensors, which will be stored on Futurity's database. The Customer controls access to the Customer Data and has full administrative control over such data, including by its right to view or modify it. Except as expressly set forth herein, nothing in this Agreement shall be construed as transferring any rights, title or interests to such Customer Data to Futurity or any third party. “**Anonymous Information**” means non-identifiable information regarding use of the Program (e.g., aggregated and analytics information about use of the Program). Futurity owns all Anonymous Information collected or obtained by Futurity.

7. Consideration

7.1. Subscription Fee. Customer's access to and use of the Program is subject to Customer's up-front payment in full of the Subscription Fee for the applicable subscription period **as described in the SOW**.

7.2. Payment Terms. Payments shall be made without any right of set-off or deduction and are irrevocable and (except as expressly set forth herein) nonrefundable **in accordance with the fee schedule described in the SOW**. All Futurity invoices are payable within thirty (30) days of the date of invoice. Any amount not paid when required to be paid hereunder shall accrue interest on a daily basis until paid in full at the lesser of: (i) the rate of one and a half percent (1.5%) per month; or (ii) the highest amount permitted by applicable law.

8. Term and Termination

8.1. Term. This Agreement shall be effective as of the Effective Date and shall continue for an initial term described in the SOW unless: (i) Futurity or Customer provides the other with sixty (60) days written notice prior to the end of any term of its intent not to renew, or (ii) Customer can demonstrate an impossibility to purchase the subscription based on an unforeseen non-appropriation of funds that are required for the purchase of this subscription, or (iii) this Agreement is terminated in accordance with Section 8.2 below. If Customer continues to use the Program past any renewal date, then Customer shall be deemed to have renewed the Agreement for the following term at the rates applicable for said new term. Any increase in renewal rates shall be limited to no more than 3%.

8.2. Termination

8.2.1. Material Breach. Either party may terminate this Agreement with immediate effect if the other party materially breaches this Agreement and such breach remains uncured (to the extent that the breach can be cured) fifteen (15) days after having received written notice thereof.

8.3. Suspension. If Futurity believes that Customer is using the Program in a manner that may cause harm to Futurity or any third party, then Futurity may, upon 5 days written notice of intent to suspend, without derogating from Futurity's right to terminate this Agreement for any breach hereof, suspend Customer's access to and use of the Program and/or the Services until such time as Futurity believes the threat of harm, or actual harm, has passed.

8.4. Effect of Termination

8.4.1. General. Upon termination of this Agreement, Customer shall immediately discontinue all access and use of the Program.

8.4.2. Access to Customer Data. Upon termination of this Agreement, Customer will lose all access to any Customer Data that Futurity may be storing in order to make the Program available to Customer. Customer shall be responsible to download its Customer Data prior to termination of this Agreement. Notwithstanding the foregoing, for a period of thirty (30) days from the effective date of termination of this Agreement, Futurity will provide Customer, with a reasonable opportunity to download the Customer Data still retained by Futurity at such time. Futurity reserves the right to permanently delete any Customer Data that may be contained in Customer's Account at any time following said thirty (30) day period, and Customer agrees to waive any legal or equitable rights or remedies it may have against Futurity with respect to Customer Data that is deleted in connection thereto.

8.4.3. Survival. This Section 8 and Sections 4 (Restrictions on Used), 6 (Rights and Title), 7 (Consideration), 9 (Warranty Disclaimer), 10 (Limitation of Liability), 11 (Indemnification), 12 (Confidential Information), 13 (Privacy Policy) and 15 (Miscellaneous) shall survive termination of this Agreement.

9. Warranty Disclaimer

9.1. FUTURITY DOES NOT WARRANT THAT THE PROGRAM AND THE SERVICES WILL MEET CUSTOMER'S REQUIREMENTS OR THAT THE OPERATION OF THE PROGRAM WILL BE UNINTERRUPTED OR ERROR-FREE. FUTURITY WILL NOT BE LIABLE OR RESPONSIBLE FOR: (a) ANY TECHNICAL PROBLEMS OF THE INTERNET (INCLUDING WITHOUT LIMITATION SLOW INTERNET CONNECTIONS OR OUTAGES); AND/OR (b) ANY ISSUE THAT IS ATTRIBUTABLE TO CUSTOMER'S HARDWARE OR SOFTWARE OR CUSTOMER'S INTERNET OR DATA SERVICE PROVIDER.

9.2. FUTURITY DOES NOT OFFER A WARRANTY OR MAKE ANY REPRESENTATION REGARDING ANY CONTENT, REPORTS, INFORMATION, OR RESULTS THAT CUSTOMER OBTAINS THROUGH USE OF THE PROGRAM (COLLECTIVELY, "**REPORTS**"), OR THAT THE REPORTS ARE COMPLETE OR ERROR-FREE. THE REPORTS DO NOT CONSTITUTE LEGAL ADVICE, AND CUSTOMER UNDERSTANDS IT MUST DETERMINE FOR ITSELF THE NEED TO OBTAIN ITS OWN INDEPENDENT LEGAL ADVICE REGARDING THE SUBJECT MATTER OF ANY REPORT AND/OR ANY SOFTWARE THAT CUSTOMER USES OR IS CONSIDERING TO USE. CUSTOMER'S USE OF AND RELIANCE UPON THE PROGRAM AND ANY REPORTS IS ENTIRELY AT CUSTOMER'S SOLE DISCRETION AND RISK, AND FUTURITY SHALL HAVE NO RESPONSIBILITY OR LIABILITY

WHATSOEVER TO CUSTOMER IN CONNECTION WITH ANY OF THE FOREGOING.

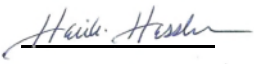
10. Limitation of Liability. FUTURITY ASSUMES NO LIABILITY FOR CUSTOMER'S USE OF THE PROGRAM, AND CUSTOMER EXPRESSLY ACKNOWLEDGES AND AGREES THAT USE OF THE PROGRAM IS AT CUSTOMER'S OWN RISK. EXCEPT FOR LIABILITY ARISING FROM FUTURITY'S INTENTIONAL MISCONDUCT OR NEGLIGENCE, FUTURITY WILL NOT BE LIABLE FOR ANY DAMAGES OR INJURIES TO ANY PERSONS OR RESULTING FROM ANY CAUSE WHATSOEVER, AND CUSTOMER FURTHER ACKNOWLEDGE THAT IN NO EVENT WILL FUTURITY BE LIABLE FOR ANY DAMAGES RESULTING FROM LOSS OF DATA, LOSS OF USE OR LOSS OF REVENUE OR PROFIT AND FUTURITY FURTHER DISCLAIMS ANY AND ALL LIABILITY FOR DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES), OR OTHER SIMILAR DAMAGES REGARDLESS OF THE FORM OF ACTION WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT PRODUCT LIABILITY OR ANY OTHER LEGAL OR EQUITABLE THEORY, EVEN IF FUTURITY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES. NOTWITHSTANDING THE ABOVE, IF FUTURITY IS FOUND TO BE LIABLE BY A FINAL JUDICIAL RULING, FUTURITY'S LIABILITY TO CUSTOMER OR TO ANY THIRD PARTY IS LIMITED TO THE CONSIDERATION CUSTOMER ACTUALLY PAID TO FUTURITY HEREUNDER DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE INDEMNIFIABLE EVENT.

11. Confidential Information. Each party may have access to certain non-public and/or proprietary information of the other party, in any form or media, including (without limitation) confidential trade secrets and other information related to the products, software, technology, data, know-how, or business of the other party, whether written or oral, and any such other information that, regardless of the manner in which it is furnished and given the totality of the circumstances, a reasonable person or entity should have reason to believe is proprietary, confidential, or competitively sensitive (the "**Confidential Information**"). Each party shall take reasonable measures, at least as protective as those taken to protect its own confidential information, but in no event less than reasonable care, to protect the other party's Confidential Information from disclosure to a third party. Neither party shall use or disclose the Confidential Information of the other party except as expressly permitted under this Agreement or by applicable law. All right, title and interest in and to Confidential Information are and shall remain the sole and exclusive property of the disclosing party. The terms of this Agreement are deemed Futurity's Confidential Information, however, Customer may disclose the terms herein to its advisers, subject to a confidentiality undertaking similar to the above.

[Remainder of Page Left Intentionally Blank]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives to be effective as of the Effective Date.

Futurity IT, Inc.

By: 
Name: Heidi Hessler
Title: CEO
Date: 02/18/2020

Columbia County Emergency Management

By: _____
Name: Steve Pegram
Title: Emergency Management Director
Date: _____

[Signature Page- Futurity IT, Inc. SaaS Subscription Agreement]