

Contract for Services No. [REDACTED]

THIRD AMENDMENT  
TO  
CONTRACT FOR SERVICES

THIS THIRD AMENDMENT to the Contract for Services dated January 28, 2015 and made effective January 14, 2015 is made and entered into June 26 2018 (the "Third Amendment"), between Elation Systems, Inc., having an office located at 5000 Hopyard Road, Suite 405, Pleasanton, CA 94588 ("Contractor"), and the HOUSING TRUST FUND CORPORATION, having its principal office at 38-40 State Street, Albany, New York 12207 ("HTFC").

WITNESSETH:

WHEREAS, Contractor was a successful bidder pursuant to a request for proposals issued by HTFC on September 23, 2014 (the "RFP"); and

WHEREAS, HTFC and Contractor entered into a Contract for Services (the "Agreement") on January 28, 2015, made effective January 14, 2015, pursuant to which Contractor provides certain services in support of HTFC's administration of the State of New York's Community Development Block Grant-Disaster Recovery ("CDBG-DR") program; and

WHEREAS, HTFC's Governor's Office of Storm Recovery ("GOSR") is specifically tasked with administering the State of New York's CDBG-DR program and therefore oversees and administers this particular Agreement; and

WHEREAS, Contractor's Total Fee in the Contract for Services dated January 28, 2015 totaled \$795,000.00; and

WHEREAS, HTFC/GOSR and Contractor entered into a First Amendment to the Agreement on December 31, 2015, which increased the Total Fee to \$1,190,260.00 and extended the Term to January 13, 2018; and

WHEREAS, HTFC/GOSR and Contractor entered into a Second Amendment to the Agreement on March 1, 2018 which extended the Term to July 13, 2018 and increased the Total Fee to \$1,665,086.00; and

WHEREAS, GOSR wishes to obtain additional services from Contractor that are within the scope of services sought under the RFP and provided by Contractor under the Agreement; and

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WHEREAS, HTFC/GOSR and Contractor desire to amend the Agreement by means of this Third Amendment in order to extend the Term to allow Contractor to perform additional services;

NOW, THEREFORE, pursuant to and in consideration of the above, and other mutual covenants and obligations herein contained, it is

STIPULATED AND AGREED as follows:

1. The second sentence of Section 2(a) of the Agreement, entitled "General Obligations of HTFC/GOSR," is hereby deleted and replaced with the following: "Contractor agrees that in no event will HTFC pay the Contractor more than \$4,479,426.00 ("Total Fee") for the Services under all Task Orders under this Agreement."
2. Section 4 of the Agreement, entitled "Period of Agreement," is hereby deleted and replaced with the following:

Period of Agreement. The duration of this Agreement shall extend from the Effective Date to September 30, 2029. The Effective Date shall be the date that HTFC issues a written Notice to Proceed to Contractor following the completion of the New York State Comptroller contract review process. Any extension of this Agreement shall be mutually agreed to by the Parties in writing through a modification to the Agreement, as provided for in Appendix II. If the Agreement is not modified, unless otherwise instructed by HTFC, by the end of the period of the Agreement, Consultant shall deliver any and all Property belonging to HTFC to a location designated by HTFC. In addition, Contractor, at no additional cost, shall: (a) reasonably cooperate at the direction of HTFC in the orderly transition of the Services to its successor; and (b) undertake the orderly cessation of the Services. For the purposes of this provision, "Property" means all tangible and real property owned or leased by HTFC. HTFC Property includes (i) property acquired with HTFC funds and used exclusively for the Services and (ii) material, equipment, special tooling, special test equipment, and real property. Intellectual property shall be governed by Appendix I, Article 8.

3. Section 5 of the Agreement, titled "Contractor Representations and Warranties" is hereby supplemented by the following new Subsections (h) through (o), as follows:

(h) **Definitions.** "Products" shall mean deliverables furnished under this Agreement by or through Contractor, including existing and custom Products, including, but not limited to: a) components of the hardware environment, b) printed materials (including but not limited to training manuals, system and user documentation, reports, drawings), whether printed in hard copy or maintained on electronic media c) Third-Party Software, d) modifications, customizations, custom programs, program listings, programming tools, data, modules, components, and e) any properties embodied therein, whether in tangible or intangible form (including but not limited to utilities, interfaces, templates, subroutines, algorithms, formulas, Source Code, object code).

(i) **Title and Ownership.** Contractor warrants and represents that it has (i) full ownership, clear title free of all liens, or (ii) the right to transfer or deliver specified license rights to any Products acquired by HTFC under this Contract. Contractor shall be solely liable for any costs of acquisition associated therewith. Contractor shall indemnify HTFC and hold HTFC harmless from any damages and liabilities (including reasonable attorneys' fees and costs) arising from any breach of Contractor's warranties as set forth herein.

(j) Contractor shall be responsible for fully cooperating with any third party, including but not limited to other Contractors or Subcontractors of HTFC, as necessary to ensure delivery or performance.

(k) **Virus Warranty.** The Contractor represents and warrants that any Product acquired under the Contract by the HTFC does not contain any known Viruses. Contractor is not responsible for Viruses introduced at HTFC's Site.

(l) **Date/Time Warranty.** Contractor warrants that Product furnished pursuant to this Agreement shall, when used in accordance with the Product documentation, be able to accurately process date/time data (including, but not limited to, calculating, comparing, and sequencing) transitions, including leap year calculations. Where a Contractor proposes or an acquisition requires that specific Products must perform as a package or system, this warranty shall apply to the Products as a system. Where Contractor is providing ongoing services, including but not limited to: (i) consulting, integration, code or data conversion, (ii) maintenance or support services, (iii) data entry or processing, or (iv) contract administration services (e.g., billing, invoicing, claim processing), Contractor warrants that services shall be provided in an accurate and timely manner without interruption, failure or error due to the inaccuracy of Contractor's business operations in processing date/time data (including, but not limited to, calculating, comparing, and sequencing) various date/time transitions, including leap year calculations. Contractor shall be responsible for damages resulting from any delays, errors or untimely performance resulting therefrom, including but not limited to the failure or untimely performance of such services.

(m) **Survival of Warranties.** All warranties contained in this Contract shall survive the termination of this Contract.

(n) **Additional Warranties.** Where Contractor, Product manufacturer or service provider generally offers additional or more advantageous warranties than those set forth herein, Contractor shall offer or pass through any such warranties to HTFC.

(o) **No Limitation of Rights.** The rights and remedies of HTFC in this section are in addition to and do not limit any rights afforded to HTFC by any other clause of the Contract.

4. Section 11(a) of the Agreement, titled "Indemnity" is hereby supplemented with the following:

Indemnity Relating to Infringement: The Contractor shall also defend, indemnify and hold HTFC harmless from all suits, actions, proceedings, claims, losses, damages, and costs of every name and description (including reasonable attorney fees), relating to a claim of infringement of a patent, copyright, trademark, trade secret or other proprietary right provided such claim arises solely out of the Products as supplied by the Contractor, and not out of any modification to the Products made by HTFC or by someone other than Contractor at the direction of HTFC without Contractor's approval; provided, however, that the Contractor shall not be obligated to indemnify HTFC for any claim, loss or damage arising hereunder to the extent caused by the negligent act, failure to act, gross negligence or willful misconduct of the HTFC.

5. Section 14(g) of the Agreement, titled "Order of Precedence" is hereby replaced with the following:

(g) Order of Precedence. This Agreement and all attachments and exhibits hereto, and all referenced documents, constitute the entire agreement between the Parties with respect to the matters herein, and integrates, merges, and supersedes all prior negotiations, representations, or agreements relating thereto, whether written or oral, except to the extent they are expressly incorporated herein. The provisions of this Agreement and the accompanying document shall be construed and interpreted as consistent whenever possible. Unless otherwise stated elsewhere in this Agreement, any conflicts in this Agreement and the accompanying documents shall be resolved in accordance with the following descending order of precedence:

- i. Appendix I—HUD General Provisions
- ii. Appendix II—Standard Clause for all HTFC Contracts
- iii. Appendix III—Diversity Forms
- iv. Appendix IV—Construction Related Terms and Forms (if applicable)
- v. Appendix A—Standard Clauses for New York State Contracts
- vi. This Agreement
- vii. Exhibit A—Scope of Services

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- viii. Exhibit B—Fee Schedule
- ix. The applicable Task Order
- x. Proposal Documents—Technical Proposal and Price Proposal
- xi. Exhibit C—Designation of Depository for Direct Deposit of HTFC Funds
- xii. Exhibit D—Service Interruptions and Service Level Agreement

6. Section 14 of the Agreement, titled “Miscellaneous Provisions” is hereby supplemented by a new Subsection (h), as follows:

(h) State Comptroller Approval. In accordance with Public Authorities Law §2879-a, as this contract was determined by the State Comptroller to be subject to the Comptroller’s prior approval, this contract shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller.

7. Schedule A of the Agreement, entitled “Scope of Services”, is hereby supplemented by the Exhibit A Scope of Services appended hereto.

8. Schedule B of the Agreement, entitled “Fee Schedule,” is hereby supplemented by the Exhibit B Fee Schedule appended hereto.

9. The final paragraph of Section 1.7 of the Exhibit D Service Interruptions and Service Level Agreement, titled “Remedies and Credits”, is hereby replaced with the following:

SLA CREDIT SHALL BE CUSTOMER’S SOLE AND EXCLUSIVE REMEDY FOR ANY SERVICE OUTAGE OR ANY ELATION FAILURE TO MEET THE SERVICE OBJECTIVES SET FORTH, EXCEPT THAT THIS SHALL NOT BE CONSTRUED IN DEROGATION OF CUSTOMER’S RIGHT TO TERMINATE ITS CONTRACT FOR SERVICES WITH ELATION IN ACCORDANCE WITH THE TERMS OF THAT AGREEMENT. IN NO EVENT WILL ELATION BE LIABLE TO CUSTOMER OR ANY PARTY OR FOR ANY CLAIMS ARISING OUT OF, OR RELATED TO, CUSTOMER’S BUSINESS, CUSTOMER-RELATIONSHIP WITH ITS END-USERS, OR OTHERWISE. THE MAXIMUM AGGREGATE ELATION LIABILITY TO CUSTOMER RELATED TO A CLAIM UNDER THIS AGREEMENT, UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY, WILL BE LIMITED TO THE TOTAL AMOUNT PAID BY CUSTOMER TO ELATION FOR THE SERVICES GIVING RISE TO SUCH CLAIM IN THE ONE (1) MONTH PRIOR

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TO THE OCCURRENCE OF SUCH CLAIM. NEITHER PARTY WILL BE LIABLE UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY FOR ANY LOST REVENUE, LOST PROFITS, AND INCIDENTAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT. THE FOREGOING SHALL IN NO WAY BE DEEMED AS A WAIVER OF LIABILITIES ASSOCIATED WITH FEDERAL STATE OR LOCAL GOVERNMENTAL CIVIL, CRIMINAL OR ADMINISTRATIVE ENFORCEMENT ACTIONS. NOTWITHSTANDING THE FOREGOING, ELATION REMAINS LIABLE, WITHOUT MONETARY LIMITATION, FOR DIRECT DAMAGES FOR PERSONAL INJURY, DEATH OR DAMAGE TO REAL PROPERTY OR TANGIBLE PERSONAL PROPERTY OR INTELLECTUAL PROPERTY ATTRIBUTABLE TO THE NEGLIGENCE OR OTHER TORT OF ELATION, ITS OFFICERS, EMPLOYEES OR AGENTS.

10. The Agreement is hereby supplemented by Appendix A, titled "Standard Clauses for New York State Contracts".
  
11. All other terms and conditions, including appendices, attachments, exhibits, riders and Letter Agreements to the Agreement are hereby continued in full force and effect as though set forth herein.

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IN WITNESS WHEREOF, the parties executed this Third Amendment on the day and year first above written.



Elation Systems, Inc. [REDACTED]  
By: [REDACTED]  
Name: Rick Shin  
Title: president  
Date: 6/22/2018

STATE OF NEW YORK )

COUNTY OF NEW YORK )

)  
) SS.:  
)

On this \_\_\_\_\_ day of \_\_\_\_\_, in the year 20\_\_\_\_, before me personally name \_\_\_\_\_, to me known, who, being by me duly sworn did depose and say that he/she resides in \_\_\_\_\_; and that he/she is the \_\_\_\_\_ of the \_\_\_\_\_, the corporation described in and which executed the above instrument.

Notary Public

A notary public or other officer completing this certificate warrants the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.  
STATE OF CALIFORNIA COUNTY OF Alameda  
Subscribed and sworn to (or attested) before me on the 22 day of June  
2018 by Rick Shin  
I hereby certify that the foregoing is a true and correct copy of the original as presented to me on the basis of satisfactory evidence to be the same as shown before me.

Housing Trust Fund Corporation [REDACTED]  
By: [REDACTED]  
Name: Daniel Greene  
Title: General Counsel,  
Governor's Office Storm Recovery  
Date: 6/26/18

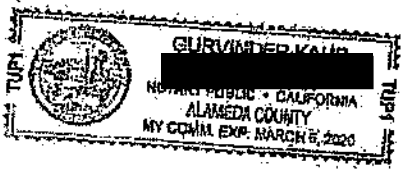




EXHIBIT A  
SCOPE OF SERVICES

Effective July 14, 2018, the following Scope of Services shall govern the Agreement:

**Project Overview:** The Section 3, MWBE and Davis Bacon Electronic Labor and Diversity Compliance Monitoring and Tracking System will support the implementation and administration of a broad range of programs for which CDBG-DR funds will be used. Contractor will support HTFC in meeting its Key Objectives, as defined below, including four main services (the "Services").

**Scope of Services:** This Third Amendment authorizes an extension through September 30, 2029, which shall include the following services:

1. Annual software licensing to allow GOSR to use the Elation compliance monitoring and tracking application for the duration of HUD's grant with the State and a one (1) year closeout and audit period ending September 13, 2023 <sup>1</sup>;
  - a. **Deliverable:** Labor and diversity compliance reporting data from the Elation compliance monitoring and tracking application
  - b. **Acceptance Criteria:** Acceptance Criteria shall be based on effective access to and use of the Elation Systems application by the following stakeholder groups by service/deliverable: Program, Monitoring & Compliance, Diversity and Civil Rights and Wage Compliance Unit, and Organizational Systems & Performance
2. System enhancements required by all GOSR stakeholders;
  - a. **Deliverable:** Satisfactory completion of enhancements validated by GOSR stakeholders
  - b. **Acceptance Criteria:** Acceptance Criteria shall be based on effective access to and use of the Elation Systems application by the following stakeholder groups by service/deliverable: Program, Monitoring & Compliance, Diversity and Civil Rights and Wage Compliance Unit, and Organizational Systems & Performance
3. Invoice processing and tracking in support of certain compliance report metrics; and
  - a. **Deliverable:** Invoices and recorded payment data
  - b. **Acceptance Criteria:** Acceptance Criteria shall be based on effective access to and use of the Elation Systems application by the following stakeholder groups by service/deliverable: GOSR Finance and Organizational Systems and Performance

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<sup>1</sup>GOSR has an expenditure deadline, set by HUD, within which to respond to the disaster recovery needs of counties impacted by Hurricane Sandy. Per the Appropriations Act (P.L. 113:2), CDBG-DR funds must be obligated no later than September 30, 2017, and expended within two (2) years of the date funds are obligated unless a waiver is granted by HUD. In May 2017, a GOSR-issued expenditure deadline extension request was approved by HUD, extending expenditure deadline for some of GOSR's obligated funds to September 30, 2022.

4. Archival system maintenance services through a 72.5-month audit period ending on September 30, 2029.
  - a. **Deliverable:** Provide read-only audit access to all data in GOSR's Elation account.
  - b. **Acceptance Criteria:** Acceptance Criteria shall be based on effective access to and use of the Elation Systems application by the following stakeholder groups by service/deliverable: Monitoring and Compliance, Organizational Systems and Performance, HUD and other regulatory/audit bodies



Archival System Maintenance Services							
7/14/18 - 1/13/19	1/14/19 - 1/13/20	1/14/20 - 1/13/21	1/14/21 - 1/13/22	1/14/22 - 1/13/23	1/14/23 - 9/13/23	9/14/23 - 9/30/29	Total
							\$72,500.00