

MASTER CONTRACTOR/SERVICES AGREEMENT

THIS AGREEMENT is made by and between the City of Delray Beach, a Florida municipal corporation (hereinafter referred to as "City"), whose address is 100 NW 1st Avenue, Delray Beach, FL 33444 and Granicus, LLC, a Minnesota Corporation, (herein after referred to as "Contractor") whose address is 408 Saint Peter Street, Suite 600, Saint Paul, MN 55102, this ____ day of _____, 2022.

WHEREAS, the City desires to purchase Agenda Management Services; and

WHEREAS, the City desires to procure these services from Contractor, utilizing existing contract prices provided to the Region 14 Education Service Center, on behalf of the National Cooperative Purchasing Alliance (NCPA), pursuant to its Solicitation No. 39-20, to purchase Agenda Management Services; and

WHEREAS, in accordance with Solicitation No. 39-20, the Region 14 Education Service Center, on behalf of the National Cooperative Purchasing Alliance (NCPA), entered into a three (3) year Agreement, Contract #01-115, with Contractor for services effective December 8, 2020, through December 31, 2023, with the option to renew for up to two (2) additional one (1) year terms; and

WHEREAS, the City desires to purchase Agenda Management Services from Contractor on the same terms, conditions, and pricing provided under Contract #01-115, subject to the terms and conditions of this Agreement, the City's Purchasing ordinance, and Florida law; and

WHEREAS, the Contractor agrees to extend the terms, conditions, and pricing of Contract #01-115 to the City, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration of which the parties hereto acknowledge, the parties agree as follows:

1. The above recitals are true and correct and are incorporated herein by reference.
2. This Agreement shall become effective retroactively as of December 19, 2021.
3. The City shall pay the Contractor in accordance with the pricing schedule detailed in Exhibit A.
4. The Contractor shall provide Agenda Management Services for the City, in accordance with and pursuant to the same terms, conditions, and pricing of Contract #01-115 procured by the Region 14 Education Service Center, on behalf of the National Cooperative Purchasing Alliance (NCPA),
5. This Agreement shall terminate on December 31, 2023, unless Contract #01-115 is renewed by the Region 14 Education Service Center, on behalf of the National Cooperative Purchasing Alliance (NCPA), in which case this Agreement will automatically renew.

6. Either Party may terminate this Agreement for convenience upon providing at least 90 days' written notice to the other Party. Either Party may terminate this Agreement for cause upon written notice if the other Party is in material breach of this Agreement and fails to cure such breach within 30 days after the notifying Party provides written notice of the breach.

7. Contractor shall protect, indemnify, and hold harmless the City and its administrators, employees, and agents against all claims, damages, losses, and expenses arising out of or resulting from the actions of the Contractor, Contractor's employees or Contractor's subcontractors in the preparation of the solicitation and the later execution of the contract. Notwithstanding the foregoing or anything to the contrary herein, in no event shall Contractor's liability under this Agreement exceed the fees paid by City for the vendor products and services during the six (6) months immediately preceding the date the entity notifies the vendor in writing of a claim for direct damages.

8. Whenever either Party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or sent by commercial express carrier with acknowledgement of delivery, or by hand delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the Parties designate the following:

For CITY:

City of Delray Beach
100 N.W. 1st Avenue
Delray Beach, Florida 33444
Attn: City Manager

For CONTRACTOR:

Granicus, LLC
Attn: Mark Hynes, Chief Executive Officer
408 Saint Peter Street, Suite 600
Saint Paul, MN 55102
Email: contracts@granicus.com

9. Neither Party may assign, delegate, or otherwise transfer this Agreement or any of its rights or obligations hereunder, either voluntarily or by operation of law, without the prior written consent of the other Party (such consent not to be unreasonably withheld); provided, however, that either Party may assign this Agreement without the other Party's consent in the event of any successor or assign that has acquired all, or substantially all, of the assigning Party's business by means of merger, stock purchase, asset purchase, or otherwise. Any assignment or attempted assignment in violation of this Agreement will be null and void.

10. This Agreement shall be construed in accordance with the City of Delray Beach's Code of Ordinances and the laws of the State of Florida. Any dispute relating to this Agreement shall only be filed in a court of competent jurisdiction in Palm Beach County, Florida, and each of the parties to this Agreement submits itself to the jurisdiction of such court. It is hereby understood and agreed that in the event any lawsuit in the judicial system, federal or state, is brought to enforce compliance with this contract or interpret same, or if any administrative proceeding is brought for the same purposes, each party shall pay their own attorney's fees and costs, including appellate fees and costs.

11. IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT CITY OF DELRAY BEACH, CITY CLERK, 100 N.W. 1ST AVE., DELRAY BEACH FLORIDA. THE CITY CLERK'S OFFICE MAY BE CONTACTED BY PHONE AT 561-243-7050 OR VIA EMAIL AT CITYCLERK@MYDELRAYBEACH.COM.

a. Contractor shall comply with public records laws, specifically to:

- i. Keep and maintain public records required by the City to perform the service.
- ii. Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Florida Statute or as otherwise provided by law.
- iii. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if the Contractor does not transfer the records to the City.
- iv. Upon completion of the Agreement, transfer, at no cost, to the City all public records in possession of the Contractor or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City upon completion of the Agreement, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Agreement, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.
- v. If the Contractor does not comply with this section, the City shall enforce the contract provisions in accordance with the contract and may unilaterally cancel this contract in accordance with state law.

12. Contractor is aware that the Inspector General of Palm Beach County has the authority to investigate and audit matters relating to the negotiation and performance of this contract and may demand and obtain records and testimony from Contractor and its subcontractors and lower tier subcontractors. Contractor understands and agrees that in addition to all other remedies and consequences provided by law, the failure of Contractor or its subcontractors and lower tier subcontractors to fully cooperate with the Inspector General when requested may be deemed by the City to be a material breach of this Agreement justifying its termination.

13. The continuation of this Agreement beyond the end of any fiscal year shall be subject to both the appropriation and the availability of funds in accordance with Florida law.

14. By entering into this Agreement Contractor acknowledges its obligation to comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility." Contractor affirms and represents it is registered with the E-Verify system, utilizing same, and will continue to utilize same as required by law. Compliance with this section includes, but is not limited to, utilization of the E-Verify System to verify the work authorization status of all newly hired employees and requiring all subcontractors to provide an affidavit attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. Failure to comply with this section will result in the termination of this Agreement, or

if your subcontractor knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than 20 calendar days after the date of termination. If terminated for a violation of the statute by Contractor, the Contractor may be prohibited from conducting future business with the City or awarded a solicitation or contract for a period of 1 year after the date of termination. All costs incurred to initiate and sustain the aforementioned programs shall be the responsibility of the Contractor.

15. The documents listed below are a part of this Agreement and are hereby incorporated by reference. In the event of inconsistency between the documents, unless otherwise provided herein, the terms of the following documents will govern in the following order of precedence:

- a. Terms and conditions as contained in this Agreement.
- b. Terms and Conditions of Contract #01-115.
- c. Contractor's response to Solicitation No. 39-20 and any subsequent information submitted by Contractor during the evaluation.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the City and the Contractor executed this Agreement as of the day and year first above written.

ATTEST:

CITY OF DELRAY BEACH

Katerri Johnson, City Clerk

By: _____
Shelly Petrolia, Mayor

Approved as to form and legal sufficiency:

Lynn Gelin, City Attorney

GRANICUS, LLC

By: Kelly Oliver

Print Name: Kelly Oliver

Title: Vice President Contracts

(SEAL)

STATE OF MA
COUNTY OF Hampden

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 15 day of April, 2022 by Kelly Oliver (name of person), as VP (type of authority) for Granicus (name of party on behalf of whom instrument was executed).

Personally known _____ OR Produced Identification ☒
Type of Identification Produced MA DL

Darci L. Furr
Notary Public - State of MA
DARCI L. FURR
Notary Public
Commonwealth of Massachusetts
My Commission Expires
October 20, 2028





Exhibit A

408 Saint Peter Street, Suite 600
Saint Paul, MN 55102
United States

THIS IS NOT AN INVOICE

Order Form
Prepared for
Delray Beach, FL

Procurement Vehicle: NCPA (01-115)
In Support of: Delray Beach, FL

ORDER DETAILS

Prepared By:	Bernadette Foley
Phone:	(651) 925-5781
Email:	bernadette.foley@granicus.com
Order #:	Q-167734
Prepared On:	03/15/2022
Expires On:	04/30/2022

ORDER TERMS

Currency:	USD
Payment Terms:	Net 30 (Payments for subscriptions are due at the beginning of the period of performance.)
Current Billing Term	
End Date:	12/18/2021
Period of Performance:	12/19/2021 - 01/15/2023

Exhibit A



Order Form
Delray Beach, FL

PRICING SUMMARY

The pricing and terms within this Proposal are specific to the products and volumes contained within this Proposal.

Terminating Subscriptions		
Solution	Quantity/Unit	Prior Annual Fee
Granicus Encoding Appliance Software (GT)	0 Each	\$1,292.55
Portable Encoder	0 Each	\$3,417.59
Government Transparency Suite	0 Each	\$11,658.98
Granicus Encoding Appliance Software (GT)	0 Each	\$1,292.53
Upgrade to SDI 720p Streaming	0 Each	\$2,271.23
SUBTOTAL:		\$19,932.88

Upon the signing of this Agreement, annual fees for the terminating subscription(s) shall cease.

Client will continue to have access to and use the terminating solution until the new subscription(s) is/are deployed.

Upon the deployment of Client's new solution as determined at Granicus' sole discretion, Granicus shall remove access to the Client's terminating subscription(s).

One-Time Fees			
Solution	Billing Frequency	Quantity/Unit	One-Time Fee
GovMeetings Live Cast SetUp and Config	Up Front	1 Each	\$0.00
Encoding Appliance HDW - WOWZA ClearCaster	Up Front	1 Each	\$2,950.00
Granicus Video - Online Training	Upon Delivery	1 Hour	\$0.00
Granicus ClearCaster Setup and Configuration	Up Front	1 Each	\$0.00
US Shipping Charge C - Large Item	Upon Delivery	1 Each	\$0.00
SUBTOTAL:			\$2,950.00

Exhibit A



Order Form
Delray Beach, FL

New Subscription Fees					
Solution	Period of Performance	Billing Frequency	Quantity/ Unit	Annual Fee	Prorated Fee
GovMeetings Live Cast	12/19/2021 to 1/15/2023	Annual	1 Each	\$11,658.98	\$12,553.08
Granicus ClearCaster Software	12/19/2021 to 1/15/2023	Annual	1 Each	\$1,500.00	\$1,615.07
SUBTOTAL:				\$13,158.71	\$14,168.15

Renewing Subscription Fees					
Solution	Period of Performance	Billing Frequency	Quantity/ Unit	Annual Fee	Prorated Fee
Open Platform Suite	12/19/2021 to 1/15/2023	Annual	1 Each	\$0.00	\$0.00
Legistar	12/19/2021 to 1/15/2023	Annual	1 Each	\$10,296.24	\$11,086.09
Citizen Participation Suite	12/19/2021 to 1/15/2023	Annual	1 Each	\$6,056.60	\$6,521.22
Template - Sectioned View Page	12/19/2021 to 1/15/2023	Annual	1 Each	\$0.00	\$0.00
SUBTOTAL:				\$16,352.84	\$17,607.31



Exhibit A

408 Saint Peter Street, Suite 600
Saint Paul, MN 55102
United States

THIS IS NOT AN INVOICE

Order Form
Prepared for
Delray Beach, FL

Procurement Vehicle: NCPA (01-115)
In Support of: Delray Beach, FL

ORDER DETAILS

Prepared By:	Bernadette Foley
Phone:	(651) 925-5781
Email:	bernadette.foley@granicus.com
Order #:	Q-138796
Prepared On:	11/18/2021
Expires On:	04/30/2022

ORDER TERMS

Currency:	USD
Payment Terms:	Net 30 (Payments for subscriptions are due at the beginning of the period of performance.)
Current Subscription End Date:	03/14/2022
Period of Performance:	03/15/2022 - 01/15/2023

PRICING SUMMARY

The pricing and terms within this Proposal are specific to the products and volumes contained within this Proposal.

Renewing Subscription Fees					
Solution	Period of Performance	Billing Frequency	Quantity/ Unit	Annual Fee	Prorated Fee
govAccess - Maintenance, Hosting, & Licensing Fee - Core	3/15/2022 to 1/15/2023	Annual	1 Each	\$9,909.27	\$8,284.87
SUBTOTAL:				\$9,909.27	\$8,284.87

PRODUCT DESCRIPTIONS

Solution	Description
Open Platform Suite	Open Platform is access to MediaManager, upload of archives, ability to post agendas/documents, and index of archives. These are able to be published and accessible through a searchable viewpage.
Legistar	<p>Legistar is a Software-as-a-Service (SaaS) solution that enables government organizations to automate the entire legislative process of the clerk's office. Clerks can leverage Legistar to easily manage the entire legislative process from drafting files, through assignment to various departments, to final approval. Legistar includes:</p> <ul style="list-style-type: none">• Unlimited user accounts• Unlimited meeting bodies and meeting types• Unlimited data storage and retention• Up to one (1) Legistar database• Up to one (1) InSite web portal

Solution	Description
Citizen Participation Suite	<p>The Granicus Citizen Participation suite provides the ability to involve the community throughout the legislative process and produce better outcomes. The Citizen Participation suite also reduces staff time by providing the ability to effortlessly collect, manage, and prioritize citizen input. The software provides a convenient way for citizens to voice their feedback and participate online. Granicus Citizen Participation includes:</p> <ul style="list-style-type: none"> • Unlimited user signup • SpeakUp tool • eComment tool • Ability for citizens to sign up and participate in online projects, discussions, forums, ideas, surveys, and meetings • Spam protection through CAPTCHA • Profanity filters • Role permissions for administrators • Idea module • Discussion module • Forum module • Projects module • Survey module • Meetings module • Reporting on a module by module basis • Ability to request, speak, or comment on agenda items
GovMeetings Live Cast	<p>govMeetings LiveCast provides the ability to manage public meetings from anywhere, on almost any device using cloud based software and a Granicus ClearCaster encoder. It will stream public meetings in HD, allow users to live index items, record and publish minutes, and provide archive videos for on-demand viewing.</p>
Encoding Appliance HDW - WOWZA ClearCaster	<p>WOWZA ClearCaster encoder is the hardware appliance used convert the video feed for video streaming on the web. It also records the video and provides the MP4 file for archive playback.</p>
Granicus Video - Online Training	Granicus Video - Online Training

Exhibit A



Order Form
Delray Beach, FL

Solution	Description
US Shipping Charge C - Large Item	US shipping of a large item
Granicus ClearCaster Software	<p>Granicus ClearCaster Software will convert the video feed for video streaming on the web which will also record video and provides the MP4 file for archive playback.</p> <p><i>Only used with the ClearCaster encoder hardware and LiveCast solution.</i></p>

THIRD PARTY DISCLAIMER

ClearCaster and LiveCast Services: Client and Granicus agree that a third party will provide services under this Agreement. Client expressly understands that the third party is an independent contractor and not an agent or employee of Granicus. Granicus is not liable for acts performed by such an independent third party.

PRODUCT DESCRIPTIONS

Solution	Description
govAccess - Maintenance, Hosting, & Licensing Fee - Core	<p>The govAccess Maintenance, Hosting, and Licensing plan is designed to equip the client with the technology, expertise and training to keep the client's website relevant and effective over time.</p> <p>Services include the following:</p> <ul style="list-style-type: none">• Ongoing software updates• Unlimited technical support (6:00 AM - 6:00 PM PT, Monday - Friday)• Access to training webinars and on-demand video library• Access to best practice webinars and resources• Annual health check with research-based recommendations for website optimization• DDoS mitigation• Disaster recovery with 90-minute failover (RTO) and 15-minute data replication (RPO)

TERMS & CONDITIONS

- The terms and Conditions of the Agreement 01-115 effective December 8th 2020 between Granicus and NCPA govern this Quote and are incorporated herein by reference, including the Master Agreement and all exhibits thereto.
- Upon the effective date, this Agreement shall supersede and replace any previous agreement between the parties for the Terminating and/or Existing Subscriptions listed herein. All such prior agreements between the parties are hereby void and of no force and effect.
- ClearCaster Terms & Conditions attached to this quote are incorporated herein by reference.
- This quote is exclusive of applicable state, local, and federal taxes, which, if any, will be included in the invoice. It is the responsibility of Delray Beach, FL to provide applicable exemption certificate(s).
- Any lapse in payment may result in suspension of service and will require the payment of a setup fee to reinstate the subscription.
- Notwithstanding anything to the contrary, Granicus reserves the right to adjust pricing at any renewal in which the volume has changed from the prior term without regard to the prior term's per-unit pricing.
- Granicus will provide a three (3) year warranty with respect to required hardware. Within the three (3) year warranty period, Granicus shall repair or replace any required hardware provided directly from Granicus that fails to function properly due to normal wear and tear, defective workmanship, or defective materials.

ClearCaster Terms & Conditions

The ClearCaster products are subject to the following terms:

Permitted Use. Granicus hereby grants during each Order Term or as otherwise specified in the Order, and Customer hereby accepts, solely for its internal use, a worldwide, revocable, non-exclusive, non-transferrable right to use the ClearCaster products to the extent allowed in the relevant Order (collectively the "Permitted Use"). The Permitted Use shall also include the right, subject to the conditions and restrictions set forth herein, to use the ClearCaster products up to the levels limited in the applicable Order.

Data Sources. Data uploaded into ClearCaster products must be brought in from Customer sources (interactions with end users and opt-in contact lists). Customer cannot upload purchased contact information into the ClearCaster products without Granicus' written permission and professional services support for list cleansing.

Passwords. Passwords are not transferable to any third party. Customer is responsible for keeping all passwords secure and all use of the the ClearCaster products accessed through Customer's passwords.

Content. Customer can only use the ClearCaster products to share content that is created by and owned by Customer and/or content for related organizations provided that it is in support of other organizations but not as a primary communication vehicle for other organizations that do not have a Granicus subscription. Any content deemed inappropriate for a public audience or in support of programs or topics that are unrelated to Customer, can be removed or limited by Granicus.

Disclaimers. Any text, data, graphics, or any other material displayed or published on Customer's website must be free from violation of or infringement of copyright, trademark, service mark, patent, trade secret, statutory, common law or proprietary or intellectual property rights of others. Granicus is not responsible for content migrated by Client or any third party.

Advertising. The ClearCaster products shall not be used to promote products or services available for sale through Customer or any third party unless approved in writing, in advance, by Granicus. Granicus reserves the right to request and review the details of any agreement between Customer and a third party that compensates Customer for the right to have information included in Content distributed or made available through the ClearCaster products prior to approving the presence of Advertising within the ClearCaster products.

Restrictions. Customer shall not:

- Misuse any Granicus resources or the ClearCaster products or cause any disruption, including but not limited to, the display of pornography or linking to pornographic material, advertisements, solicitations, or mass mailings to individuals who have not agreed to be contacted;
- Use any process, program, or tool for gaining unauthorized access to the systems, networks, or

accounts of other parties, including but not limited to, other Granicus customers;

- Customer must not use the Granicus products, services or the ClearCaster products in a manner in which system or network resources are unreasonably denied to other Granicus clients;
- Customer must not use the services or ClearCaster products as a door or signpost to another server.
- Access or use any portion of the ClearCaster products, except as expressly allowed by this Order;
- Copy, distribute, sublicense, or otherwise share, software provided on the ClearCaster products;
- Disassemble, decompile, or otherwise reverse engineer all or any portion of the ClearCaster products; or add or remove software on the ClearCaster products without Granicus consent;
- Use the ClearCaster products for any unlawful purposes;
- Export or allow access to the ClearCaster products in violation of U.S. laws or regulations;
- Except as expressly permitted in this Order, subcontract, disclose, rent, or lease the ClearCaster products, or any portion thereof, for third party use; or
- Modify, adapt, or use the ClearCaster products to develop any software application intended for resale which uses the ClearCaster products in whole or in part.

Customer Feedback. Customer assigns to Granicus any suggestion, enhancement, request, recommendation, correction or other feedback provided by Customer relating to the use of the ClearCaster products. Granicus may use such submissions as it deems appropriate in its sole discretion.

Reservation of Rights. Subject to the limited rights expressly granted hereunder, Granicus and/or its licensors reserve all right, title and interest in the ClearCaster products, the documentation and resulting product including all related intellectual property rights. Further, no implied licenses are granted to Customer. The Granicus name, the Granicus logo, and the product names associated with the services are trademarks of Granicus or its suppliers, and no right or license is granted to use them.

License to Content; Access. Customer hereby grants Granicus and its vendors a limited right and license to view, access, use, modify, adapt, reproduce, transmit, distribute, display, and disclose Content for the sole purpose of providing the ClearCaster products. Customer agrees that Granicus and its vendors may remotely access the ClearCaster products for the sole purpose of providing Granicus products and services, and the ClearCaster products.

Warranties and Disclaimers. The ClearCaster products are provided "AS IS" and as available. EACH PARTY HEREBY DISCLAIMS ANY AND ALL OTHER WARRANTIES OF ANY NATURE WHATSOEVER WHETHER ORAL AND WRITTEN, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. NEITHER GRANICUS NOR ITS SUPPLIERS WARRANT THAT THE CLEARCASTER PRODUCTS WILL MEET CUSTOMER'S REQUIREMENTS NOR THAT THE OPERATION THEREOF WILL BE UNINTERRUPTED OR ERROR FREE.

Notwithstanding the foregoing and subject to payment of all applicable fees, Granicus will provide a three (3) year warranty with respect to required hardware. Within the three (3) year warranty period, Granicus shall repair or replace any required hardware provided directly from Granicus that fails to function properly due to normal wear and tear, defective workmanship, or defective materials.

EXCLUSION OF CONSEQUENTIAL AND RELATED DAMAGES. UNDER NO CIRCUMSTANCES SHALL GRANICUS NOR ITS SUPPLIERS BE LIABLE FOR ANY SPECIAL, INDIRECT, PUNITIVE, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FURTHER, GRANICUS NOR ITS SUPPLIER SHALL BE LIABLE FOR: (A) ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY OR CORRUPTION OF CUSTOMER DATA; (B) COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES, TECHNOLOGY, OR HARDWARE; (C) LOSS OF BUSINESS; (D) DAMAGES ARISING OUT OF ACCESS TO OR INABILITY TO ACCESS THE SERVICES, SOFTWARE, CONTENT, HARDWARE, CLEARCASTER PRODUCTS, OR RELATED TECHNICAL SUPPORT; OR (E) FOR ANY MATTER BEYOND GRANICUS' REASONABLE CONTROL, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

LIMITATION OF LIABILITY. IN NO INSTANCE SHALL EITHER PARTY'S LIABILITY TO THE OTHER PARTY FOR DIRECT DAMAGES RESULTING EXCLUSIVELY FROM THE CLEARCASTER PRODUCTS (WHETHER IN CONTRACT OR TORT OR OTHERWISE) EXCEED THE FEES PAID BY CUSTOMER FOR GRANICUS PRODUCTS AND SERVICES DURING THE SIX (6) MONTHS IMMEDIATELY PRECEDING THE DATE THE DAMAGED PARTY NOTIFIES THE OTHER PARTY IN WRITING OF THE CLAIM FOR DIRECT DAMAGES. NEITHER PARTY MAY INSTITUTE AN ACTION IN ANY FORM ARISING OUT OF NOR IN CONNECTION WITH THE CLEARCASTER PRODUCTS MORE THAN TWO (2) YEARS AFTER THE CAUSE OF ACTION HAS ARISEN.