

**PHASE II FUNDING
GRANT AGREEMENT BETWEEN
INDIANA ECONOMIC DEVELOPMENT CORPORATION
AND
BASHPOLE SOFTWARE, INC.
(ITEM NO. 371)**

This Grant Agreement ("Agreement") is made and entered into by and between the Indiana Economic Development Corporation (the "IEDC"), on behalf of the Indiana Twenty-First Century Research and Technology Fund (the "Fund"), and BASHPOLE SOFTWARE, INC. ("Grantee"), and shall be dated effective as of September 1, 2011 (the "Effective Date"). The parties hereto agree as follows:

1. Purpose of Agreement; Scope of Work.

The purpose of this Agreement is to enable the IEDC to make a grant (the "Grant") from the Fund of NINETY-EIGHT THOUSAND NINE HUNDRED NINETY-NINE AND 00/100 DOLLARS (\$98,999.00) subject to the terms and conditions of this Agreement and Grantee's compliance with its obligations described herein. Grantee will use its best efforts to perform, coordinate and supervise to completion the experiments, studies and commercialization plans (the "Project") as described in the research proposal contained in its grant application package submitted to DARPA prior to the Effective Date (the "Proposal") and its abstract attached hereto as Schedule A, all of which are incorporated herein by reference. The Grant shall be used exclusively in accordance with the provisions of this Agreement and Indiana Code § 5-28-16 *et. seq.* (establishing the Fund) and any rules adopted thereunder, for the implementation of the Project or the provision of the services in conformance with the budget submitted with the Proposal and for no other purpose. Modification of the Project description or the Proposal will only be allowed in accordance with Section 11 of this Agreement or by a written amendment to this Agreement executed by both parties.

2. Term.

The term of this Agreement (the "Term") is the Effective Date through September 30, 2013, unless sooner terminated as described in this Agreement (the "Expiration Date").

3. Reporting Requirements.

3.1 Grantee shall submit to the IEDC copies of all materials that are required to be submitted by Grantee to a federal agency as part of Grantee's federal Phase II SBIR grant as set forth at Schedule B, which is attached hereto and incorporated herein by reference. Grantee shall file periodic financial and technical reports in the form required by the IEDC on the dates set forth at Schedule B, which is attached hereto and incorporated herein by reference. Grantee shall also promptly submit any other financial or technical information reasonably requested from time to time by the IEDC to ensure compliance with the terms and conditions of this Agreement.

3.2 Failure of Grantee or its Principal (as defined in Section 11.2 below) to comply with the reporting requirements set out in Section 3.1 shall be grounds for the suspension and/or termination of this Agreement and the reimbursement of Grant funds as set forth in Sections 23 and 7.2(v) hereof, respectively.

3.3 To the extent permitted by applicable law, the Fund and its representatives agree to hold

in confidence any information disclosed to them by Grantee under this Agreement which is either identified in writing as confidential or not generally known by or available to the public. For the purpose of this Agreement, "hold in confidence" means that the IEDC will protect the information in accordance with the most recent confidentiality policy adopted by the Board of Directors of the IEDC.

4. Disbursements.

The Fund shall pay to Grantee NINETY-EIGHT THOUSAND NINE HUNDRED NINETY-NINE AND 00/100 DOLLARS (\$98,999.00) for the Project described at Schedule A. In accordance with the terms of this Agreement, the Grant shall be disbursed promptly after the full execution of this Agreement. All payments hereunder are subject to the IEDC's determination that Grantee's performance to date conforms to the Project, as approved and described at Schedule A, notwithstanding any other provision of this Agreement to the contrary. Accordingly, no payments will be made without the prior written approval of the IEDC. As required by Indiana Code § 4-13-2-14.8 and notwithstanding any other law, rule or custom, a person or company which has a contract with the IEDC or the State of Indiana or submits invoices to the IEDC or the State of Indiana for payment shall authorize in writing the direct deposit by electronic funds transfer of all payments by the State of Indiana to the person or company. The written authorization must designate a financial institution and an account number to which all payments are to be credited.

5. Continuing Disbursements.

5.1 Unless otherwise specified, each payment will be funded at the level and at the times set forth on Schedule A, provided that Grantee is in compliance with the provisions of this Agreement, including, but not limited to, technical, financial and metrics reporting requirements. Grantee acknowledges that any delay in Grantee's satisfaction of these requirements may delay a payment by at least fifteen (15) days.

5.2 Grant payments may be held by Grantee in the short term in interest bearing accounts until needed to pay the expenses of the Project as outlined in the budget included at Schedule A. Disbursements from the Fund are intended solely for use in paying expenses generated by the Project. Grantee shall not use Fund disbursements as investments to generate significant amounts of interest. If a disbursement from the Fund is not required, Grantee shall notify the Fund in writing, and specify when the next disbursement should be made.

5.3 After the completion of the Project, any unexpended funds drawn by Grantee must be returned promptly to the Fund. Furthermore, no Grant funds may be expended after the Expiration Date, and any drawn funds unexpended as of the Expiration Date must be returned promptly to the Fund. The Fund shall not be obligated to disburse any remaining funds to Grantee after the Expiration Date and Grantee acknowledges that any delay in Grantee's satisfaction of the requirements of this Agreement may result in the loss of payment. The Fund may deobligate any Grant funds returned to, or otherwise on deposit with, the Fund after the Expiration Date.

6. Grantee Responsibilities.

6.1 Grantee has full responsibility for the conduct of the Project supported under this Grant and for adherence to the conditions set forth in this Agreement. Although Grantee is encouraged to seek the advice and opinion of the IEDC on special problems that may arise, such advice does not diminish Grantee's responsibility for making sound scientific and administrative judgments and should not, and does not, imply that the responsibility for operating decisions ever transfers to either the IEDC or the

Fund. It is further understood that Grantee shall make such operating decisions based upon its own investigations, knowledge and experience and not in reliance upon the advice or opinion of the IEDC. Grantee is responsible during the Term of this Agreement for notifying the IEDC and the Fund of any significant problems relating to the scientific, administrative or financial aspects of the Project.

6.2 By acceptance of this Grant, Grantee agrees to comply with each of the requirements set forth in this Agreement and to the prudent management of all expenditures and actions affecting the Grant. Documentation for expenditures or actions affecting the Grant must reflect appropriate organizational reviews or approvals in accordance with Grantee's internal governance requirements and procedures, which reviews and approvals should be made in advance of the action. Grantee's internal organizational reviews are intended to help assure that expenditures are allowable, necessary and reasonable for the conduct of the Project, and that the proposed action:

- (i) is consistent with Grant terms and conditions as set forth herein;
- (ii) represents effective utilization of resources;
- (iii) does not constitute a significant Project change; and
- (iv) is consistent with Grantee's organizational policies and procedures.

7. Reimbursement.

If any one or more of the events set forth in this Section 7 occurs, Grantee shall be responsible for reimbursement of all or parts of the Grant to the Fund, as set forth in this Section 7. The obligations of Grantee under this Section 7 shall indefinitely survive the Expiration Date of this Agreement and any successor, acquiring or surviving entity of Grantee shall be deemed to have assumed Grantee's obligations under this Section 7. In no event shall Grantee, through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, seek to avoid the observance or performance of any of the terms to be observed or performed under this Section 7, but shall at all times, in good faith, assist in carrying out the provisions hereof and, in taking all such actions, shall act as may be reasonably necessary or appropriate in order to protect the rights of the IEDC hereunder.

7.1 Grantee must return promptly to the Fund any unused portion of Grant funds actually disbursed to Grantee pursuant to this Agreement in the event that the Project is terminated by mutual agreement of the parties as permitted in Section 23.

7.2 Grantee shall promptly pay to the IEDC, in cash, an amount equal to all amounts paid by the IEDC to Grantee under this Agreement multiplied by two (2) (the "Liquidated Damages"), if Grantee:

- (i) moves the Project outside of the State of Indiana at any time during the Term, or within two (2) years following the Expiration Date; or
- (ii) establishes (or subsequently moves) any business operation resulting from, or arising out of, the Project (other than clinical trials or collaboration or licensing arrangements with third parties), including without limitation a manufacturing operation or a contract for manufacturing, in any location outside the State of Indiana during the Term or within two (2) years following the Expiration Date, unless, with respect to outsourced activities, Grantee receives the advance written consent of the IEDC to undertake such activity outside the State of Indiana and establishes to the reasonable satisfaction of the IEDC that the service cannot be obtained within the State of Indiana on commercially reasonable terms; or

- (iii) pays more than fifty percent (50%) of the aggregate amount of all salaries, wages and benefits (and similar compensation) paid by it for non-service, non-support, non-sales personnel during any calendar year to persons other than full-time residents of the State of Indiana at any time during the Term or within two (2) years following the Expiration Date; or
- (iv) makes a misstatement of material fact in the Project abstract contained in Schedule A or any other materials submitted to the IEDC or the Fund in connection with the Project, including, without limitation, the Application; or
- (v) defaults under any of the material terms and conditions of this Agreement, including without limitation a breach by Grantee of any of the representations, warranties and/or covenants contained in Section 6 of this Agreement, and a non-mutual termination results under Section 23.

Reimbursement must occur within thirty (30) days of an occurrence of any of the foregoing circumstances.

In the event that the IEDC has received any payment pursuant to Section 7.3 of this Agreement, then this Section 7.2 shall be of no further force or effect. Section 7.3 shall remain in full force and effect regardless of whether a "Transaction" (as defined below) occurs before or after any Liquidated Damages are paid to the IEDC under this Section 7.2.

The parties acknowledge that the terms of this Section 7 are reasonable in light of the nature of this Agreement, the amount of the Grant considering the circumstances, the uncertainty related to the successful completion of the Project, and the IEDC's objective to encourage the development of new technologies that will result in economic growth and job opportunities in the State of Indiana.

7.3 Upon the occurrence of a "Transaction" (as defined below) pursuant to which the "Invested Capital Multiplier" (as defined below) equals or exceeds three (3), Grantee shall promptly pay to the IEDC, concurrently with any payments to be made to any of the equity holders of Grantee, regardless of whether prior to such time repayment has been made under Section 7.2 hereof, in cash, an amount equal to (i) all amounts paid by the IEDC to Grantee under this Agreement multiplied by fifty percent (50%) of the "Invested Capital Multiplier" less (ii) any repayment previously received by the IEDC under Section 7.2 hereof; provided, however, that in no event shall the repayment to the IEDC under this Section 7.3 exceed all amounts paid by the IEDC to Grantee under this Agreement multiplied by three (3).

"Invested Capital" means, immediately prior to consummation of a Transaction, the aggregate amount of cash and the fair market value of property (as of the date of its contribution) contributed as capital to Grantee in exchange for equity or convertible debt securities of Grantee less any prior returns of such capital, regardless of how denoted, including without limitation as dividends or distributions (other than tax distributions made in the case Grantee is a flow-through entity). The fair market value of property contributed as capital to Grantee shall be mutually determined by the IEDC and Grantee's board of directors or other governing board, in their respective reasonable, good faith judgment.

"Invested Capital Multiplier" means the quotient determined by dividing the Net Transaction Proceeds by the Invested Capital.

“*Initial Public Offering*” means the closing of the sale of shares of Grantee’s capital stock to the public pursuant to an effective registration statement under the Securities Act of 1933, as amended.

“*Net Transaction Proceeds*” means the aggregate proceeds paid or payable to Grantee and/or the equity holders of Grantee in connection with a Transaction, including, but not limited to, the amount of cash, principal on promissory notes, or the fair market value of securities or other property; plus the fair market value of any liabilities assumed and assets retained by Grantee following the Transaction; less, without duplication, the direct and reasonable costs actually incurred by Grantee or the equity holders of Grantee in effecting the Transaction, (i) including, but not limited to, fees and commissions to underwriters, brokers, appraisers, accountants or attorneys, but (ii) specifically excluding the value of any ordinary and customary non-competition agreement or employment, consulting or similar arrangement entered into in connection with the Transaction and any finders or underwriting fees entitled equity holders or related parties related to the Transaction (collectively, the “Transaction Costs”); less, without duplication, the amount necessary for Grantee to satisfy all debt obligations of Grantee not assumed by the successor, acquiring or surviving entity. If any consideration received in connection with the Transaction is paid or payable in whole or in part in the form of securities or other property, the value of such securities or other property for these purposes shall be, in the case of publicly traded securities, the last closing price as of the last business day before consummation of the Transaction, and, in the case of non-publicly traded securities or other property, the fair market value, as determined by Grantee’s board of directors or other governing board, in its reasonable, good faith judgment. If all or a portion of the proceeds is contingent or not paid at the closing, Grantee’s board of directors or other governing board, in its reasonable, good faith judgment, will value such contingent or delayed payments at their fair market value and include such sum in the Net Transaction Proceeds. Any taxes withheld by Grantee on behalf of equity holders for a Transaction shall be deemed to be distributed to such holders and shall not fall within the definition of Transaction Costs for purposes of calculating Net Transaction Proceeds.

“*Transaction*” means the closing of the first to occur of: (a) the sale of all or substantially all of the assets of Grantee, in one transaction or a series of related transactions; (b) an Initial Public Offering; or (c) any transaction or series of related transactions (including, without limitation, a merger or consolidation, recapitalization, reorganization or sale of equity interests) pursuant to which the holders of Grantee’s outstanding voting equity interests immediately prior to the closing of such transaction(s) hold less than a majority of the outstanding voting equity interests of the successor or surviving entity immediately after the closing of such transaction(s). Notwithstanding the foregoing, a transaction (or series of transactions) other than an Initial Public Offering, undertaken for the purposes of raising working capital or for sustaining or expansion of Grantee’s business (e.g., a raise of venture capital from angel investors, institutional investors or venture capital firms, or other debt or equity transactions undertaken for purposes other than the sale of Grantee) shall not be considered a “Transaction” for purposes of this Agreement.

7.4 Grantee covenants and agrees to the following:

- (i) Grantee shall use good faith efforts to explore opportunities for any desired private funding of Grantee with capital providers located in the State of Indiana.
- (ii) Grantee shall use commercially reasonable efforts to spend all of the Grant funds disbursed to it pursuant to this Agreement with individuals residing and entities domiciled within the State of Indiana.

8. Equipment.

8.1 Title to Equipment. Unless otherwise specified herein, title to equipment purchased or

fabricated with Grant funds shall be purchased for use in the Project, shall vest in Grantee upon acquisition, and shall be free of all claims, liens, or encumbrances of the Fund or the IEDC. Grantee shall be responsible for all insurance and liability related to such equipment. Such equipment is subject to the conditions established in Section 8.2 below.

8.2 Conditions for Acquisition and Use of Equipment. Grantee will assure that each purchase of equipment is:

- (i) necessary for the research or activity supported by the Grant;
- (ii) made because such equipment is not otherwise reasonably available and accessible on commercially reasonable terms without purchase; and
- (iii) acquired in the ordinary course of Grantee's business.

9. Publications.

9.1 The IEDC will not restrict Grantee, the Principal or associated investigators involved in the Project from presenting or publishing results of the Project, provided that all such presentations and publications shall be made in a commercially reasonable, prudent manner so as to protect any intellectual property or other confidential or proprietary information of Grantee.

9.2 During the Term, Grantee will use best efforts to acknowledge Fund support in any publication (including World Wide Web pages) of any material based on or developed under the Project, and during all news media interviews, including popular media such as radio, television and news magazines.

9.3 During the Term, Grantee will use best efforts to assure that a copy of every publication of which Grantee is aware and which is based on or developed under this Grant, clearly labeled with the Proposal number and other appropriate identifying information, is sent to the IEDC promptly after publication.

10. Intellectual Property and Commercialization.

10.1 Neither the Fund nor the IEDC will make any claim to, or take any interest in, any inventions, improvements, information, data, know-how, findings, recommendations, proposals, trade secrets, patents, by whatever name described and by whatever form therein, secured, developed, written or produced (collectively "Intellectual Property") by Grantee and collaborators in connection with the Project.

10.2 Grantee recognizes that the publication of results and the commercialization of innovative technology developed with Grant funds received from the Fund are of fundamental importance to the IEDC and the State of Indiana. Grantee agrees to diligently pursue the commercialization of any patented technology and/or copyrightable works produced under this Agreement.

10.3 Grantee recognizes that the Fund's primary objectives are to support proposals for economic development to (i) increase the success of Indiana institutions of higher education, Indiana businesses and Indiana nonprofit corporations and organizations in securing research funding, (ii) transfer research and technologies into marketable products, (iii) assist with diversifying Indiana's economy by focusing investment in targeted industry clusters requiring high skill, high wage workers, and (iv) encourage an environment of innovation and cooperation among universities and businesses to promote research activity. Grantee agrees that all activities supported with Fund dollars will further efforts toward

accomplishing one or more of these objectives.

10.4 The Fund is interested in measuring the long-term outcomes of Grantee and the Project. To gather this information, the Fund may periodically request information from Grantee after Grantee's reporting requirements have terminated. The information regarding success of Grantee and the Project will not be as detailed as required in the reporting requirements. Grantee shall cooperate in tracking Fund outcomes and use commercially reasonable best efforts in providing requested information.

10.5 Grantee expressly represents and warrants to the IEDC and the Fund that it is statutorily eligible to receive these monies and it expressly agrees to repay all monies paid to it under this Agreement, should a legal determination of its ineligibility be made by any court of competent jurisdiction.

11. Prior Approval Requirements.

Grantee is required to obtain prior written approval from the IEDC whenever there are significant changes in the Project or in its direction or budget as stipulated as follows:

11.1 Change in the objectives or scope of the Project. The IEDC intends to provide flexibility to Grantee in the pursuit of its technology development/commercialization goals. However, a proposed change in the phenomenon or phenomena under study or the objectives of the Project stated in the Proposal or agreed modifications thereto should be communicated in writing to the IEDC by Grantee along with a request for modification of the Project. Changes in the allocation of up to 25% of the annual budget can be made at the discretion of Grantee, if no change in overall Project objectives is involved. Approval of such changes by the IEDC, if granted, will be memorialized by a written amendment to this Agreement.

11.2 Absences or Change of the Principal. The Project will be performed under the direction of **Benjamin C. Ashpole** (the "Principal"). If the Principal plans to or becomes aware that he will: (1) devote substantially less effort to the work than anticipated in the approved Proposal (defined as a reduction of 25% or more in time); (2) sever his connection with Grantee; or (3) be absent for a continuous period of three (3) months or more, or otherwise relinquish active direction of the Project, he shall, in writing, advise the IEDC of such circumstance. In the event of any of the above occurring, the parties will attempt to identify and secure a mutually acceptable substitute. In the event a mutually acceptable substitute is not found, the Agreement may be suspended or terminated in accordance with Section 23.

12. Confidentiality of State Information.

Grantee understands and agrees that data, materials and other information disclosed to Grantee by the IEDC, the Fund or any of their representatives may contain confidential and protected data, therefore, Grantee promises and assures that data, material and other information gathered, based upon or disclosed to Grantee for the purpose of this Agreement and which are marked as confidential will not be disclosed to others or discussed with other parties without the prior written consent of the IEDC.

13. Access to Records, Audit, and Site Visits.

13.1 Grantee and its permitted subgrantees or subcontractors, if any, shall maintain all books, documents, papers, accounting records, and other evidence pertaining to costs incurred under this Agreement ("Records") for inspection by the IEDC and the Fund or by any of their respective authorized

representatives, and reasonable requests for copies thereof shall be furnished to the IEDC and the Fund if requested. Grantee and its permitted subgrantees, if any, shall make all Records available at their respective offices at all reasonable times during the Term of this Agreement and for three (3) years from the date of the final disbursement under the Grant or until a state or federal audit has been completed and all audit exceptions cleared, whichever is earlier.

13.2 If the IEDC determines that fraud or other criminal misconduct has occurred with disbursements of Grant funds made to Grantee from the IEDC, the IEDC will consider Grantee in default of a material provision of this Agreement and will terminate this Agreement in accordance with Section 23. Grantee will be responsible for reimbursement to the Fund of the full amount required under Section 7.2(iv) or (v) at the time of the termination.

13.3 The IEDC and its authorized representatives shall have the right, at all reasonable times, to make site visits to: (1) review Project accomplishments and to confer with the Principal and permitted subgrantees, if any; (2) to audit Records and management control systems; and (3) to provide such technical assistance as may be required. If any site visit is made on the premises of Grantee or any subgrantee or contractor under the Grant, Grantee shall provide and shall require its subgrantees and contractors to provide all reasonable facilities and assistance for the safety and convenience of the Fund or its representatives in the performance of their duties. All site visits and evaluations shall be performed in such a manner that will not unduly delay work on the Project. Grantee will be given at least one (1) week prior notice before any site visit.

14. Compliance with Laws.

14.1 Grantee agrees to comply with all applicable federal, state and local laws, rules, regulations and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment of any state or federal statute or the promulgation of regulations thereunder after execution of this Agreement shall be reviewed by the IEDC and Grantee to determine whether the provisions of this Agreement require formal modification.

14.2 Grantee and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State of Indiana, as set forth in Indiana Code § 4-2-6 *et seq.*, the regulations promulgated thereunder, and Executive Order 04-08, dated April 27, 2004. If Grantee is not familiar with these ethical requirements, Grantee should refer any questions to the Indiana State Ethics Commission, or visit the Indiana State Ethics Commission website at <http://www.in.gov/ethics/>. If Grantee and/or its agents violate any applicable ethical standards, the IEDC may, in its sole discretion, terminate this Agreement immediately upon notice to Grantee. In addition, Grantee may be subject to penalties under Indiana Code § 4-2-6-12.

14.3 Grantee certifies by entering into this Agreement that neither it nor any of its principals is presently in arrears in payment of its taxes, permit fees or other statutory, regulatory or judicially required payments or other liabilities to the IEDC or the State of Indiana. Further, Grantee agrees that any payments in arrears and currently due to the IEDC or the State of Indiana may be withheld from payments due to Grantee. Additionally, payment of the Grant may be suspended by the IEDC until Grantee is current in the foregoing payments to the IEDC or the State of Indiana, whichever the case may be, and has submitted proof of such payments to the IEDC.

14.4 Grantee warrants that it has no current or outstanding criminal, civil, or enforcement actions initiated by the State of Indiana pending, and agrees that it will immediately notify the IEDC of any such actions.

14.5 If a valid dispute exists as to Grantee's liability or guilt in any action initiated by the IEDC or the State of Indiana or its agencies, and the IEDC decides, as a result, to delay, withhold, or deny payments under the Grant, Grantee may request that it be allowed to continue to receive such payments without delay. Grantee must submit, in writing, a request for review to the Indiana Department of Administration (IDOA) following the procedures for disputes outlined herein. A determination by IDOA shall be binding on the parties.

14.6 Any payments that may be delayed, withheld, denied, or applied under this Section shall not be subject to penalty or interest under Indiana Code § 5-17-5.

14.7 Grantee warrants that Grantee and its subcontractors, if any, shall obtain and maintain all required permits, licenses, and approvals, as well as comply with all health, safety, and environmental statutes, rules, or regulations in the performance of the Project. Failure to do so is a material breach of this Agreement and grounds for immediate suspension or termination of the Grant under Section 23.

14.8 Grantee hereby affirms that it is properly registered with, and owes no outstanding reports to, the Indiana Secretary of State and that it is in good standing with the Indiana Department of Revenue. Grantee also affirms that (A) there are no outstanding enforcement actions against it by the IEDC or agencies of the State of Indiana, and (B) there are no significant workforce issues pending against Grantee. The below named signatory(ies) hereby warrant that they are authorized to make such affirmations to the IEDC.

14.9 Grantee agrees that the State of Indiana may confirm, at any time, that no liabilities exist to the IEDC or the State of Indiana, and, if such liabilities are discovered, that the IEDC or the State of Indiana may bar Grantee from contracting with the IEDC or the State of Indiana in the future, cancel existing contracts, withhold payments to setoff such obligations, and withhold further payments or purchases until the entity is current in its payments on its liabilities to the IEDC or the State of Indiana and has submitted proof of such payment to the IEDC or the State of Indiana.

15. Compliance with Telephone Solicitations Act.

As required by Indiana Code § 5-22-3-7:

15.1 Grantee and any principals of Grantee certify that:

(i) Grantee, except for de minimis and nonsystematic violations, has not violated the terms of:

(A) Indiana Code § 24-4.7 [Telephone Solicitation of Consumers],

(B) Indiana Code § 24-5-12 [Telephone Solicitations]; or

(C) Indiana Code § 24-5-14 [Regulation of Automatic Dialing Machines]

in the previous three hundred sixty-five (365) days, even if Indiana Code § 24-4.7 is preempted by federal law; and

(ii) Grantee will not violate the terms of Indiana Code § 24-4.7 for the duration of this Agreement, even if Indiana Code § 24-4.7 is preempted by federal law.

15.2 Grantee and any principals of Grantee certify that no affiliate or principal of Grantee or any agent acting on behalf of Grantee or on behalf of an affiliate or principal of Grantee:

- (i) except for de minimis and nonsystematic violations, has violated the terms of Indiana Code § 24-4.7 in the previous three hundred sixty-five (365) days, even if Indiana Code § 24-4.7 is preempted by federal law; and
- (ii) will violate the terms of Indiana Code § 24-4.7 for the duration of the Agreement, even if Indiana Code § 24-4.7 is preempted by federal law.

16. Conflict of Interest.

16.1 As used in this Section, (a) "immediate family" means the spouse and the unemancipated children of an individual; (b) "Interested Party" means (i) the individual executing this Agreement; (ii) an individual who combined with his immediate family has an equity interest of one percent (1%) or more of Grantee, if Grantee is not an individual; or (iii) any member of the immediate family of an individual specified under clause (i) or (ii); and (c) "Commission" means the Indiana State Ethics Commission.

16.2 The IEDC may cancel this Agreement without recourse to Grantee if any Interested Party is (i) an employee of the State of Indiana or the IEDC, (ii) a state officer or special state appointee of the IEDC under Indiana Code § 4-2-6, or (iii) a public servant of the IEDC under Indiana Code § 35-44-1.

16.3 The IEDC will not exercise its right of cancellation under Section 16.2 above if Grantee gives the IEDC an opinion by the Commission indicating that the existence of this Agreement and the employment, election or appointment by the State of Indiana or the IEDC of the Interested Party does not violate any statute or code relating to the ethical conduct of employees, officers and special state appointees of the IEDC. The IEDC may take action, including cancellation of this Agreement, consistent with an opinion of the Commission obtained under this Section 16.

16.4 Grantee has an affirmative obligation under this Agreement to disclose to the IEDC when an Interested Party is or becomes an employee, officer or special state appointee of the State of Indiana or the IEDC. The obligation under this Section 16.4 extends only to those facts that Grantee knows or reasonably could know.

17. Maintaining a Drug Free Workplace.

17.1 Grantee hereby covenants and agrees to make a good faith effort to provide and maintain a drug free workplace during the Term of this Agreement, and that it will give written notice to the IEDC within ten (10) days after receiving actual notice that Grantee or an employee of Grantee in the State of Indiana has been convicted of a criminal drug violation occurring in Grantee's workplace.

17.2 It is further expressly agreed that a false certification, a violation of the certification or the failure of Grantee to comply, in good faith, with the terms of this Section shall constitute a material breach of this Agreement, and shall entitle the IEDC to impose, or otherwise may result in, sanctions including but not limited to the suspension of Grant payments, the termination of this Agreement in accordance with Section 23, and/or debarment of grant opportunities with the Fund, the IEDC and the State of Indiana for up to three (3) years.

17.3 In addition to the provisions of the above paragraphs, if the total Grant amount set forth in this Agreement is in excess of \$25,000.00, Grantee hereby further agrees that this Agreement is expressly subject to the terms, conditions and representations of the following certification:

This certification is required by Executive Order No. 90-5, April 12, 1990, issued by the

Governor of Indiana. Pursuant to its delegated authority, the Indiana Department of Administration is requiring the inclusion of this certification in all contracts with and grants from the State of Indiana in excess of \$25,000.00. No grant of a contract shall be made, and no contract, purchase order or agreement, the total amount of which exceeds \$25,000.00, shall be valid, unless and until this certification has been fully executed by Grantee and made a part of the contract or agreement as part of the agreement documents.

Grantee certifies and agrees that it will provide a drug-free workplace by:

- A. Publishing and providing to all of its employees a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in Grantee's workplace and specifying the actions that will be taken against employees for violations of such prohibition; and
- B. Establishing a drug-free awareness program to inform its employees of (1) the dangers of drug abuse in the workplace; (2) Grantee's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation, and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace.
- C. Notifying all employees in the statement required by clause (A) above that as a condition of continued employment the employee will (1) abide by the terms of the statement, and (2) notify Grantee of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- D. Notifying the Fund, in writing, within ten (10) days after receiving notice from an employee under clause (C)(2) above, or otherwise receiving actual notice of such conviction;
- E. Within thirty (30) days after receiving notice under clause (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) take appropriate personnel action against the employee, up to and including termination; or (2) require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency; and
- F. Making a good faith effort to maintain a drug-free workplace through the implementation of clauses (A) through (E) above.

18. Funding Cancellation.

When the Director of the Indiana State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Grant, the Grant shall be canceled immediately. A determination by the Budget Director that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive. The IEDC shall notify Grantee of any such cancellation.

19. Non-Discrimination.

Pursuant to Indiana Code § 22-9-1-10 and in keeping with the purposes of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, Grantee and its subgrantees and subcontractors, if any, shall not discriminate against any employee or applicant for employment to be employed in connection with the performance of this Agreement, with respect to hiring, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of his or her race, color, religion, sex, age, disability, national origin or ancestry or status as a veteran. A breach of this covenant shall be regarded as a material breach of this Agreement. Acceptance of this Agreement also signifies compliance with the applicable federal and state laws and regulations prohibiting the aforementioned discrimination in the provision of services.

20. Notices and Other Communications.

Whenever any notice, statement, or other communication shall be sent to the Fund or Grantee it shall be sent to the following addresses unless otherwise specifically advised in writing by such party:

IEDC: Attn: General Counsel
Indiana Twenty-First Century Research and Technology Fund
C/O Indiana Economic Development Corporation
One North Capitol Avenue, Suite 700
Indianapolis, IN 46204-2043

Grantee: Attn: Benjamin C. Ashpole
Bashpole Software, Inc.
8791 E. Wesley Lane
North Webster, IN 46555

Notices, statements or other communications shall be deemed delivered when received. As required by Indiana Code § 4-13-2-14.8, payments to Grantee shall be made via electronic funds transfer in accordance with the instructions filed by Grantee with the Indiana State Auditor's Office, unless an exception to such requirement is approved by the IEDC and the State of Indiana. Payments shall be deemed delivered upon being transmitted pursuant to the written instructions of Grantee.

21. Order of Precedence.

Any inconsistency or ambiguity in this Agreement shall be resolved by giving precedence in the following order: (1) this Agreement, (2) the Schedules attached to this Agreement, (3) the Indiana Economic Development Corporation guidelines and (4) 21st Century Research and Technology Fund guidelines.

22. Extension of Agreement.

Grantee may request in writing that the Expiration Date of this Agreement be extended; provided, however, that the amount of Grant funds disbursed under this Agreement shall not exceed the Maximum Grant Amount. Prior to the Expiration Date, the IEDC, through a duly authorized representative, may approve or deny such request in its sole and unreviewable discretion; provided, however, that the authorized representative of the IEDC may not extend the Expiration Date of this Agreement beyond **March 31, 2014**, without the approval of the Indiana State Budget Director. Documentation approving an extension shall be attached hereto as an addendum. If the Expiration Date is extended, the Expiration

Date shall be extended for all purposes. A denial of an extension request shall in no way affect the survival of certain terms of this Agreement as provided for in Section 23.1.

23. Suspensions, Termination and Survival of Terms.

23.1 Unless otherwise terminated or modified as expressly permitted hereunder, this Agreement will remain in force during the Term stated in Section 2. Notwithstanding anything contained herein to the contrary, provisions of this Agreement which by their nature contemplate rights and obligations of the parties to be enjoyed or performed after the expiration or termination of this Agreement, shall survive until their purposes are fulfilled.

23.2 In the event that Grantee defaults, fails to perform or breaches any provision of this Agreement, the IEDC may suspend or terminate this Agreement upon providing thirty (30) days' prior written notice to Grantee, if Grantee fails to cure such breach or nonperformance (if curable) within such period; provided, however, that notwithstanding the foregoing, the IEDC may immediately suspend and withhold, without notice to Grantee, any and all payments to Grantee hereunder until such breach or nonperformance is cured. As previously stated in Section 4 and notwithstanding the foregoing, all payments under this Agreement are subject to the IEDC's determination that Grantee's performance to date conforms to the Project as approved, irrespective of whether the aforementioned thirty (30) day notice requirement has been met.

23.3 This Agreement may be suspended or terminated by the mutual written agreement of the IEDC and Grantee, if it is determined by both parties that the Project should be suspended or terminated. If the IEDC and Grantee are unable to reach an agreement on the status of the Project, the IEDC reserves the right to suspend or terminate the Agreement.

23.4 No costs incurred during a suspension period or after the effective date of a termination will be allowable, except those costs which, in the opinion of the IEDC, Grantee could not reasonably avoid or eliminate, or which were otherwise authorized by the suspension or termination notice, provided such costs would otherwise be allowable under the terms of the Grant.

23.5 Within thirty (30) days of termination of this Agreement under this Section 23, Grantee shall furnish a summary of progress under the Grant and an itemized accounting of costs incurred prior to such termination date pursuant to 23.4 above. Final allowable costs under a termination settlement shall be in accordance with the terms of the Grant, including this Section 23, giving due consideration to the progress of the Project under the Grant.

23.6 Failure to complete the Project and expend the Grant funds and/or other State of Indiana, IEDC, local and/or private funds, if applicable, in accordance with this Agreement may be considered a material breach, and shall entitle the IEDC and the State of Indiana to impose sanctions against Grantee including, but not limited to, suspension of all Grant payments and/or suspension of Grantee's participation in State of Indiana or IEDC programs until such time as all material breaches are cured to the IEDC's satisfaction. Sanctions may also include repayment of all State of Indiana or IEDC funds expended, whether or not they are held or were expended for this Project or accounted for in the budget included at Schedule A.

23.7 Any payments that may be delayed, withheld, denied, or applied under this Section, Section 3, Section 4 or Section 5 shall not be subject to penalty or interest under Indiana Code § 5-17-5.

24. Assignment.

This Agreement binds Grantee's successors and assignees to all terms and conditions of this Agreement. Grantee shall not assign, subgrant or subcontract the whole or any part of the Project unless it was specifically identified in the original Proposal or has been approved in writing by the IEDC.

25. Hold Harmless.

Grantee shall indemnify, defend, and hold harmless the IEDC, the Fund, the State of Indiana and their respective agents, officers, employees and representatives from all claims and suits for loss or damage to property, including the loss of use thereof, and injuries to or death of persons, including without limitation any officers, agents, employees and representatives of Grantee or its subgrantees or subcontractors, and from all judgments recovered therefor and for expenses in defending any such claims or suits, including court costs, attorneys' fees, and for any other expenses caused by an act or omission of Grantee and/or its subgrantees, subcontractors, agents, officers or employees in connection with the performance of this Agreement.

26. Debarment and Suspension.

Grantee certifies, by entering into this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into this Agreement by any federal agency or department, the IEDC, or any agency or political subdivision of the State of Indiana. The term "principal" for purposes of this Agreement is defined as an officer, director, owner, partner, key employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of Grantee.

27. Penalties; Interest; Attorneys' Fees.

The IEDC will in good faith perform its required obligations hereunder and does not agree to pay any penalties, liquidated damages, interest or attorneys' fees, except as authorized by Indiana law, in part, if applicable, Indiana Code § 5-17-5, Indiana Code § 34-54-8; and Indiana Code § 34-13-1. Notwithstanding the provisions contained in Indiana Code § 5-17-5, the parties hereto stipulate and agree that any liability resulting from any failure of the Fund to make payments as required hereunder shall be based solely on the amount of funding originating from the IEDC or the State of Indiana and shall not be based on funding from federal or other sources.

28. Authority to Bind Grantee.

Notwithstanding anything in this Agreement to the contrary, the signatory(ies) of Grantee represents that he/she has been duly authorized to execute contracts on behalf of Grantee and has obtained all necessary approvals from the home office of Grantee, if applicable, to make this Agreement fully binding upon Grantee when his/her signature is affixed hereto and is not subject to home office acceptance.

29. Representations Concerning Application.

Grantee represents and warrants that the representations, statements and all other matters contained in the application submitted by Grantee to the IEDC are true and complete in all material respects. It shall be considered a material breach of this Agreement if such representations, statements and other matters were not true and complete at the time the application was made.

30. Miscellaneous.

30.1 The headings in this Agreement are intended solely for convenience or reference and will be given no effect in the construction or interpretation of this Agreement.

30.2 This Agreement, including the Schedules attached hereto, supersedes all prior oral and written proposals and communications, if any, and sets forth the entire agreement of the parties with respect to the subject matter hereof and may not be altered or amended except in writing, signed by an authorized representative of each party hereto (following requisite IEDC approval).

30.3 The construction and enforcement of this Agreement shall be governed by the laws of the State of Indiana, without regard to principles of choice of law, and the venue for any court action shall be the circuit or superior court of Marion County, Indiana or the United States District Court of the Southern District of Indiana and Grantee hereby consents to the personal jurisdiction of said courts.

30.4 No waiver of any default, failure to perform, condition, provision or breach of this Agreement will be deemed to imply or constitute a waiver of any other like default, failure to perform, condition, provision or breach of this Agreement.

30.5 If any paragraph, term, condition or provision of this Agreement will be found, by a court of competent jurisdiction, to be invalid or unenforceable, or if any paragraph, term, condition or provision is found to violate or contravene the laws of the State of Indiana, then the paragraph, term, condition or provision so found will be deemed severed from this Agreement, but all other paragraphs, terms, conditions and provisions will remain in full force and effect.

30.6 The parties to the Agreement, in the performance of this Agreement, will be acting in an individual capacity and not as agents, employees, partners, joint venturers or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of any other party for any purposes whatsoever. No party will assume any liability for any injury (including death) to any persons, or any damage to any property arising out of the acts or omissions of the agents, employees or subagents of any other party.

30.7 Grantee shall be responsible for providing all necessary unemployment and workers' compensation insurance for Grantee's employees.

30.8 Grantee is required to comply with the provisions of 45 CFR Part 46, as such may be amended from time to time, as if this Grant was funded with federal funds and is responsible for the protection of the rights and welfare of any human subjects involved in the research, development and related activities supported by this Grant, and for compliance with any other federal and/or state statutes and regulations pertaining to the use of human subjects in research.

30.9 Grantee is required to comply, as applicable, with the Animal Welfare Act, as amended, 7 U.S.C. 2131-2156, and is responsible for assuring the humane care, handling, and treatment of vertebrate animals held or used for any activities supported by this Grant, and for compliance with any other federal and/or state statutes and regulations pertaining to the use of vertebrate animals in research.

31. Non-Collusion and Acceptance.

The undersigned attest(s) under the penalties for perjury that he or she is the contracting party, or that he or she is the representative, agent, member or officer of the contracting party, that he or she has not, nor

has any other member, employee, representative, agent or officer of the firm, company, corporation or partnership represented by him or her, directly or indirectly, to the best of his or her knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he or she has not received or paid, any sum of money or other consideration for the execution of this Agreement other than that which appears upon the face of the Agreement.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates entered below.

BASHPOLE SOFTWARE, INC.

BY: [Signature] **COPY** [Signature]

PRINTED: Benjamin C. Ashpole

TITLE: President

DATE: 3/26/2013

**INDIANA TWENTY-FIRST CENTURY
RESEARCH AND TECHNOLOGY FUND**

**INDIANA ECONOMIC DEVELOPMENT
CORPORATION**

[Signature]
Eric R. Doden
President

DATE: 4/1/13

BY: [Signature] **COPY** [Signature]

PRINTED: Benjamin C. Ashpole

TITLE: Principal Investigator

DATE: 3/26/2013

**STATE BUDGET AGENCY CERTIFICATION
PURSUANT TO INDIANA CODE § 5-28-16-2**

[Signature] (S)
BY: Christopher Atkins, Director
The State Budget Agency

DATE: 4/16/13

Schedule A

Company: Bashpole Software, Inc.
Address: 8791 E. Wesley Lane
North Webster, IN 46555

Phone:
E-mail:



President:
Principal Investigator:



Involved Partner Institutions: N/A

SBIR Proposal Title: MISARO (Updentity)
Funding Agency: DARPA
Award Number: W31P4Q09C0553
Phase I Total Award: \$98,999.00
Phase I Matching Funds: \$98,999.00

Federal Funding Agency Reporting Requirements:

To be provided to IEDC at execution of Grant Agreement or as/when submitted to DARPA.

Summary Abstract:

Funding will be used to expand commercialization and continue development.

- Sales and business development
- PR consultants
- Customer service staff
- Executive staff
- Travel and materials for client and conference presentations

Work Plan/Timeline for 21st Century matching funds:

The work plan is to focus on sales, business development, and PR as the following capabilities are released. To achieve this, we will network with local business leaders, trade organizations, and press in order to expand initial users and buzz around the product.

1. 2013 Q2

- Launch and evaluate call-center oriented sales in the verticals for higher education and community foundations
- Establish PR plan with PR firm
- Provide customer service for on-boarding new clients

2. 2013 Q3

- Launch PR campaign
- Expand sales to more sorts of non-profits, particularly those that perform fundraising and volunteer oriented activities
- Provide customer service for on-boarding new clients

Summary Budget:

Exec., Sales, & Biz Dev:	\$50,000
Customer Service:	\$15,000
G&A, Operations:	\$15,000
Public Relations:	\$15,000
Travel, Meetings, Materials:	<u>\$3,999</u>
Total:	<u>\$98,999</u>

Schedule B

Reporting Requirements

Reports	IEDC Reporting Due Date
IEDC Technical/Financial Interim Report	07/30/2013
IEDC Technical/Financial Final Report	10/15/2013
Annual Certification Form Year 1	09/30/2014
Annual Certification Form Year 2	09/30/2015

Grantee shall also comply with the reporting requirements of the federal agency which awards Grantee a Phase II SBIR grant related to the Project. Within fifteen (15) days following the date materials are required to be filed with such federal agency, Grantee shall be required to submit copies of those materials to the IEDC. If any such materials have already been filed with such federal agency on or prior to the Effective Date hereof, Grantee shall be required to submit copies of such materials simultaneously with its execution of this Agreement.