

SERVICES AND LICENSE AGREEMENT

This Services and License Agreement (this "Agreement") is made and entered into as of the 20 day of April 2012 (the "Effective Date") between DIRECTAPPS, INC. ("Vendor"), and Lexington-Fayette Urban County Government (LFUCG) ("Client").

- A. The parties desire to establish certain terms and conditions under which Services (as defined below) are performed by Vendor for Client.
- B. Vendor has previously developed Software (as defined below) and desires to use and license the Software in relation to the Services.

NOW, THEREFORE, in consideration of the obligations and rights described herein, the undersigned agree as follows:

ARTICLE 1 - SERVICES

1.1 This Agreement covers the provision of Services by Vendor and accordingly, this Agreement represents a vehicle by which Client can efficiently contract with Vendor for a broad range of Services.

1.2 The specific details of the project covered by this Agreement (the "Project") shall be set forth in Exhibit A attached hereto. The description of the Project will include, as appropriate, the scope of work, time line, fee structure, and budget and payment schedule. All schedules and exhibits hereto shall be deemed to be incorporated herein by reference.

ARTICLE 2 –DEFINITIONS

2.1 Customer Premise Equipment (CPE) – The equipment comprising telecommunications equipment and associated software, together with other equipment and associated software used by PSAPs to receive 911 calls.

2.2 Call Detail Record (CDR) - The data and information (including record of incoming call, Automatic Number Identification (ANI), trunk number, time of call seizure, time of answer, time of transfer and time of termination) sent by a PSAP's CPE to an external device such as a printer or buffer appliance; and as may be sent to a PSAP printer.

2.3 Local Exchange Carrier (LEC) - A telecommunications carrier under the state/local Public Utilities Act that provides local exchange telecommunications services. As used herein, LEC also includes service providers such as Incumbent Local Exchange Carriers (ILECs), Alternate Local Exchange Carriers (ALECs), Competitive Local Exchange Carriers (CLECs), Competitive Access Providers (CAPs), Certified Local Exchange Carriers (CLECs), and Local Service Providers (LSPs).

2.4 Portal - A web portal that presents information from diverse sources in a unified way. Portals provide a way for enterprises to provide a consistent look and feel with access control and procedures for multiple applications, which otherwise would have been set up differently altogether.

2.5 Services – The broad range of services covered by this Agreement, which may include strategic planning, consultation, programming and analysis, data processing, data management, implementation, the services set forth in Article 4, and such other services requested by Client and agreed to by Vendor.

2.6 Software - The hosted software licensed under this Agreement, and which includes the software for the ECaTS Data Collection and Reporting Services. The Software comprises Web-based Software applications residing on Vendor's system and accessed by authorized users through a web browser and shall include Vendor-hosted storage, databases, related documentation, and other functionalities or Services provided with the Software to facilitate the use of the Software for the purposes expressed herein (collectively, the "Documentation").

2.7 System or ECaTS System – The Software and related system to be implemented by Vendor for 911 call data capture and reporting on behalf of Client.

2.8 User – The Client's designees and primary PSAPs in Client's jurisdiction participating in the 911 Emergency Call Tracking and Analysis Services (ECaTS) Project.

2.9 POC –The person or person(s) acting as the key communication point for either Client or Vendor.

- 2.10 **PSAP** – Public Safety Answering Point. Calls to 911 are automatically routed to the most appropriate PSAP, where a trained 911 call-taker will answer and determine what kind of emergency service needs to respond.
- 2.11 **ECaTS** –Emergency Call Tracking and Analysis System.
- 2.12 **RDDM** – Remote Data Distribution Module is the buffer box installed on-site at each PSAP for collection of CDR data.

ARTICLE 3 - ROLES AND RESPONSIBILITIES

3.1 Vendor will take the lead role in the implementation, transition and maintenance of the Project. Specifically, Vendor will assign a dedicated Project manager (“Project Manager”) to supervise the Project. The Project Manager must have strong communications skills, excellent Project planning and execution experience, and proven skills in leading Project teams to successful solution implementation. The Project Manager will work directly with the Client’s Project team. The full Vendor team shall include personnel with skills in process and requirements.

3.2 The Project Manager will establish a master Project timeline (if not already set forth in Exhibit A) to be shared with Client and reviewed regularly by the parties. The Project Manager will be primarily responsible for coordinating all required resources identified in the Project timeline, including the following:

- **Client** – The Project Manager will work directly with Client’s assigned POC for the duration of the Project. Regular weekly communications will be held with the POC for the purposes of reviewing progress, identifying and solving issues, identifying and mitigating risks and prioritizing deployment efforts. Client will be responsible for ensuring the ongoing collaboration of PSAPs and LECs in the implementation of the Project and ongoing maintenance of the Services.
- **LECs, (Telecommunication Companies)** – The Project Manager will be responsible for coordinating Project and deployment efforts with LECs to ensure their participation in the installation of the new RDDM (buffer) boxes at each PSAP to the fullest extent that the LECs’ participation is necessary or proper to complete the Project and for Vendor to provide the Services.
- **CPE Support Vendors** –The Project Manager will work directly with CPE support vendors such as Qwest, Verizon, AT&T, Intrado, Xtend, Zetron, and others to obtain circuit information and perform the onsite installation.

3.3 Vendor will be responsible for managing access to the data and information collected from Client and stored by Vendor. Each authorized user will have access to Client’s reports by means of unique identification credentials (e.g. user ID and password). These user credentials will determine what data (readership) and what reports (levels of access) each user will have upon successful login. All data collected and stored shall be stored in a secure location within the contiguous United States.

ARTICLE 4 – SCOPE OF WORK

Vendor will provide the following Services under this Agreement (Exhibit A may provide a more detailed descriptions of the Services).

4.1 Vendor will develop and refine a detailed Project plan that will act as a framework for the deployment and installation of the ECaTS System (including hardware) and the provision of the Services.

4.2 Vendor will work with each PSAP (and where appropriate with the LEC) in Client’s jurisdiction, as listed in Exhibit B, to obtain surveys, complete PSAP network and inventory worksheets as well as document the findings. This effort may require the assistance of Client to ensure the timely collaboration by either PSAP or LEC during this data collection and inventory phase.

4.3 Vendor will configure and deploy the ECaTS System, consistent with the requirements and design documentation set forth in Exhibit A or the description of the Project. Vendor will collect CDR information at each PSAP by connecting the CPE to a custom built RDDM (buffer) box. The RDDM box has specifically been built, and uses customized software, for the collection, compression, security and delivery of CDR data. As 911 calls are completed, the local CPE generates a CDR data and outputs this information using a serial or parallel port. The customized RDDM box connects to this output port and dynamically stores each and every CDR port entry and compresses it into a secure database running within the device. On a predetermined time frequency (anywhere from five to thirty minutes) the database is encrypted by the RDDM and the data is delivered to Vendor's data center for processing. In order to accomplish this data collection, Client must ensure the following:

- a) All CPE is configured and has the necessary licensing from CPE manufacturer (where applicable) to provide complete CDR output via a serial, parallel or Internet Protocol (IP) port.
- b) Not all CPE automatically supports administrative lines. For those CPE manufacturers, special hardware and/or software licensing may be required. Client should consult with CPE manufacturer to ensure availability of 10-digit and 7-digit administrative CDR data in their configuration.

4.4 Vendor will provide the implementation Services set forth in Exhibit C.

4.5 Vendor will provide training and knowledge transfer to foster user adoption of the ECaTS System and ensure the Client's Primary 911 PSAPs are able to utilize solution functions by providing the training Services set forth in Exhibit C.

ARTICLE 5 – ACCEPTANCE

5.1 The Implementation Plan set forth in Exhibit C shall include system and data quality assurance steps and tests, which shall be used to validate the integrity of Client's completed implementation of the System, from data collection, parsing, storage and reporting perspectives. Vendor will, upon completion of its own internal quality assurance testing and validation, meet with Client and (a) demonstrate accessing the reporting capabilities of the System, including how to obtain a User logon and password, logging into the System web site and navigating through the System, including requesting reports, and (b) demonstrate how to generate reports, demonstrate reporting trouble tickets and accessing the System to receive trouble ticket updates. After Vendor's quality assurance team has released the completed System, Client will perform User acceptance testing ("UAT"). After successful completion of UAT (not to exceed 15 days), Client will sign the Certificate of Acceptance, using the form provided in Exhibit D.

5.2 Acceptance Testing by Vendor and UAT by Client will, at a minimum includes the following deliverables:

- User Registration and Login Process.
- User Navigation using multiple Roles / Readership.
- User Access for PSAPs, Client Representatives and Administrators.
- Report Generation -Pull preconfigured reports
 - Use single PSAP with custom date ranges
 - Use single PSAP with previous week, previous month, current month to date, etc.
 - Use multiple PSAPs including custom groups – repeat previous two tests
 - Use multiple PSAPs using geographical grouping (county) – repeat previous two tests
 - Demonstrate ability to modify the graphical report output on at least three preconfigured reports
 - Pull ad-hoc reports using simplified wizard interface
 - Pull ad-hoc reports using advanced interface.
- Demonstrate Trouble Ticket Management Database and Links from within ECaTS. Vendor uses Microsoft's Team Foundation Server to report and track defects and Trouble Tickets
 - How tickets are generated
 - How tickets are updated
 - How the Help Desk can pull reports and update tickets
 - How the Client can view/access and pull reports on tickets
 - How tickets are linked into the ECaTS Portal System.

- Demonstrate ability to generate reports from a handful of PSAPs (Not to exceed 5) highlighting the following:
 - Select specific CDR and show the final stage of transformation starting with the RDDM Collection, Forwarding, Parsing, Injection and Reporting
 - Show how data/time stamp from the RDDM is utilized in the preconfigured reports
 - Show how the data/time stamp is utilized in the ad-hoc reports.

5.3 Acceptance of the System deliverables set forth above shall not be unreasonably withheld; but may be conditioned or delayed as required for installation and/or testing of additional or replacement deliverables. Client shall not exceed fifteen (15) days from activation of the System to perform the UAT process described herein. Final acceptance is expressly conditioned upon completion of all applicable inspection and testing procedures as set forth herein. Should the deliverables materially fail to meet any specifications or acceptance criteria, Client may exercise any and all rights hereunder. Deliverables discovered to be defective or failing to conform to the specifications may be rejected by Client upon initial inspection or at any later time if the defects contained in the deliverables or non-compliance with the specifications was not reasonably ascertainable upon initial inspection. When deliverables are rejected by Client, Vendor must correct the rejected deliverables within a reasonable amount of time. Once corrected, Vendor shall submit the rejected deliverables to Client for retesting, validation and acceptance.

ARTICLE 6 – MAINTENANCE AND SUPPORT SERVICES

6.1 In addition to the System implementation, during the Term, Vendor agrees to provide the following Services as part of the ECaTS Service and for the agreed upon monthly fee set forth in Exhibit A:

- a) Ongoing data collection of CDR data at each of Client's PSAPs using ECaTS' RDDM modules.
- b) Ongoing delivery of the data from the RDDM to Vendor's data center.
- c) Ongoing parsing and storage of the data in a high-speed, high-availability SQL storage system.
- d) Support for hosting of all data and web services necessary for the ongoing operation of the ECaTS System.
- e) Implementation of parser changes as necessary for existing CPE installed in the PSAP at the time when the RDDM was installed.
- f) Vendor shall provide to the Client, at no additional charge, all new releases of the base Software including bug fixes for any Software deliverable developed or published by Vendor and made generally available to its other customers at no additional charge.
- g) Vendor shall provide Client with telephone access to technical support engineers for assistance in the proper installation and use of the Software, and to report and resolve Software problems, during normal business hours, 5–00 AM - 6:00 PM Pacific Time, Monday-Friday.
- h) Vendor shall monitor all field equipment (RDDMs) on a 24x7 basis and shall open up tickets in the Trouble Ticket Management database whenever hardware failure is detected
- i) Vendor shall replace any faulty RDDMs for the Term to ensure appropriate data collection at each PSAP. RDDM replacement will be performed within 48 hours from identification of the problem.

6.2 ECaTS may also provide Client with additional Services to augment its standard ECaTS Services. These Services are optional and may be requested by the Client at any time during the Term. Should the Client request additional information regarding these and other Services, Vendor will provide Client with a separate work order (“Work Order”) for review and approval. Should the Work Order be approved, it will be developed and implemented by Vendor on a timeframe agreeable to both parties. The Work Order will be governed by the terms and conditions of this Agreement. Additional Services to be provided may include, but are not limited to:

- a) Support for installation and implementation of new RDDMs for Client during the installation of new CPE, CPE Software enhancements or new PSAPs;
- b) Optional modules (new or existing) that provide unique and distinct functionality on and above the features included in ECaTS as part of its standard offering;
- c) Custom Software requests for functionality desired by the Client;
- d) Other services or interfaces (existing today or to be developed in the future).

ARTICLE 7—REPRESENTATION AND WARRANTIES

7.1 Each party represents and warrants to the other party that: (a) such party is either a governmental entity, corporation, limited liability company, or limited partnership and has the full right, power and authority to enter into this Agreement and to perform the acts required of it hereunder; (b) the execution of this Agreement by such party, and the performance by such party of its obligations and duties hereunder, do not and will not violate any agreement to which such party is a party or by which it is otherwise bound; (c) when executed and delivered by such party, this Agreement will constitute a legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms; and (d) such party acknowledges that the other party makes no representations, warranties or agreements related to the subject matter hereof that are not expressly provided for in this Agreement.

7.2 Vendor represents and warrants that it will perform the Services in a timely, workmanlike and professional manner. At all times during the performance of the Services, Client shall have the right to inspect the work performed by Vendor. Vendor represents and warrants that qualified personnel will provide Services in a professional manner. "Professional manner" means that the personnel performing the Services will possess the skill and competence consistent with the prevailing business standards in the information technology industry. Vendor will serve as the prime Vendor under this Agreement and will not utilize any subcontractors without written consent from Client. ALL WORK TO BE PERFORMED IN THIS AGREEMENT SHALL BE PERFORMED IN THE UNITED STATES AT ONE OF VENDOR'S OFFICES OR VENDOR'S DATA CENTERS. Should the Client approve any subcontractor(s), Vendor shall be legally responsible for the performance and payment of the subcontractor(s). Vendor will retain control and administration for any work by third party subcontractor(s) under this Agreement.

7.3 Vendor represents and warrants that it has the right to provide the Services and the System without violating or infringing any law, rule, regulation, copyright, patent, trade secret or other proprietary right of any third party. Vendor represents and warrants that the Services are not the subject of any actual or threatened actions arising from, or alleged under, any intellectual property rights of any third party.

7.4 Vendor represents and warrants that the equipment and hardware that it provides pursuant to this Agreement shall be free from material defects in materials, in good working order and be maintained in good working order.

7.5 Vendor agrees to use commercially reasonable efforts to provide the Software and System twenty-four (24) hours a day, seven (7) days a week. Client acknowledges that from time to time the Software and System may be inaccessible or inoperable for various reasons, including periodic maintenance procedures or upgrades ("Scheduled Downtime"); network or service malfunctions; and causes beyond the control of Vendor or which are not reasonably foreseeable by Vendor, including the interruption or failure of telecommunication or digital transmission links, hostile network attacks or network congestion or other failures (collectively "Downtime"). Vendor will provide at least forty-eight (48) hours' notice to Client in the event of any Scheduled Downtime. Vendor agrees to use commercially reasonable efforts to minimize any disruption, inaccessibility and/or inoperability of the Software and System in connection with Downtime, whether scheduled or not.

7.6 Vendor represents and warrants that (a) the ECaTS System delivered under this Agreement will materially conform to the requirements of materials and workmanship specified in this Agreement, and (b) the System will materially conform to the design requirements including software design specifications and software configuration set forth in the existing User Manual (as prepared by Vendor) and as defined in the Joint Application Design (JAD) Sessions with the Client (if applicable). These warranties shall extend only to all defects discovered during the Term.

7.7. The representations and warranties set forth in this Article shall not apply to the extent of alleged defects that Vendor demonstrates to be otherwise attributable to Client-furnished property. This includes installation of new CPE, Software enhancements, network modifications, configuration changes or any other activity that may otherwise adversely affect the operation, output or the format of the CDR record. In the event, of such defects, Vendor will identify the problem and provide Client with a custom Software fix as set forth in Section 6.1.

7.8 EXCEPT AS EXPRESSLY SET FORTH IN THE AGREEMENT, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, VENDOR MAKES NO, AND SPECIFICALLY DISCLAIMS, ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, REGARDING THE SERVICES, PROGRAMS, PRODUCTS, OR ANY OTHER MATERIALS OR SERVICES PROVIDED HEREUNDER, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF NONINFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE AND IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE.

ARTICLE 8 – SOFTWARE LICENSE

8.1 Vendor grants to Client and participating PSAPs a non-transferable and non-exclusive right to use, during the Term, all the Software, together with the Documentation, in object code form only. This license includes the right to access Users' data and to transmit revisions, updates, deletions, enhancements, or modifications to the Data and shall include the right to and access to any upgrades, updates, maintenance, releases or other enhancements or modifications made generally available to Vendor's customers of the Software and System and Services without the Vendor requiring a separate maintenance or support agreement. Client may use the Software and System with any Vendor approved computer platform, computer system, server, or desktop workstation owned by Client or PSAP. User access to the Software and System shall solely be through User identification and passwords; otherwise, User shall not otherwise access the Software and System. Client agrees to use its best efforts to see that its employees, contractors or other agents comply with the terms and conditions set forth in this Agreement, and any Exhibits or Amendments hereto. Client shall, and shall cause Users to, notify the Vendor immediately of any unauthorized use of any password or account, or any other known or suspected breach of security access. Client shall, and shall cause Users, to refrain from taking any steps, such as reverse engineering, reverse assembly or reverse compilation to derive a source code equivalent to the Software and System or any portion thereof. No license is granted to use the Software and System to perform services for commercial third parties (so-called "service bureau" uses). The number of Users within the PSAPs may be increased at any time, subject to the restrictions on the maximum number of PSAPs specified in Exhibit B.

8.2 All intellectual property rights or proprietary property and information, supplied or developed by Vendor or any third party shall be and remain the sole and exclusive property of the party who supplied or developed the same and no party, including Client, shall acquire any rights in the intellectual property of another party solely as a consequence of the integration or combined use of such other party's intellectual property with such party's own intellectual property. This license does transfer, vest, or infer any title or other ownership right in any source code associated with the Software and System in the Client or any PSAP. This license will not be construed as a sale of any ownership rights in the Software and System. Any Software and System or technical and business information owned by Vendor or its suppliers or licensors made accessible or furnished to the Client or any PSAP shall be and remain the property of the Vendor or other party, respectively.

For the avoidance of doubt, the Services and any products arising from the Services are not "works made for hire" as that term is defined in the U.S. Copyright Act of 1976 and Client shall not acquire any right, title and interest in and to the Software and System.

8.3 Nothing in this Agreement shall be deemed to grant to Client any licenses or rights to market, promote, sell, use or distribute any Software or System, products or services except those expressly specified in this Agreement.

ARTICLE 9 - CONFIDENTIALITY

9.1 During the Term, each party may be given access to information that (i) relates to the past, present, and future research, development, business activities, products, services, and technical knowledge of the other party, and (ii) has been identified, in writing, as confidential or would be understood to be confidential or proprietary by an individual exercising reasonable judgment under the circumstances ("Confidential Information"). Except as required by law or as necessary to perform under this Agreement, neither party will disclose the Confidential Information of the other party or use such Confidential Information for its own benefit or for the benefit of any third party for any reason. Each party will use the other party's Confidential Information only in connection with the Services and this Agreement. Each party agrees to protect the confidentiality of the other party's Confidential Information in the same manner that it protects the confidentiality of its own Confidential Information of like or similar kind. Access to the Confidential Information shall be restricted to those of Vendor's and Client's personnel with a need-to-know and shall be used only as permitted hereby. No Confidential Information may be copied or reproduced without the discloser's prior written consent. All Confidential Information made available hereunder, including copies thereof, shall be returned or destroyed upon the first to occur of (a) completion of the Services or (b) request by the discloser. Vendor may retain, however, subject to the terms of this section, copies of the Confidential Information required for compliance with its quality assurance requirements. Each party's obligations under this Article with respect to any portion of the other party's Confidential Information will terminate when the party seeking to avoid its obligations can document by written evidence that: (a) it was in the public domain at or subsequent to the time it was communicated to the receiving party ("Recipient") by the disclosing party ("Discloser") through no fault of the Recipient, (b) it was rightfully in Recipient's possession free of any obligation of confidence at or subsequent to the time it was communicated to Recipient by Discloser, (c) it was developed by employees or agents of Recipient, independent of and without reference to any information communicated by Recipient to Discloser, (d) it was acquired by Discloser from an unaffiliated third party, which is not, to Discloser's knowledge, under an obligation of confidence with respect to such information, or (e) the communication was in response to a valid order by a court or other governmental body, was otherwise required by law or was necessary to establish the rights of either party under this Agreement, provided at least five (5) business days' prior notice is given to the affected party and a request to such court or government body that such communication receive confidential treatment under the laws, rules and regulations or otherwise to the fullest extent permitted under the laws, rules or regulations of such court or government body.

9.2 Each party's obligations under this Article 9 shall be binding upon such party and all of its related entities and shall survive the expiration or termination of this Agreement.

ARTICLE 10 – TERM

10.1 This Agreement shall become effective as of the Effective Date and shall remain in full force and effect for 36 months (the "Initial Term"), unless otherwise terminated earlier by either party.

10.2 Upon the expiration of the Initial Term, this agreement will automatically renew for one or more additional terms of one (1) year (each, a "Renewal Term"), unless an until either party notifies the other party of its intent to terminate at least sixty (60) days prior to the expiration of the Initial Term or a Renewal Term. The Initial Term, together with any and all Renewal Terms, is collectively referred to as the "Term."

ARTICLE 11 – TERMINATION

11.1 Client may terminate this Agreement for any reason upon sixty (60) calendar days' written notice to Vendor. If Client cancels the Services and terminates this Agreement for any reason, Client agrees to pay to Vendor: (a) all unpaid Service fees accrued as of the termination date, and (b) all unpaid amounts incurred by Vendor, reasonable expenses (including hardware and travel expenses) and/or uncancelable commitments incurred as of the termination date. Client will pay for all Services performed and delivered in conformance with the Agreement up to the termination date. Vendor will provide necessary documentation to support the final invoice, which invoice shall be provided to Client no later than ten (10) days from the termination date.

11.2 Either party may terminate this Agreement in the event that the other party materially breaches any of its obligations hereunder and does not cure such breach within thirty (30) days of receipt of written notice of breach from the other party or such other cure period as the parties may mutually agree.

11.3 This Agreement shall terminate, effective upon delivery of written notice by a party: (a) upon the institution of Insolvency, receivership or bankruptcy proceedings or any other proceedings for the settlement of debts of the other party; (b) upon the making of an assignment for the benefit of creditors by the other party; or (c) upon the dissolution of the other party.

11.4 The termination of this Agreement for reasons other than an unremedied failure to meet the material obligations under this Agreement shall not affect the rights and obligations of the parties accrued prior to termination. Upon termination of the Agreement for any reason, Vendor shall remove any ECaTS equipment from PSAP and Client premises at Client's expense.

ARTICLE 12 – FEES; PRICING AND PAYMENT TERMS

12.1 Vendor's current fees for the Services (including license fees, installation charges, service charges, non-recurring fees, monthly recurring service fees and other fees) are set forth in Exhibit A. Vendor reserves the right to amend the fees payable hereunder at any time during the Term upon sixty-(60) days' prior written notice to Client. All prices are in United States dollars and not include sales, use, value-added or import taxes, customs duties or similar taxes that may be assessed by any jurisdiction. Amounts due hereunder are payable upon receipt of invoice, unless otherwise indicated in the invoice. Client agrees to pay a late charge on all past due invoices as follows: (a) ten percent (10%) or the maximum lawful rate, whichever is less, for all amounts not paid within forty-five (45) days of receipt of invoice, (b) eighteen percent (18%) or the maximum lawful rate, whichever is less, for all amounts not paid within ninety (90) days of receipt of invoice. Failure by Client to pay any amounts due within one hundred (100) days of receipt of invoice will result in the termination of this Agreement and the Services by Vendor. In such event, Vendor reserves the right to engage collection services for any unpaid invoices associated with this Agreement and seek any other collection process allowable under they law. A reconnection fee (as set forth in Exhibit A) will be assessed to re-activate any Services disconnected or terminated due to Client's failure to pay amounts due to Vendor.

12.2 All taxes, duties, fees and other governmental charges of any kind (including sales and use taxes, but excluding taxes based on the gross revenues or net income of Vendor) which are imposed by or under the authority of any government or any political subdivision thereof on the fees for any of the Services provided by Vendor under this Agreement shall be borne by Client and shall not be considered a part of, a deduction from or an offset against such fees.

12.3 Vendor shall maintain complete and accurate records and log files to support and document the fees charged to Client in connection with this Agreement. Vendor shall, upon written request from Client, provide access to such records during regular business hours at Vendor's convenience, to an independent auditor(s) chosen by Client for the purposes of audit. Client's right to conduct such audits shall be limited to twice in any one calendar year.

12.4 Should Client reasonably dispute any item(s) on an invoice, Client shall deduct the amount of said item(s) from the total and shall make payment of the remainder of the invoice. The amounts and reasons for such disputed item(s) shall be promptly documented and transmitted to Vendor. Disputed items which are subsequently justified to Client's reasonable satisfaction shall be paid by Client during the next monthly payment.

ARTICLE 13 - COMPLIANCE WITH LAWS

Each party (a) shall comply with applicable laws, rules, ordinances and regulations of the United States and any other jurisdiction in which it acts, including but not limited to, the laws of foreign countries relating to government procurement, payment to government officials or employees, conflicts of interest and the like, and (b) shall not take any action, or fail to take any action, that would directly or indirectly result in the other party violating any such law, rule or regulation.

ARTICLE 14—LIMITATION OF LIABILITY

IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER OR TO ANY THIRD FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL OR OTHER INDIRECT DAMAGES, INCLUDING LOSS OF PROFITS, REVENUE, DATA, OR USE, REGARDLESS OF THE THEORY OF LIABILITY, OR PUNITIVE OR EXEMPLARY DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES (COLLECTIVELY, “DISCLAIMED DAMAGES”), PROVIDED THAT EACH PARTY WILL REMAIN LIABLE TO THE OTHER PARTY TO THE EXTENT ANY DISCLAIMED DAMAGES ARISE FROM BREACH OF THE CONFIDENTIALITY OBLIGATIONS UNDER ARTICLE 9, MISUSE OF THE INTELLECTUAL PROPERTY OF EITHER PARTY OR ARE SUBJECT TO INDEMNIFICATION OBLIGATIONS UNDER ARTICLE 15. EXCEPT FOR EITHER PARTY’S INDEMNIFICATION OBLIGATIONS UNDER ARTICLE 15, IN NO EVENT WILL EITHER PARTY’S LIABILITY UNDER THIS ARTICLE OR THIS AGREEMENT FOR DIRECT DAMAGES EXCEED THE AMOUNTS PAID OR PROPERLY PAYABLE BY CLIENT TO VENDOR FOR SERVICES UNDER THIS AGREEMENT DURING THE ONE (1) YEAR PERIOD PRECEDING SUCH LIABILITY OR LIABILITIES. THE FOREGOING PROVISIONS LIMITING DAMAGES AND EXCLUDING CONSEQUENTIAL DAMAGES ARE INDEPENDENT OF ANY EXCLUSIVE REMEDIES FOR BREACH OF WARRANTY SET FORTH HEREIN.

ARTICLE 15 - INDEMNITY

15.1 To the extent allowable by law, each party (the “Indemnifying Party”) shall indemnify, defend and hold harmless the other party, its officers, directors, agents, and employees (the “Indemnified Party”) from and against any and all liability, loss, suits, actions, costs and expense (including but not limited to reasonable attorney fees and costs of investigation and defense) (collectively, “Losses”) resulting from (a) any breach or alleged breach by the Indemnifying Party of any of its representations, warranties set forth herein; or (b) any intentional or grossly negligent acts or omission by the Indemnifying Party or any third party acting under such party’s direction and control, or (c) the unlawful acts or omissions of the Indemnifying Party, except that the Indemnifying Party shall not be liable for any Losses which are finally determined by a court of competent jurisdiction to have resulted from the Indemnified Person’s fraud, gross negligence or wilful misconduct. It is not the intent of the Client to waive sovereign immunity or any other third party defense as result of this provision.

15.2 If, as a result of any default or breach by Client or other action or failure to act (material or otherwise) by Client, Vendor terminates this Agreement for default, then in any such event, to the extent allowable by law Client shall indemnify and hold harmless Vendor from all Losses incurred by Vendor that resulted from such Client’s default or breach. It is not the intent of the Client to waive sovereign immunity or any other third party defense as result of this provision.

15.3 To the extent allowable by law, each Indemnifying party shall indemnify and hold harmless the Indemnified Party from any and all Losses resulting from any claim or action by a third party for infringement of any presently-existing United States intellectual property right, except as set forth below. If any Service, or any part thereof, is in such action held to constitute an infringement or misappropriation of the proprietary rights of a third-party, or the performance of such Service is enjoined or restricted or if a proceeding appears to the party providing the offending Service likely to be brought, such party will, at its own expense: (a) procure the right to continue using or receiving the Service; (b) modify or replace the Service or its components to comply with the specifications and to not violate any third party intellectual property rights; or (c) refund all amounts paid for such Service. The obligations in this Section 15.3 shall not apply if the applicable infringement claim is caused by or based upon: (x) unauthorized modifications made to the Services and/or products of the Services by the Indemnified Party; (y) the unauthorized combination, operation, or use of the Services and/or the products of the Services with other items or services by the Indemnified Party; or (z) the failure by the Indemnified Party to use any new or corrected versions of the Service and/or the products of the Services. It is not the intent of the Client to waive sovereign immunity or any other third party defense as result of this provision.

15.4 A party’s obligations to indemnify the other party are expressly conditioned on the party seeking indemnification: (a) giving written notice of the claim promptly to the Indemnifying Party; (b) giving the Indemnifying Party sole control of the defense and settlement of the claim (provided, that the Indemnified Party may at its sole option choose to participate in the defense at its own expense through counsel of its own choosing); (c) providing to the Indemnifying Party all reasonable

assistance (at the Indemnifying Party's expense); and (d) not compromising or settling such claim without the Indemnifying Party's prior approval. The Indemnifying Party will not settle or compromise any claim without the prior consent of the Indemnified Party if such settlement would involve any admission of fault by the Indemnified Party or any limitation on the future conduct of the Indemnified Party.

ARTICLE 16 - EXCUSABLE DELAY

Neither party shall be liable for any delay nor failure in performance arising out of causes beyond its reasonable control as defined in Article 23 and without its negligence or fault. The obligation of the party or parties relying on such cause or force majeure shall be suspended only during the continuance of any inability so caused and for no longer period of said unexpected or uncontrollable event, and such cause shall, so far as possible, be remedied with all reasonable dispatch. The party, in the event of such a cause, shall notify the other party immediately in writing of its delay or failure in performance, but not later than ten (10) working days after the occurrence, unless there exists good cause for failure to give such notice, in which event, failure to give such notice shall not prejudice any party's right to justify any nonperformance as caused by force majeure unless the failure to give timely notice causes material prejudice to the other party. The notice shall describe the cause and its effect upon performance and the anticipated duration of the inability to perform.

ARTICLE 17 - BOOKS AND RECORDS

17.1 At all times during the Term, each party shall maintain a complete and accurate set of files, records, books, papers and accounts ("Records") of all business activities and operations conducted by such party in connection with its performance under this Agreement. Each party shall make such Records available to the other upon request. All accounts required to perform Services shall be maintained and prepared in accordance with generally accepted accounting principles.

17.2 Vendor shall maintain all Records pertaining to its performance of Services under this Agreement for a period of not less than one year after the date of termination or expiration of this Agreement. During the Term and during the one year period following the expiration or termination this Agreement, Vendor shall make available to Client, Records related to its performance under this Agreement, for Client's inspection, audit and copying, if requested.

ARTICLE 18 - GOVERNING LAW

This Agreement shall be governed by the laws of the Commonwealth of Kentucky, without regard to its conflict or choice of laws principles.

ARTICLE 19 - DISPUTES

19.1 The parties agree that it is in their mutual interest to resolve disputes informally prior to either party commencing any legal action relating to any disputes concerning the interpretation, implementation, compliance or termination of this Agreement. The parties agree not to file suit except as may be permitted herein. A claim by Vendor shall be submitted in writing to Client's Contract Administrator. A claim by Client shall be submitted in writing to Vendor's Contract Administrator. Each party shall designate a Contract Administrator for purposes of this Agreement, and shall provide the contact information for such Contract Administrator to the other party. A representative of the party who files the claim and the Contract Administrator of the other party shall negotiate in good faith and use all reasonable efforts to resolve such claim(s) or dispute(s). During the time that the parties are engaged in good faith negotiations to resolve a claim or dispute, each party shall proceed diligently to perform its respective duties and obligations under this Agreement. If a dispute cannot be resolved between the parties within thirty (30) days after delivery of a claim to the applicable Contract Administrator, either party may elect to exercise any other remedies available under this Agreement, or at law.

19.2 The parties agree to submit to and will not contest the exclusive jurisdiction of, and venue in, the federal and state courts located within Fayette County, Kentucky, and agree that service of documents commencing any suit therein may be made on either party as provided in the Article for notices or as provided by law.

