



Master Service Agreement (the "Agreement")

CUSTOMER/BUSINESS (the "Customer")			
Primary Contact Name:	Eddie Dean	Primary Contact Title:	WM IT Project Manager
Business Name:	LFUCG- Waste Management	Primary Contact E-Mail:	edean@lexingtonky.gov
Street Address:	675 Byrd Thurman Drive	Primary Contact Phone:	859-425-2838
Address:		Contact Fax:	
City, State, Zip:	Lexington, KY 40510	Federal Tax ID:	

AUTHORIZATION

▪ By signing this Master Service Agreement, you (the "Customer") will be bound by the terms and conditions in this service agreement.

This agreement will be between RACO Industries, LLC and the Lexington Fayette Urban County Government Division on behalf of the Division of Waste Management in order to purchase a custom inventory management system (software and scanners) to track refuse containers for Waste Management. This will allow Waste Management to properly track current containers and manage supply. The cost for this project will be \$22,000.

RACO Terms and Conditions
 This RACO Industries Master Services Agreement is made and entered into as of "Effective Date" by and between RACO Industries LLC "RACO", an Ohio Limited Liability Company having a principal place of business at 5480 Creek Road, Cincinnati, Ohio 45242 and "Customer". The following terms and conditions will apply to any purchase order placed by the Customer identified in the Statement of Work. This RACO Industries' Master Services Agreement together with the applicable Statement of Work are the sole agreements between Customer and RACO for the provision of the Services the "Agreement".

1. Definitions
 As used herein, the following terms have the following defined meanings. Terms used but not defined herein have the meanings given to them in the Statement of Work:
 "Affiliate" means with respect to any entity, any other legal entity that controls, is controlled by, or is under common control with, a Party, and includes a legal entity that wholly owns, or is wholly owned by, a Party. An entity is deemed to "control" another if it owns directly a sufficient voting interest of at least 50% to elect a majority of the board of directors, or has managing or other authority to direct the affairs or management of the other entity.
 "Confidential Information" means information which is (i) not known outside of a party's business and from which that party obtains an economic benefit because it is not known outside of its business; (ii) disclosed by that party to the other party or becomes known to the other party as a consequence of this Agreement or any actions taken under this Agreement; (iii) if disclosed in tangible form, is clearly marked to indicate its confidential nature, or if disclosed otherwise (such as orally or visually) is identified as confidential at the time of disclosure and confirmed as such by a writing reasonably identifying the confidential subject matter within thirty (30) days.
 "Customer Intellectual Property" means all Intellectual Property owned by Customer or its Affiliates prior to the Effective Date or independently developed by Customer thereafter.
 "Improvement" means any upgrade, new version, adaptation, change, redesign, improvement, derivative work or modification of or to Intellectual Property, or any Service or deliverable, and the corresponding specifications, or the method or process of creation, production or use.
 "Intellectual Property" means all: (a) patents, patent applications, patent disclosures and all related continuation, continuation-in-part, divisional, reissue, reexamination, utility model, certificate of invention and design patents, patent applications, registrations and applications for registrations; (b) trademarks, service marks, trade dress, internet domain names, logos, trade names and corporate names and registrations and applications for registration thereof; (c) copyrights and registrations and applications for registration thereof; (d) mask works and registrations and applications for registration thereof; (e) materials, data, documents, specifications, software code, software modules, programming documentation, applications, customizations, designs, techniques, programs, analyses, reports, summaries, recommendations or work-in-process and all concepts, formulas, know-how and improvements; (f) inventions, trade secrets and confidential business information, whether patentable or nonpatentable and whether or not reduced to practice, manufacturing and product processes and techniques, research and development information; and (g) copies and tangible embodiments of each of the above.
 "RACO" means RACO Industries LLC and its affiliates.
 "RACO Intellectual Property" means: (i) Intellectual Property owned or licensed by RACO or its subcontractor(s) prior to the Effective Date or created or developed by RACO or its subcontractor(s) thereafter other than in connection with the Services rendered hereunder; and (ii) all Intellectual Property created or developed by RACO or its subcontractor(s) in connection with the Services rendered hereunder excluding Customer Intellectual Property or Customer Confidential Information.

“Services” means the services identified in the SOW to be provided by RACO to Customer.

“Statement of Work” or “SOW” means the document(s) reflecting the Customer information, project specifics, fulfillment plan, description of services, conditions of service, and service level agreement (if applicable).

2. RACO Responsibilities

Subject to acceptance of a purchase order by RACO, RACO agrees to perform the Services as specified in the applicable SOW. RACO is responsible for loss of or damage to Customer’s equipment while in RACO’s possession and in transit to Customer. To the extent that RACO has access to Customer’s computer systems and/or personally identifiable data or information, RACO agrees to exercise a reasonable degree of care regarding such access. In particular, RACO agrees to: (a) use commercially reasonable efforts to protect against the introduction of any computer virus by RACO into Customer’s systems; (b) comply with applicable privacy and data protection laws and regulations regarding any personally identifiable data or information (as defined and/or protected by applicable law) provided to RACO under an applicable SOW; and (c) take reasonable measures to safeguard against unauthorized disclosure or access to Customer’s data provided to RACO.

3. Customer Responsibilities

Customer agrees to (a) provide RACO, in a timely fashion, all information reasonably required for performance of the Services, including completing the SOW prior to commencement of the Services; (b) designate a business contact and a technical contact to coordinate Customer’s personnel and provide liaison between the parties; and (c) provide RACO with access to Customer’s systems and premises to the extent necessary during the performance of the Services. If applicable, Customer will accept or reject each deliverable or report within five (5) working days of receipt (unless another period is specified in the applicable SOW). Any rejection must be in writing and specifically state the manner in which the deliverable or report is materially defective. Acceptance will not be unreasonably withheld. If Customer does not respond within such five (5) working day time period, the deliverable or report will be deemed accepted. Transportation or shipping charges associated with the shipment of a defective or replacement equipment from Customer shall be at Customer’s expense. Customer is responsible for loss of or damage to equipment while equipment is in Customer’s possession and in transit to RACO. Customer agrees to (i) identify any computer systems or data that contain personally identifiable data or information to which RACO will have access under this Agreement or any applicable SOW; and (ii) identify the types of personally identifiable data or information being provided to RACO as part of RACO’s performance of the Services. Customer warrants that it shall not provide RACO with any personally identifiable data or information or provide RACO with access to any Customer systems that contain personally identifiable data or information, if that data or access is not necessary for RACO to perform the Services under this Agreement or an applicable SOW. Customer further warrants that it shall not provide RACO with any Sensitive Personal Information or access to any systems that contain Sensitive Personal Information. “Sensitive Personal Information” shall include national ID numbers (e.g., Social Security numbers), information relating to financial accounts or financial payment cards, passport numbers, driver’s license numbers, state identification numbers, medical or health information (including health insurance information), race and ethnicity information, and date of birth.

4. Changes in Scope of Services

All requests for changes in the scope of Services must be documented and agreed to in writing by both parties prior to being implemented. RACO reserves final authority to determine whether actual Customer requirements significantly deviate from the SOW. In such case, RACO reserves the right to quote additional fees or decline to proceed with the change.

5. Payment: All invoices will be generated against the Customer’s purchase order provided by Customer to RACO. If Customer purchases Services directly from RACO, Customer will pay RACO the fees and expenses due for the Services specified in the applicable SOW within thirty (30) days of the date of each invoice. Interest will be charged at the rate of 1.0% per month on any overdue amounts. If a bona fide dispute exists regarding amounts due on an invoice, Customer agrees to pay the undisputed items and notify RACO of the disputed items within thirty (30) days of the invoice date. No later than thirty (30) days after resolution of the disputed items, Customer will pay the amount, if any, mutually agreed to be due with respect to any disputed items.

6. Taxes: Prices are exclusive of all sales taxes, value added taxes, assessments, and similar taxes and duties for which Customer may be liable. RACO is responsible for the payment of its corporate income taxes.

7. Term and Termination: The term of this Agreement will commence on the Effective Date specified in the SOW and continue in full force and effect until the expiration date specified in the SOW, unless sooner terminated pursuant to this Section 7 or as otherwise provided for termination in the SOW (the “Term”). Either party may terminate any Service for the other party’s failure to comply with any material term or condition in this Agreement or the applicable SOW unless such failure is cured within thirty (30) days after the defaulting party has received written notice of such default. Either party will have the right to suspend or terminate this Agreement at any time upon the other making an assignment for the benefit of creditors or becoming bankrupt or insolvent, or upon a petition being filed in a court of competent jurisdiction proposing the appointment of a receiver or that the non-terminating party being adjudicated bankrupt or insolvent or reorganized under the provisions of any applicable bankruptcy or insolvency act. If Services are not prepaid, Customer will remain responsible for all fees and expenses for Services performed prior to the effective date of termination and will pay such charges within thirty (30) days of submission of a final invoice by RACO.

8. Confidential Information: If the parties have entered into a non-disclosure agreement (NDA) applicable to information exchanged under this Agreement, that NDA will govern. If no NDA is in place between the parties, the following terms will apply: Neither party will directly or indirectly disclose or reveal to any third party any Confidential Information of the other party without the other party’s prior written consent and will not use such Confidential Information for any purpose other than the performance of this Agreement. Each party will use the same degree of care with the other party’s Confidential Information as it uses with its own Confidential Information of a similar nature, but in all cases at least a reasonable degree of care. The receiving party will return Confidential Information to the disclosing party upon request, or destroy the Confidential Information at the disclosing party’s selection. Confidential Information will not be afforded the protection of this Section 8 if such Confidential Information (i) is or becomes publicly available without breach of this Agreement, (ii) is known to the receiving party at the time of its receipt from the disclosing party, (iii) is received from a third party who did not wrongfully acquire or disclose such Confidential Information, (iv) is developed by the receiving party independently of the disclosing party’s Confidential Information, (v) is or later becomes released without restrictions by the disclosing party to anyone, or (vi) is disclosed pursuant to the requirement of a government body or court of law so long as the receiving party gives the disclosing party reasonable, advance notice of the requirement so disclosing party may object to the disclosure or seek a protective order.

9. Warranties; Disclaimer: RACO warrants that during the Term, the Services will substantially conform to the specifications set forth in the applicable SOW. RACO further warrants that RACO will provide the Services in a good and workmanlike manner and in accordance with the prevailing professional standards and practices. Customer’s sole remedy for any breach of the foregoing warranty is that RACO shall re-perform the Services. Unless otherwise specified in the applicable SOW, RACO provides software on an “as is” basis only.

EXCEPT AS SET FORTH IN THIS SECTION 9, THIS AGREEMENT DOES NOT CONTAIN OR OFFER ANY WARRANTIES BY RACO, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WHICH ARE HEREBY EXPRESSLY DISCLAIMED.

10. Intellectual Property: 10.1 License to RACO Intellectual Property; Reservation of Rights. RACO grants Customer a limited, royalty-free, non-transferable, non-exclusive license during the Term to access and use the RACO Services for the purposes set forth in the applicable SOW. Any additional license rights and restrictions

specific to a particular Service will be as stated in the applicable SOW. The license grant is conditioned upon full payment of the compensation due RACO under this Agreement and is terminable as specified herein. RACO reserves all rights not expressly granted herein. 10.2 Limitations. Customer may use the Services solely for Customer's own internal business purposes. Customer will not use the Services to provide time sharing, third party training, virtual or actual hosting, or as a service bureau for any third parties. Customer will not and will not permit any third party to: modify, reverse engineer, decompile, disassemble, translate or convert the Services or apply any procedure or process to the Services in order to ascertain or derive the source code version of the Services. 10.3 License to Customer Intellectual Property. Customer here by grants RACO a royalty-free, sub licensable, non-exclusive license during the Term to the Customer Intellectual Property needed to perform the Services to the specifications in the applicable SOW. 10.4 Ownership. Nothing in this agreement should be construed as providing Customer with a license or other right to any RACO Intellectual Property other than the limited license to access and use the RACO Services set forth herein.

11. Indemnity: 11.1 General from RACO. RACO will indemnify the Customer against and from all third party claims, liabilities, costs, expenses, and reasonable attorney's fees incident thereto, for bodily injury, including death, or damage to property, to the extent it arises from any negligent act or omission or willful misconduct of RACO arising from or connected to the presence on the Customer's premises of RACO, except to the extent any such claims, damages, liabilities, or causes of action are caused by the negligence or intentional misconduct of the Customer, its agents or employees or other third parties. 11.2 To the extent allowable by law, customer will indemnify RACO, its parent, subsidiaries, subcontractors and affiliates, and their respective officers, directors, shareholders, members, and employees, and their respective successors, heirs, and assigns (collectively, the "RACO Indemnitees"), against and from all claims, liabilities, costs, expenses, and reasonable attorney's fees incident thereto, for bodily injury, including death, or damage to property, to the extent it arises from or is caused by any negligent act or omission or willful misconduct of Customer or its subcontractors. Customer will indemnify RACO Indemnitees against and from all claims, liabilities, costs, expenses arising from (a) products furnished by or acts performed by Customer, or (b) Customer's use of any hardware, software or services not provided by RACO, affiliates or subcontractors, (c) specifications or requests provided by Customer, (d) modification of the Services by Customer, (d) use of the Services by Customer outside of the normal, ordinary, and customary use of the Services, or (e) a combination of the Services with hardware, software, or services not provided by RACO, which is alleged to infringe or misappropriate the intellectual property rights of a third party. Customer will pay all damages and costs finally awarded against RACO Indemnitees to the extent that they arise out of such claim, provided that RACO (i) promptly informs Customer of the claim in writing by express courier, email or fax, within thirty (30) days of receiving the claim, provided, however, that Customer is relieved of its obligation only to the extent it is unduly prejudiced in its defense or settlement of such claims by RACO's failure or delay to provide such notification, (ii) gives Customer the right, solely at its option, and expense, to defend and/or settle such claim, provided RACO shall have the right, at its expense, to participate in any such claim or action, and (iii) provides Customer at Customer's expense all reasonable assistance in the defense and/or settlement of the claim. Customer agrees not to enter into any settlement that imposes a burden, obligation, or liability upon RACO Indemnitees without the prior written consent of RACO. This is not deemed a waiver of sovereign immunity or any other third party defense available to Customer. 11.3 THIS SECTION 11 SETS FORTH CUSTOMER'S ENTIRE REMEDY AND RACO'S ENTIRE OBLIGATION AND LIABILITY TO CUSTOMER WITH RESPECT TO THIRD PARTY CLAIMS.

12. Limitation of Liability: 12.1 NEITHER PARTY WILL BE LIABLE FOR LOST PROFITS, LOST SAVINGS, LOST DATA, LOSS OF USE OR OTHER, SPECIAL, INDIRECT, CONSEQUENTIAL OR INCIDENTAL DAMAGES OF ANY KIND, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. 12.2 IN NO EVENT WILL RACO'S AGGREGATE LIABILITY IN CONNECTION WITH THIS AGREEMENT AND THE SALE OF PRODUCTS AND PROVISION OF SERVICES TO CUSTOMER, REGARDLESS OF THE FORM OF ACTION GIVING RISE TO SUCH LIABILITY (WHETHER IN CONTRACT, TORT, OR OTHERWISE), AND INCLUDING ANY LIABILITY UNDER SECTIONS 9 AND 11 ABOVE, EXCEED THE AGGREGATE PURCHASE PRICE FOR SERVICES AND PRODUCTS IN QUESTION PAID BY CUSTOMER TO RACO UNDER THIS AGREEMENT. RACO should be liable for any personal injury or property damage caused by its employees while on LFUCG property.


13. Independent Contractor

The parties will act as independent contractors. Neither party will act as, or be deemed to be, an agent for or partner of the other party for any purpose nor will either party have the authority to bind the other.


14. General: 14.1 If there is a conflict between the documents, the order of precedence will be: (1) these terms and conditions; (2) the SOW (unless the SOW explicitly states the conflicting term prevails over the terms and conditions). **14.2** Neither party will be responsible for its failure to perform due to causes beyond its reasonable control, such as acts of God, fire, theft, war, acts of terrorism, riot, embargoes, civil insurrections, strikes, flood, shortages or unavailability of material or energy or acts of civil or military authorities ("Force Majeure Event"). If performance is to be delayed by a Force Majeure Event, the affected party will notify the other party in writing. Except for payment of funds due and payable, neither party will be required to make up any performance that was prevented by a Force Majeure Event. **14.3** Neither party will assign this Agreement or any obligations or rights hereunder without the express written consent of the other party, except that either party may assign this Agreement to any Affiliate upon notice but without obtaining such consent. RACO may subcontract its performance under this Agreement but will use reasonable efforts to replace any subcontractor to whom the Customer objects in writing. **14.4** This Agreement contains the entire agreement between the parties, and no modification or waiver of any of the provisions, or any future representation, promise, or addition will be binding upon the parties unless agreed to in a written instrument signed by the parties. Placement of an order by Customer for Services is deemed an acknowledgement and acceptance by Customer of this Agreement. This Agreement supersedes any preprinted or standard terms which may appear on any purchase orders submitted by Customer and cancels any prior agreements between the parties in their entirety with respect to the subject matter addressed herein. The mere acknowledgment or acceptance of any purchase order with provisions that are ambiguous, in addition to or inconsistent with the terms of this Agreement or the providing of Services pursuant thereto will not be deemed as acceptance or approval of such ambiguous, additional or inconsistent provisions. In the event that any provision of this Agreement will be held to be invalid or unenforceable, the same will not affect in any respect whatsoever the validity or enforceability of the remainder. **14.5** Notices: All notices, reports and other communications required or permitted to be made with respect to this Agreement will be given in writing, addressed to the parties identified in the SOW. A copy of all notices relating to this Agreement should be sent to: RACO Industries, 5480 Creek Road, Cincinnati, Ohio 45242 Attn: Legal Department. **14.6** Publicity: The parties will cooperate in preparing press releases and white papers as they deem appropriate. Any such press release or white paper will be subject to the parties' mutual written approval, which approval will not be unreasonably withheld.

15 Governing Law: 15.1 For purchase orders placed in the USA, Canada, or Latin America, any question concerning the validity, construction or performance of this Agreement will be governed by the laws of the Commonwealth of Kentucky, USA. Sole venue and exclusive jurisdiction will rest with the courts at Fayette County, Kentucky, USA and Customer hereby waives any objection or challenge to those courts' jurisdiction over Customer in such an action. **15.2** Customer acknowledges that export and re-export of software and/or hardware associated with the Services under this Agreement is subject to U.S. and European Union export regulations or other similar laws or regulations.

Mayor-Lexington Fayette Urban County Government

Signature:  Print Name: Jim Gray Title: Mayor Date: 12 May-16

RACO INTERACTIVE:

Signature:  Print Name: Don Mech Title: VP Bus Dev. Date: 4/7/16