



**THIS MASTER LICENSE AND SERVICES AGREEMENT** (the "Agreement"), is made and entered into as of this the 1<sup>st</sup> day of August, 2016 ("Effective Date"), by and between Ion Wave Technologies, Inc., a Missouri corporation having its principal offices located at 3653 South Avenue, Springfield, Missouri 65807 ("IWT") and the Lexington-Fayette Urban County Government, an urban county government pursuant to Chapter 67A of the Kentucky Revised Statutes having its principal offices located at 200 East Main Street, Lexington, Kentucky, 40507 ("Client" or "LFUCG").

**WHEREAS**, IWT is engaged in the business of the development, marketing, and support of Internet based software of all types; and

WHEREAS, IWT has been selected to establish a centralized electronic procurement solution for the LFUCG Division of Central Purchasing pursuant to RFP #20-2015 Procurement System (the "RFP").

**NOW THEREFORE**, in consideration of the premises, covenants, and mutual promises contained in this Agreement, including all incorporated attachments, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties do hereby agree as follows:

## **1. Software Licensing and Use**

- 1.1 **License Grant.** In accordance with and subject to the terms and conditions provided herein and in consideration of payment of the license fees set forth in any mutually executed exhibit, including Exhibit A, which is attached hereto and incorporated herein by reference, IWT hereby grants to Client and Client accepts from IWT a non-exclusive, non-transferable license to use the IWT products specified in Exhibit A, collectively or individually referred to as the "Licensed Products", solely for its internal business purposes. Any rights not granted herein are reserved to IWT.
- 1.2 **Access.** Access to and usage of the Licensed Products shall be limited to Client's internal business purposes, specifically defined as the operation of Client's Division of Central Purchasing. Access to the Licensed Products shall be limited to the Client end user community, as defined in Exhibit A. Unless specified in Exhibit A, Client will not permit others, including but not limited to subsidiaries, affiliates, and contractors, to access or use the Licensed Products, nor will Client use the Licensed Products on their behalf.
- 1.3 **Use Limits.** Client is prohibited from performing any load testing against IWT's hosted production environments, without the prior express written permission of IWT. Client is prohibited from reverse engineering, decompiling, and disassembling the Licensed Products.
- 1.4 **Work Products.** Any Work Products, as defined below, that are software, shall be subject to the same license limitations of this Agreement and any additional limitations as set forth in any Exhibit hereto.
- 1.5 **Rent, Lease, and Sublicense Restrictions.** Client shall not rent, lease, sublicense, grant a security interest in, or otherwise transfer the Client's right to use and possess the Licensed Products, in whole or part.
- 1.6 **Copies and Proprietary Notices.** Any Licensed Products, together with any accompanying technical or system documentation that is delivered to Client pursuant to this Agreement shall not be copied, except that one (1) copy may be made for backup or archival purposes, provided any such copy is clearly marked as proprietary to IWT, licensed to Client, and contains IWT's proprietary notices. Client shall be permitted to make additional copies of documentation specifically designated for training of end users. Client shall not remove any proprietary notices or labels on the Licensed Products or its documentation.
- 1.7 **Violation.** Violation of any provision of this Section 1 shall breach the Agreement and be the basis for immediate termination of this Agreement and the corresponding license grant to the Licensed Products with no refund to Client of fees paid to IWT.

## **2. Maintenance and Support**

- 2.1 **Support Services.** Subject to the payment of the applicable licensing and support fees as set forth in Exhibit A, IWT shall provide Client with the maintenance and support services as set forth in Exhibit B of this Agreement ("Support Services"), which is attached hereto and incorporated herein by reference, for the Licensed Products. Exhibit B may be updated from time to time at IWT's sole discretion, provided said updates do not materially diminish the Support Services provided to Client without Client's consent.
- 2.2 **Payment and Term.** Provided that this Agreement and the license for the applications which the Support Services are to be performed has not been terminated, IWT will provide Support Services as specified in Exhibit B of this Agreement for the support fees indicated in Exhibit A. In the event (i) IWT has not received payment for the next annual period's applicable license or support fees, prior to the last day of the current term; and/or (ii) this Agreement and/or the license is no longer in

effect, Support Services shall be discontinued.

- 2.3 On-Site Services. Support Services do not include any on-site services. At Client's request, IWT may provide technical, operational or other assistance or consulting in excess of the standard Support Services at IWT's standard hourly rate then in effect.

### **3 Professional Services**

- 3.1 Professional Services. IWT shall provide Client with professional consulting services as described in the Statements of Work ("SOW") to be attached as Exhibit C hereto ("Professional Services") and incorporated herein by reference, which SOW by its express terms shall be considered part of this Agreement. Any additional services beyond those described in any Exhibit C shall be at the mutual, written agreement of the parties.
- 3.2 Client Obligations. In order to facilitate the provision of the Professional Services by IWT, Client shall have installed the recommended hardware and software and will have completed the required preparatory work described in the Exhibit(s) attached hereto.
- 3.3 Contact Person. Each party will appoint in writing, in the applicable Exhibit, an employee or agent of such party to act as the "Contact Person" for all communications between the parties related to the Professional Services. Each party may change its Contact Person upon written notice to the other.

### **4 Proprietary Rights**

- 4.1 Ownership. Client acknowledges and agrees that, as between Client and IWT, IWT is the sole and exclusive owner of all right, title and interest in and to the Licensed Products, as well as all alterations, modifications, additions, and derivative works made with respect to the Licensed Products and all work products produced from the Professional Services performed under the SOW ("Work Products"), except that Client shall be granted limited rights in IWT's Licensed Products as set forth in Section 4.4 of this Agreement. Except as expressly permitted or required hereby: (i) Client shall have no right or license to the Licensed Products or Work Products; and (ii) Client shall not use, reproduce, publish, or make available to others, modify, or create any derivative works of, all or any part of the Licensed Products or Work Products.
- 4.2 License Rights. Nothing in this Agreement or any Exhibit hereto shall in anyway enlarge or extend Client's license rights in the Licensed Products, with respect to the materials that IWT delivers to Client pursuant to any SOW.
- 4.3 Client Data. Any client data and any materials or equipment furnished to IWT by Client in connection with any of the Professional Services provided under an Exhibit shall be deemed proprietary to Client.
- 4.4 Client Data. During the term of this Agreement, Client may utilize the standard functionality of the Licensed Products for their intended purpose, including the ability to download copies of documents loaded into or generated by the Licensed Products. Client shall have the right to retain a copy of all downloaded documents in perpetuity.
- 4.5 Client Data. IWT and Client acknowledge and agree that any data entered by Client into IWT Hosted Products ("Client Data") remains the property of Client. Client grants IWT a limited, nonexclusive license to copy, transmit, use and prepare derivative works of the Client Data to the extent necessary for IWT to perform its obligations under this Agreement. IWT is permitted to use Client Data in an aggregate data form; provided that, no aggregated data may be used or shared with third parties unless the data has been anonymized and compiled in a way that does not identify Client's end users, vendors, or specific activities within the IWT Products. Upon termination, cancellation, expiration, or other conclusion of this Agreement, Client may request that IWT remove Client Data from IWT's production systems. Client acknowledges that as part of a commercially reasonable backup strategy, IWT does maintain long term archival backups that may continue to contain Client Data after termination of this Agreement. IWT agrees not to utilize such archival backups for the specific purpose of accessing Client Data after termination of this Agreement, unless specifically authorized to do so by Client.
- 4.6 Data Extraction. During the term of and within thirty (30) days following termination of this Agreement, Client may request IWT to provide consulting services to Client in order to perform a custom extract of Client data from the Licensed Products. IWT will provide the requested consulting services for an hourly rate of \$175.00 per hour. Custom data extracts will be provided electronically in a text delimited flat file format (or other mutually acceptable format) and will be scrubbed of all IWT proprietary data structures. Client and IWT will work together to determine a list of the specific data elements to be provided, at which point IWT will provide an estimate of the time required to extract the data. Once the estimate has been provided, if Client wishes IWT to proceed with the data extract, Client will make a mobilization payment of fifty percent (50%) of the estimated amount to IWT. After receipt of this payment, IWT will then have thirty (30) days to deliver the data extracts to Client. Client shall have thirty (30) days upon receipt of the data to review for acceptance. Upon acceptance, IWT will provide Client with a final accounting of hours and Client shall be responsible for payment of the additional consulting fees.
- 4.7 Trademarks. All trademarks, service marks, trade names and logos of IWT appearing on or within the Licensed Products or Work Products used in connection with the Support Services or the Professional Services provided by IWT are the property of IWT and Client shall not use them without IWT's prior written approval.

## 5 Fees and Payment Terms

- 5.1 Fees. Client will pay IWT the fees as set forth in the Exhibits. Except for initial payments, which payments, unless provided otherwise, shall be due and payable upon the execution of this Agreement and any Exhibit hereto, IWT will submit to Client an invoice for the amounts due. Unless provided otherwise, all invoices submitted by IWT shall be due and payable in full, without reduction for any offset, withholding or other claims, within thirty (30) days of the date thereof. Any amounts payable to IWT hereunder, which are not paid when due, shall thereafter bear interest at the rate of one and one-half percent (1.5%) per month or the maximum amount permitted by applicable law, whichever is less.
- 5.2 Taxes. Fees do not include any taxes. Client is exempt by law from payment of Kentucky Sales Tax, local Sales Tax and Federal Excise Tax. In the event that taxes are assessed by any governmental body on any deliverable provided under this Agreement, in which Client is not exempted from paying, Client shall have the option to pay IWT all such tax amounts which have been properly invoiced, at Client's discretion, to avoid termination of this Agreement. IWT shall have the option to terminate the Agreement if timely payment of said taxes is not made by Client. Client shall provide IWT with a valid tax exemption certificate upon request.
- 5.3 Travel Expenses. Unless otherwise specified in the Exhibits, IWT shall be reimbursed by Client for all reasonable travel and living expenses. Prior to any travel taking place, Client and IWT shall agree in writing on the details of reasonable travel and living expenses.
- 5.4 Non-Payment. As opposed to exercising its right to terminate an Exhibit or this Agreement in its entirety, IWT may, at IWT's sole discretion, suspend performance of any obligations under the applicable Exhibit for nonpayment, but only until such time as payment is made.
- 5.5 Currency. All fees are stated in US dollars and are payable in US currency.
- 5.6 Invoices. All invoices to Client shall be mailed or emailed to the following address, which may be changed from time to time, provided Client provides IWT with written notice of such change:  
Lexington-Fayette Urban County Government  
Attn: Accounts Payable  
200 East Main Street  
Lexington, KY 40507  
Email: [tslatin@lexingtonky.gov](mailto:tslatin@lexingtonky.gov)

## 6 Term and Termination

- 6.1 Term and Termination. The term of this Agreement shall commence on the Effective Date and will run for a period of five (5) years, as indicated in the Exhibits.
- 6.2 Termination for Breach. This Agreement may be terminated by either party upon a breach by the other party of any material term of the Agreement or its Exhibits, which breach is not cured (unless such breach is incapable of cure, such as breach of the restrictions on use and license grant described herein or of any confidentiality agreement between the parties hereto) within thirty (30) days of written notice of the breach. Upon termination for breach, all use and access to the Licensed Products shall cease and Client shall immediately return to IWT or destroy all copies of the Licensed Products, together with all documentation and any other IWT proprietary information in its possession. Furthermore, Client shall provide IWT a certification from an officer of Client that all Licensed Products, documentation, and all copies thereof, have been returned to IWT or destroyed in accordance with this Agreement.
- 6.3 Effects of Termination. This Agreement may also be terminated by either party for reasons other than the breach of this Agreement, provided that the party wishing to terminate the Agreement provide notice, in writing, within thirty (30) days to the other party. Upon termination or expiration of this Agreement for reasons other than the breach of this Agreement: (i) all use and access to products licensed on a term basis shall cease and Client shall immediately return to IWT or destroy all copies of the term licensed products, together with all documentation and any other IWT proprietary information in its possession. Client shall provide IWT a certification from an officer of Client that all term licensed products and all associated documentation, have been returned to IWT or destroyed in accordance with this Agreement. (ii) all use and access to products licensed on a perpetual basis shall continue, subject to the terms of this Agreement and any Exhibits, including but not limited to, the provisions for access and use of the Licensed Products (Section 1), Proprietary Rights (Section 4), Warranties and Indemnification (Section 7), and Confidentiality (Section 8). Upon termination or expiration of this Agreement, all Support Services and Professional Services as discussed in this Agreement or any Exhibits will cease.

## 7 Warranties, Indemnity, and Limitations

- 7.1 Licensed Products Warranty. IWT warrants that it is the owner of the Licensed Products or otherwise has the right and authority to grant the licenses to Client, which are provided for herein. IWT represents that for the entire term covered by the Support Services ("Warranty Period") that the Licensed Products will substantially perform in accordance with and as

specified in the applicable documentation when operated in the designated environment. IWT does not represent that the functions contained in the Licensed Products or that the Licensed Products will operate uninterrupted or error free. In the event that Client does not pay the required Support Services fees or this Agreement is terminated, Client agrees that all warranty provisions and associated remedies shall be terminated.

- 7.2 **Limitations of Warranty.** IWT's warranties in this Section 7 shall only apply to the IWT Products developed by IWT or its affiliates. All other Licensed Products shall be provided by IWT "AS IS." Notwithstanding anything to the contrary in this Section 7.2, IWT shall assign to Client any warranty granted by the supplying party for the Licensed Products, to the extent of IWT's right to do so.
- 7.3 **Remedy.** During the Warranty Period, IWT's entire liability and Client's sole remedy for any reproducible, substantive error(s) in the unmodified IWT Application, as reported in writing by Client, shall be that IWT, at its option, will use its reasonable good faith efforts to correct the error(s) or, upon return of the Licensed Product and accompanying documentation to IWT, terminate this Agreement or the applicable license to the Licensed Product, as the case may be, and refund to Client a sum equal to a portion of the license fees paid, prorated on a monthly basis for the period in which the application was rendered unusable, for the Licensed Product for which the license is terminated.
- 7.4 **Services Warranty.** IWT represents and warrants that it is experienced in providing the Professional Services and Support Services described herein and further warrants that it will perform the Professional Services and Support Services in a good, workmanlike, and professional manner. Client's remedy for breach of the foregoing warranties shall be the re-performance of the relevant Professional Services free of charge.
- 7.5 **Disclaimer.** IWT shall not be liable for any loss of profits, loss of use, business interruption, loss of data, cost of cover, or indirect, special, incidental, or consequential damages of any kind in connection with or arising out of the furnishing, performance or use of the Licensed Products, Professional Services and/or Support Services provided to Client under this Agreement as applicable, whether arising in contract or tortious conduct, or any other legal theory, including negligence, or whether arising from mistakes, omissions, interruptions deletion of files, errors, defects, viruses or other malicious code, delays in operation of transmission, or the use or performances of a Work Product, or the delay or failure of performance the Professional and/or Support Services provided under this Agreement, even if IWT has been advised of the possibility of such damages.
- 7.6 **Client Responsibility.** Client acknowledges and agrees that it shall bear all liability for its end users' activity on IWT's systems. Client represents and warrants that any data loaded into IWT's systems by Client's end users will not infringe the intellectual property rights of any third party. Client acknowledges that IWT may, in appropriate circumstances and at its discretion, disable Client's access or terminate this Agreement for violations of this provision. Client will be solely responsible for bearing any and all costs of obtaining any required third party licenses for data loaded into IWT's systems by Client's end users.
- 7.7 **Limited Warranty.** THE ABOVE IS A LIMITED WARRANTY AND IT IS THE ONLY WARRANTY MADE BY IWT. EXCEPT AS EXPRESSLY SET FORTH HEREIN, IWT MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NONINFRINGEMENT, AND IWT HEREBY DISCLAIMS THE SAME.
- 7.8 **Exception to Warranty.** IWT'S WARRANTY OBLIGATIONS SHALL NOT APPLY IF THE LICENSED PRODUCTS OR SOFTWARE WORK PRODUCT'S FAILURE TO PERFORM IN ACCORDANCE WITH ITS FUNCTIONAL SPECIFICATIONS IF CAUSED BY: (I) THIRD PARTY SOFTWARE LICENSED BY CLIENT; (II) CLIENT'S USE OF OR ACCESS TO THE LICENSED PRODUCTS OTHER THAN AS INTENDED OR IN VIOLATION OF THIS AGREEMENT; OR (III) UNAUTHORIZED MODIFICATIONS MADE TO THE IWT LICENSED PRODUCTS OR SOFTWARE WORK PRODUCT BY CLIENT.
- 7.9 **Indemnification.**(a) By IWT. IWT shall indemnify, defend and hold harmless Client against any loss, damage or expense incurred by Client as a result of claims, actions, or proceedings brought by any third party alleging infringement by a IWT Licensed Product or a Work Product, of copyright, trademark, patent, or other proprietary rights, and against its reasonable attorneys' fees and any money damages or costs awarded in respect of any such claim(s) and any suit arising from any such claim(s); provided, however, that (i) Client shall have given IWT prompt written notice of such claim, demand, suit or action; (ii) Client shall cooperate with said defense by complying with IWT's reasonable instructions and requests to Client in connection with said defense; and (iii) IWT shall have control of the defense of such claim, suit, demand, or action and the settlement or compromise thereof Further, IWT shall have no liability for any infringement action or claim that is based upon or arising from the matters described in this paragraph if the applicable Licensed Product or Work Product is modified or altered by a party other than IWT or is used for a purpose other than that for which it is intended or as set forth in the appropriate documentation. If a temporary or permanent injunction is obtained against Client's use of the Licensed Product or Work Product as a result of the matters described in this paragraph, IWT shall, at its option and expense, either procure for Client the right to continue using the Licensed Product or Work Product or replace or modify the Licensed Product or Work Product or infringing portion thereof so that it no longer infringes the alleged proprietary right. In the event that IWT concludes, in its sole discretion, that such procurement, replacement or modification is not reasonably practical, IWT may terminate the applicable Exhibit and/or this Agreement without penalty and refund that portion of the Fees attributable to the

infringing product, prorated on a monthly basis. Client shall cease all use of a Licensed Product or Work Product for which a refund is given. This paragraph sets forth the exclusive remedy of Client against IWT, and IWT's exclusive obligation, with respect to any action or claim described herein.

- 7.10 Limitation of Liability. IN NO EVENT WILL IWT'S LIABILITY ARISING FROM OR RELATING TO THIS AGREEMENT EXCEED THE AGGREGATE AMOUNT OF PAYMENTS RECEIVED BY IWT FROM CLIENT UNDER THE EXHIBIT GIVING RISE TO THE CLAIM. ADDITIONALLY, IN NO EVENT WILL IWT BE LIABLE FOR ANY CLAIM BROUGHT BY CLIENT MORE THAN TWO (2) YEARS AFTER THE CAUSE OF ACTION AROSE OR REASONABLY SHOULD HAVE BEEN DISCOVERED.

## **8 Confidentiality**

- 8.1 Obligations. "Confidential Information" shall mean any proprietary information which is specifically marked as proprietary or confidential and which is disclosed by either party to the other in any form in connection with this Agreement. During the term of this Agreement and for a period of five (5) years after the date of termination of this Agreement or for a period of five (5) years after the termination of use of the Licensed Products, whichever period is longer, each party: (i) shall treat as confidential all Confidential Information provided by the other party; (ii) shall not use such Confidential Information except as expressly permitted under the terms of this Agreement or otherwise previously authorized in writing by the disclosing party; (iii) shall implement reasonable procedures to prohibit the disclosure, unauthorized duplication, reverse engineering, disassembly, decompiling, misuse or removal of such Confidential Information; and (iv) shall not disclose such Confidential Information to any third party. Without limiting the foregoing, each of the parties shall use at least the same procedures and degree of care to prevent the disclosure of Confidential Information as it uses to prevent the disclosure of its own confidential information of like importance, and shall in any event use no less than reasonable procedures and a reasonable degree of care.
- 8.2 Exceptions. Notwithstanding the above, neither party shall have liability to the other with regard to any Confidential Information that: (i) was generally available to the public at the time it was disclosed, or becomes generally available to the public through no fault of the receiver; (ii) was known to the receiving party at the time of disclosure as shown by written records in existence at the time of disclosure; (iii) was developed independently by the receiving party prior to the disclosure, as shown by written records in existence prior to the disclosure; (iv) is disclosed with the prior written approval of the disclosing party; (v) becomes known to the receiving party from a source other than the disclosing party without breach of this Agreement by the receiving party and in a manner which is otherwise not in violation of the disclosing party's rights; or (vi) is disclosed pursuant to the Kentucky Open Records Act, KRS 61.870 to 61.884, the order or requirement of a court, administrative agency, or other governmental body, provided that the receiving party shall provide reasonable advance notice to enable the disclosing party to seek a protective order or otherwise prevent such disclosure and further provided that any such disclosure shall not destroy or diminish the confidential status of such Confidential Information.

## **9 Miscellaneous**

- 9.1 Force Majeure. Neither party shall be liable to the other by reason of any failure of performance hereunder (except failure to pay) if such failure arises out of causes beyond such party's reasonable control, despite the reasonable efforts and without the fault or negligence of such party. Without limiting the generality of the foregoing, IWT shall not be liable to Client in any way for any failure or delay in the performance of its obligations hereunder which failure is caused, directly or indirectly, by the failure of any matter for which Client is responsible under this Agreement or which is a suspension of services for Client's failure to pay.
- 9.2 Assignment. Neither party may assign this Agreement without the prior written consent of the other, which consent will not be unreasonably withheld. Notwithstanding the foregoing, IWT may assign this Agreement to any entity acquiring substantially all of its stock or assets or the assets to which this Agreement or any Exhibit relates upon reasonable notice to LFUCG.
- 9.3 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky, without regard to conflicts of law principles.
- 9.4 Exhibits. Each Exhibit to this Agreement shall incorporate the terms of this Agreement. In the event of any conflict between the terms of this Agreement and the terms of any Exhibit, the terms of this Agreement shall control, unless an Exhibit expressly provides otherwise. Additional Exhibits added to this Agreement from time to time by the mutual written agreement of the parties shall be numbered sequentially under the letters of the respective Exhibit title (e.g. Exhibit A Licensed Products shall be A-1, A-2, etc.) and each shall be in addition to the previous Exhibit.
- 9.5 Records & Audits. IWT, its agents or representatives, shall have the right to conduct a technical audit of Client's records, for the express purpose of determining whether Client is in compliance with the terms of this Agreement. Should IWT find that Client is not in compliance, IWT shall immediately notify Client and afford Client an opportunity to cure or correct any event giving rise to noncompliance, which shall consist of a period not to exceed seven (7) calendar days. In the event that Client fails to bring Client records into compliance within the seven (7) day period, Client shall pay IWT for any reasonable damages actually incurred as a result of Client's noncompliance plus a five percent (5%) total penalty.

- 9.6 Independent Contractor. IWT acknowledges and agrees that its employees or agents are not employees of Client for any purpose whatsoever. IWT shall be considered an independent contractor at all times during the performance of Services specified hereunder. IWT will perform the Services under the general direction of Client, but IWT will determine, in IWT's sole discretion, the manner and means by which the Services are accomplished.
- 9.7 Waiver. No delay or omission by either party to exercise any right or power unless in writing and signed by the party waiving rights it has under this Agreement shall impair or be construed as a waiver of such right or power. A waiver by either party of any covenant or breach shall not be construed to be a waiver of any succeeding breach or of any other covenant.
- 9.8 Notices. Any notice required to be sent to a party under this Agreement will be in writing, shall be sent by: facsimile; first-class mail return receipt requested; personal delivery; or overnight courier to the Address for Notices given for that party below, and shall be considered delivered upon proof of such delivery. Either party may change its notice address by giving written notice to the other party.

**If to IWT:**

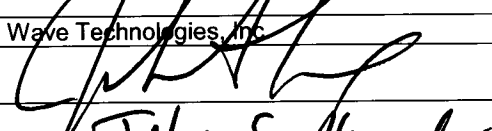
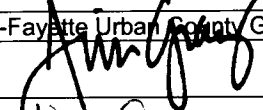
Ion Wave Technologies, Inc.  
 3653 South Avenue  
 Springfield, Missouri 65807  
 Phone: 417-823-7773  
 Fax: 417-823-7778

**If to Client:**

Lexington-Fayette Urban County Government  
 Attn: Purchasing Director  
 200 East Main Street  
 Lexington, KY 40507  
 Phone (859) 258-3320 Fax (859) 258-3322

- 9.9 Severability. If any provision of this Agreement is held to be unenforceable, then both parties shall be relieved of all obligations arising under such provision, but only to the extent that such provision is unenforceable, and this Agreement shall be deemed amended by modifying such provision to the extent necessary to make it enforceable while preserving its intent or, if that is not possible, by substituting another provision that is enforceable and achieves the same objective and economic result. It is expressly understood and agreed that each provision of this Agreement that provides for a limitation of liability, disclaimer of warranties, indemnification or exclusion or damages or other remedies are intended to be enforced as such. Further, it is expressly understood and agreed that in the event any remedy under this Agreement is determined to have failed its essential purpose, all limitations of liability and exclusions of damages or other remedies shall remain in effect.
- 9.10 Non-Solicitation. IWT and Client agree that the employees of IWT and Client may possess technical abilities that are in great demand and further agree that each party has incurred substantial expense in recruiting and training such employees and would incur even greater expense if required to replace any such employee. Therefore, IWT and Client each agree not to recruit, either directly or indirectly, a present employee of the other during the term of this Agreement or any other agreement between them, and for one year following termination of all such agreements, without the express written consent of the other party. Upon breach of this provision, the breaching party agrees to pay the other two times the yearly compensation of the affected employee. This remedy provided in this paragraph shall be the only monetary remedy for breach of the terms of this paragraph. Neither party is prevented from seeking equitable relief for breach of this paragraph.
- 9.11 Survival. Payment obligations and any other provisions, which by their terms or their nature are intended to survive, shall survive the expiration or termination of this Agreement.
- 9.12 Entire Agreement and Amendment. This Agreement, with all Exhibits, is the entire agreement between the parties with respect to its subject matter, and supersedes and replaces any prior agreement between the parties with respect to said subject matter and there are no other representations, understandings or agreements between the parties relative to such subject matter. Amendments or waivers of any provision of this Agreement or its Exhibits shall be valid only as clearly identified as such, in writing and signed by the parties. No purchase order submitted by Client, even if accepted by IWT, shall be deemed to modify any terms of this Agreement, unless IWT has expressly stated in writing its intent to do so.

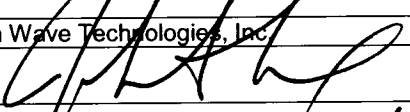
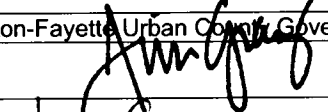
**IN WITNESS WHEREOF**, each party hereto has caused this Agreement to be executed by its duly authorized representative.

IWT - Ion Wave Technologies, Inc.	Client - Lexington-Fayette Urban County Government
Signed: 	Signed: 
Printed Name: John S. Alexander	Printed Name: Jim Gray
Printed Title: COO	Printed Title: Mayor
Date: 6/22/16	Date: 5-Jul-2016

## Exhibit A Licensed Products

1. **License Grant.** IWT Grants to Client, in accordance with and subject to the terms and conditions set forth in this Agreement, a license to the IWT products as specified below:
  - (i) IWT Sourcing
    - The license grant shall be for a five (5) year period starting upon the execution of this Agreement, with usage limited to client employees.
    - The IWT Sourcing license shall include the Electronic Bidding (eRFx), Supplier Management / Registration Modules, and the Reverse Auction modules. Any future modules released by IWT are specifically excluded. Client may purchase additional modules and incorporate an additional Exhibit into this agreement.
    - The cost of the license shall be paid annually as outlined in the payment section below.
  - (ii) IWT Contract Management subject to the following terms and restrictions:
    - The license grant shall be for a five (5) year period starting upon the execution of this Agreement, with usage limited to client employees.
    - The Contract Management license shall include the Contract and Insurance Certificate Tracking modules. Any future modules are specifically excluded. Client may purchase additional modules and incorporate an additional Exhibit into this agreement.
    - The cost of the license shall be paid annually as outlined in the payment section below when bundled with IWT Sourcing.
  
2. **Support Services.** IWT will provide Support Services to the Client, in accordance with and subject to the terms and conditions set forth in this Agreement, as specified below:
  - (i) Support and Maintenance:
    - IWT will provide Support Services as detailed in Exhibit B for the products listed above for a five (5) year period beginning upon the execution of this Agreement at no additional cost to Client.
  
3. **Payment.** Payment for the license fees shall be due as follows:
  - (i) \$23,375 due upon execution of this Agreement for the service period 08/01/2016 to 06/30/2017.
  - (ii) \$26,000 Annual License Fees due July 1, 2017 for the service period 07/01/2017 to 06/30/2018.
  - (iii) \$26,500 Annual License Fees due July 1, 2018 for the service period 07/01/2018 to 06/30/2019.
  - (iv) \$27,000 Annual License Fees due July 1, 2019 for the service period 07/01/2019 to 06/30/2020.
  - (v) \$27,500 Annual License Fees due July 1, 2020 for the service period 07/01/2020 to 06/30/2021.
  
4. **Non Appropriation.** Client intends to remit to IWT all payments for the full term if funds are legally available. In the event Client is not granted an appropriation of funds at any time during the term for the funds and are not, otherwise available to Client to pay IWT payments due and to become due under this Agreement, and there is no other available funds by which payment can be made to IWT, and the non-appropriation did not result from an act or omission by Client, Client shall have the right to terminate this Agreement on the last day of the fiscal period for which appropriations were received without penalty or expense to Client, except as to the portion of the payments for which funds shall have been appropriated and budgeted. At least ninety (90) days prior to the end of Client's fiscal period, Client's Business Services Executive Director shall certify in writing that (1) funds have not been appropriated for the next fiscal period, (b) such non-appropriation did not result from any act or failure to act by Client, and (c) Client has exhausted all funds legally available to pay IWT. If Client terminates this Agreement because of non-appropriation of funds, Client may not purchase or lease during the subsequent fiscal period, software and/or service performing the same function as, or functions taking the place of those performed by the software and/or service provided by IWT; however, that these restrictions shall not be applicable if or to the extent that the application of these restrictions would affect the validity of this Agreement.

**IN WITNESS WHEREOF**, each party hereto has caused this Exhibit to be executed and amended to the Agreement by its duly authorized representative.

IWT - Ion Wave Technologies, Inc.	Client - Lexington-Fayette Urban County Government
Signed: 	Signed: 
Printed Name: John S. Alexander	Printed Name: Jim Gray
Printed Title: COO	Printed Title: Mayor
Date: 6/22/16	Date: 5-Jul-2016


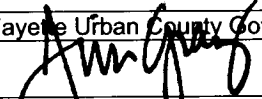
## Exhibit B Support Services

1. IWT shall (a) use commercially reasonable efforts to provide Client with maintenance and support services ("Support Services") via telephone, facsimile, electronic mail, or other electronic means, at IWT's discretion, from the hours of 8:00 a.m. to 6:00 p.m. Central Time Monday through Friday (excluding IWT Holidays, which typically consist of New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and the Friday immediately following Thanksgiving, Christmas Eve, and Christmas Day), and 24x7 access for reporting Level 1 (as defined below) situations, to a designated, authorized, qualified, and trained user of the IWT Products ("Client Contact") and to one (1) designated, authorized, qualified, and trained user of the IWT Products designated as Client Contact's backup ("Backup Client Contact") (collectively referred to as "Client Support Contact"); and (b) use commercially reasonable efforts to correct reproducible errors or malfunctions to enable the IWT Products to substantially perform in accordance with and as specified in the accompanying documentation.
2. IWT shall use commercially reasonable efforts to deliver a solution or action plan to correct reported errors that IWT categorizes as: (i) "Level 1 Catastrophic" within eight (8) business hours of receipt of the reported error. "Level 1 Catastrophic" is defined as a condition in which the IWT Products are partially or totally inoperative, including but not limited to, total system failure, data loss, data corruption, or a processing of functions and processes so slow as to render the application unusable, or any Level 2 error where a reasonable alternative work process cannot be established; (ii) "Level 2 High Impact" within the next scheduled production release of the IWT Products or within one hundred-twenty (120) days from the date error was logged with IWT, whichever shall first occur. "Level 2 High Impact" is defined as any error that results in the usability of the product being restricted and for which a reasonable alternative work process can be established; (iii) "Level 3 Non-Critical," which errors IWT shall use commercially reasonable efforts to correct within the next scheduled production release of the IWT Products. "Level 3 Non-Critical" is defined as any error wherein one or more functions do not operate optimally, but where impact on functionality and/or usability is agreed by Client and IWT to be minor and result in a mutually acceptable disruption to Client's workflow process; and (iv) "Level 4 Cosmetic," which errors IWT shall use commercially reasonable efforts to correct within the next scheduled production release of the IWT Application, at IWT's sole discretion. "Level 4 Cosmetic" is defined as any error that cannot be categorized as belonging to any higher severity level, including but not limited to a cosmetic or documentation error.
3. IWT shall provide all extensions, enhancements, and other changes, which are logical improvements to an IWT Product and to which IWT makes generally available on a commercial basis, without charge, to any other licensee of the IWT Product ("Updates"). Updates do not include any new software products that are then made generally available on a commercial basis as separate, price-listed options or additions to an IWT Product nor do they include any Professional Services Fees that may be required for implementation.
4. IWT shall have no obligation to provide Support Services except to Client Support Contact and only with respect to the unmodified Supported Releases. When an IWT Product is deployed in conjunction with other software products, including but not limited to web servers, browsers, databases, and operating systems, IWT is not responsible for providing Support Services for these other products, or for ensuring correct interoperability with these products.
5. Client shall use commercially reasonable efforts to assist IWT in reproducing the specific situation in which an IWT Product, standing alone, demonstrates a failure to substantially conform in all material respects to the functional specifications set forth in its accompanying documentation ("Defect"). Client Support Contact shall conduct reasonable and adequate research with respect to a Defect or related issue prior to contacting IWT for assistance.

### Hosting Services

1. IWT shall use commercially reasonable efforts to make all hosted IWT Products available to Client for at least ninety-nine percent (99%) of the time (determined monthly), seven (7) days a week, twenty-four (24) hours per day, not including any unavailability that: (i) lasts less than fifteen (15) minutes; (ii) results from regularly scheduled IWT maintenance; (iii) results from failure of Client's hardware or software; (iv) results from the failure of a communication service or other outside service or equipment not within the control of IWT; or (v) is beyond the reasonable control of IWT ("Service Availability").
2. Data Backup. In recognition that IWT's provision of the hosted IWT Products may be interrupted as a result of an act of God, events beyond the reasonable control of IWT, errors by IWT's staff, or a defect in the IWT Products, IWT agrees to maintain a commercially reasonable backup plan for the IWT Hosted Products and Client's data, whereby IWT can execute a recovery of the hosted IWT Products and Client's data as a result of such interruption.

**IN WITNESS WHEREOF**, each party hereto has caused this Exhibit to be executed and amended to the Agreement by its duly authorized representative.

IWT - Ion Wave Technologies, Inc.	Client - Lexington-Fayette Urban County Government
Signed: 	Signed: 



Printed Name: <i>John S. Alexander</i>	Printed Name: <i>Jim Gray</i>
Printed Title: <i>COO</i>	Printed Title: <i>Manager</i>
Date: <i>6/22/16</i>	Date: <i>5-Jul-2016</i>

## Exhibit C Statement of Work ("SOW")

### 1. Introduction

Client seeks to implement the IWT Enterprise Sourcing and Contract Management applications (the "Solution"). The primary objective of the project is to configure and implement the Solution for the Client. This will be done in a way that utilizes the standard features of the Solution and is based on the Solution standard configurations.

This SOW describes the scope of services and the services investment necessary to complete the Solution implementation project. IWT Professional Services will use commercially reasonable efforts in a manner consistent with software industry standard guidelines and as outlined in this SOW to provide the guidance and expertise necessary to help Client successfully implement the Solution.

### 2. Summary of IWT Responsibilities

The following major activities are included in the scope of this project and will be performed by IWT:

- (i) Coordinate and lead all meetings, workshops, and training sessions.
- (ii) Provide up to three web-based training sessions to Client's full-time employees.
- (iii) Provide project management, including coordination and management activities, issue tracking, and weekly status reporting to Client.
- (iv) Coordinate Client acceptance testing.
- (v) Provide configuration guides to the Client offering configuration choices, including IWT's standard commodity code structure.
- (vi) After initial training is completed, prepare the Solution for go-live.
- (vii) Perform one (1) contract data import of client's contract data using IWT's provide file format.
- (viii) Provide issue resolution according to the severity levels and response times as outlined in the Agreement.

### 3. Summary of Client Responsibilities

Client agrees to undertake at its sole expense, the following responsibilities:

- (i) Assignment of an internal dedicated project manager to manage the Solution and its implementation.
- (ii) Coordinate internal participation in project related meetings.
- (iii) Provide materials and facilities for project related activities, including Internet-capable machines for training sessions.
- (iv) Purchase, install, and validate any third-party software required.
- (v) Develop and implement test scripts for acceptance of the Solution.
- (vi) Plan, coordinate, and participate in training sessions and complete all training assignments.
- (vii) Plan and direct the production deployment (Go-live).
- (viii) Provide IWT one (1) data file, in IWT's file format, of client's contract data for importing into IWT's Contract Module.

### 4. Technical Requirements

Client will be responsible for procurement, installation, and operational verification of all software, software licenses, equipment, and hardware required to support the Solution in the production deployment. This includes:

- (i) Web Browsers. Client will be responsible for procurement, installation, and operational verification of all web browser licenses. IWT will provide its minimum browser requirements during the Workshops.
- (ii) Commodity Code. Client will be responsible for procurement and licensing of any desired proprietary commodity code structure(s).
- (iii) Network Performance. Client is responsible for maintaining the satisfactory network performance needed to conduct the deployment of the production system.
- (iv) IWT may modify any of the above hardware and software requirements from time to time, upon ninety (90) days written notice to Client.

### 5. Project Organization and Operating Procedures

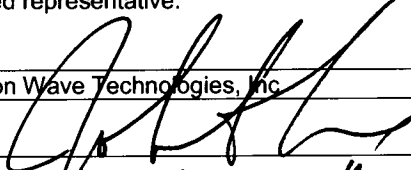
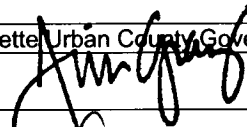
- (i) Project Organization. Client and IWT agree to assign dedicated staff to perform their respective project activities.
- (ii) Change Control Process. IWT projects follow a standard change control process. If during the course of a project, a scope change is identified, then the IWT project manager will document the change and associated cost or schedule impacts on a change authorization form. Once documented, the IWT project manager reviews the change with the Client project manager. Scope changes are defined as any modification to the agreed scope of a project, including but not limited to requirements, software modules, configuration changes, project delays and enhancements or modifications to the product. Scope changes can require modification to cost, schedule, quality or other project deliverables and therefore require sign-off from the Client project manager. No work on scope changes will be conducted until sign off is obtained. Changes that impact scope require approval from the IWT project manager and the Client project manager.
- (iii) Acceptance Process. Client will review any Work Product requiring explicit acceptance within five (5) business days of delivery and will document required adjustments. If IWT does not receive notice within the defined five-day period, each Work Product will be considered accepted. Within five (5) days, IWT will provide a revised Work Product that incorporates the agreed adjustments. In the event that Client does not accept the revised Work Product, the parties may agree to repeat this review and acceptance process one additional time. If disputes remain after repeating the acceptance process, the project team will refer these to IWT's and the Client's executive teams for resolution.
- (iv) Work Location. Unless otherwise specified, Client and IWT will perform all work at their respective locations.

**6. Project Investment**

**Project Payment Schedule**

Payment Item	Amount	Payment Schedule
Mobilization Fee	\$0	Remitted to IWT upon the start of the project.
Go-Live Fee	\$2,500	Remitted to IWT upon the preparation of the system for Go-Live following training and configuration.
<b>Total Services</b>	<b>\$2,500</b>	
Travel and Administrative Expenses Estimate	-0-	No travel is expected for this engagement.

**IN WITNESS WHEREOF**, each party hereto has caused this Exhibit to be executed and amended to the Agreement by its duly authorized representative.

IWT - Ion Wave Technologies, Inc.	Client - Lexington-Fayette Urban County Government
Signed: 	Signed: 
Printed Name: John S. Alexander	Printed Name: Jim Gray
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Date: 6/22/16	Date: 5-Jul-2016