

R#

R-340-2017
Contract # 134-2017



**Quote: Lexington-Fayette Urban County Government
A Confidential / Proprietary Document
by 911 Datamaster, Inc.**

Version 1.0
May 1st, 2017

Presented to:
Robert Stack

Presented by:
Eric J. Regnier

911 Datamaster End User License Agreement

This 911 Datamaster End User License Agreement (this "Agreement") is entered as of this 1st day of May , 2017 ("Effective Date") by and between Lexington-Fayette Urban County Government ("End User") located at 115 Cisco Road Lexington, Ky 40504 and 911 Datamaster, Inc., "Datamaster" a Kansas corporation, having its principal place of business at 7500 College Blvd, Suite 500 Overland Park, KS 66210.

NOW THEREFORE, for good and valuable consideration, the parties hereby agree as follows:

1. Definitions

"**Software**" is defined as the software developed by Datamaster as specified in **Appendix A**,

"**Services**" means Software support and/or other services provided by Datamaster to End User, as specified in this Agreement.

"**Licensed Users**" means those users that are permitted to access the Software on behalf of End User at any given point in time, whether by direct or indirect connection. The maximum number of Licensed Users, if applicable, is identified in **Appendix A**.

"**Documentation**" means current user guides, user manuals, and specifications, whether in print or machine readable media, in effect as of the date of shipment of the Software to End User. As of the date of this Agreement, Documentation includes the documentation identified on **Appendix A**.

"**Use**" means to load, install, execute, employ, utilize, or display the Software for End User's business purposes.

2. Grant of License

2.1 Datamaster grants to End User a revocable, limited term, non-exclusive, nontransferable license to Use the object code version of the Software subject to all restrictions contained in this Agreement. For example, such restrictions may include, without limitation, limits on the number of Licensed Users, the term, record count or population. Unless specifically provided herein to the contrary, End User shall not have any right to Use or have possession of any version of the Software other than the object code version.

2.2 End User may only Use the Software by and through the number of Licensed Users and/or for the population set forth on **Appendix A**. Subject to Datamaster's consent, which will not be unreasonably withheld, End User may increase the number of Licensed Users and/or population, extend the term, or other such limitations by executing a separate purchase order and paying the then current license fees for the additional Licensed Users or increased population. Associated annual fees may be initially prorated based on End User billing cycle. Use of the Software by more than the number of Licensed Users or for a higher population count than those set forth on Appendix A shall be a material breach of this Agreement. With the exception that original participant agencies/counties identified in Appendix A will not be subject to population modifications until the term of this agreement is reached.

2.3 Section Deleted

2.4 End User may make and use additional copies of the Documentation. In addition, End User may make a reasonable number of copies of the object code version of the Software for testing, inactive backup or archival purposes provided that End User must reproduce any copyright or other notice marked on the Software on all copies made for such purposes.

2.5 Neither the Software nor the Documentation may be copied or used other than as permitted by this Agreement.

3. Initial Term of the Agreement

The initial term is 1 year and commences on the Effective Date. Both parties have the right to renew for 3 additional 1 year terms.

4. Renewal of Agreement

4.1 Renewal

Unless either party has provided 60 day notice that it is not willing to renew agreement, this agreement will auto renew for an additional 12 month period. Such renewal shall be for the then current version of the Software and Datamaster shall have no obligation with respect to earlier versions.

4.2 End User License Agreement Renewal Effective Date

The renewal term will commence on the expiration of the initial term or then current renewal term of this Agreement and will terminate upon expiration of the renewal term unless End User again renews this Agreement in accordance with this Section 4.

5. Termination/Expiration/Failure to Renew

5.1 Termination by Either Party for Material Breach. If either party breaches any of its obligations hereunder and fails to remedy such breach (if such breach can be remedied) within thirty (30) days of written notice of such breach, the other party may terminate this Agreement.

5.2 Termination/Expiration/Failure to Renew by End User. The End User may terminate this Agreement by advance written notice to Datamaster as set forth in section 4.1. Any prepaid license fees shall be refunded on a pro rata basis, less a cancellation fee equal to 20% of the initial license fees set forth on **Appendix A** for such Software product.

Upon termination of this Agreement for any reason, End User shall immediately cease Using the Software and Documentation, and shall certify to Datamaster, in writing and under oath, that all copies of the Software and Documentation (in any form or media, including, without limitation, backup and archival copies), including all copies that have been modified or incorporated into other materials, have been destroyed or returned to Datamaster. End User shall be strictly liable to Datamaster for any unauthorized use of the Software or Documentation after it has certified that they have been destroyed. End User's refusal or failure to provide such certification shall be a rebuttable presumption that it has violated this Section 5.2. Termination of this Agreement shall not relieve End User's obligation to pay all fees due under this Agreement and shall not limit either party from pursuing any other remedies available to it. Each party's obligations under **Section 8** hereof shall survive termination of this Agreement.

6. Purchase Orders

Unless expressly agreed upon in writing by Datamaster, the terms and conditions contained in any purchase order used to initiate or renew this Agreement or to request that Datamaster provide services which are not included in the Services provided in this Agreement (as further described in Section 13 below) that are inconsistent with, or are in addition to, the terms and conditions of this Agreement shall be deemed stricken from such purchase order and shall not govern End User's license of the Software or the Services provided under this Agreement.

7. Payments

All amounts payable by End User under this Agreement are net amounts and are payable in full, without deduction for taxes or duties of any kind, in thirty (30) days. End User will be responsible for, and will promptly pay, all taxes and duties of any kind (including, but not limited to, sales and use taxes) associated with this Agreement or End User's receipt of the Software or Services, except for taxes based on Datamaster's net income. If Datamaster is required to collect, or pays on End User's behalf, any taxes or duties for which End User is responsible, End User will pay or reimburse Datamaster, as the case may be, for all such amounts.

All amounts not paid when due will accrue interest (without the requirement of a notice) at the lower of 1.0% per month or the highest rate permissible by law until the unpaid amounts are paid in full. End User will promptly reimburse Datamaster for all reasonable costs and expenses (including reasonable attorneys' fees) incurred by Datamaster in connection with collecting any overdue amounts.

8. Confidentiality; Proprietary Rights

Datamaster retains exclusive ownership of the Software, Documentation, and Services and all Intellectual property embodied therein (collectively, "Intellectual Property"). End User shall not reverse engineer, disassemble, decompile, or otherwise attempt to derive from the Software or any Third Party Software any Intellectual Property, including source or any other code, routines or other processes embedded therein. End User will not disclose to any person, including competitors of Datamaster, any Intellectual Property that End User does obtain, whether or not in violation of this Agreement. End User will take reasonable measures to protect Datamaster's proprietary rights in the Intellectual Property, including by limiting access to the Software and Documentation only to its authorized and Licensed Users. Except as expressly provided herein, End User is not granted any right under any of Datamaster's patents, copyrights, trade secrets, trade names, trademarks (whether registered or unregistered), or any other of its intellectual property rights, or any franchises or licenses with respect to the Software, Services or other Intellectual Property.

"Confidential Information" means the Software, Documentation and all other confidential and proprietary information of either party or any third party disclosed by one party to the other which, in the case of written information, is marked "confidential" or "proprietary" and which, in the case of information disclosed orally, is identified at the time of the disclosure as confidential or proprietary.

Each party must hold the other party's Confidential Information in confidence, and use the same degree of care (but not less than reasonable care) to safeguard such Confidential Information as that party uses to protect its own confidential or proprietary information. Each party agrees that it has obtained or will obtain a written agreement with each employee or contractor having access to any Confidential Information, under which the employee or contractor acknowledges the importance of protecting the Confidential Information to which such individual may have access and agrees to protect and not disclose any of the Confidential Information. Confidential Information may only be used for exercising rights and fulfilling obligations under this Agreement. Additional requirements may be assigned by the acceptance and execution of opportunity-specific non-disclosure agreements between the parties.

For purposes of this Agreement, "Confidential Information" shall not include information which was in the recipient's rightful possession without an obligation of confidentiality before receipt from the disclosing party, or is or becomes a matter of public knowledge through no fault of the recipient, or is rightfully

received by the recipient from a third party without a duty of confidentiality, or is independently developed by the recipient without reliance on the Confidential Information.

9. Intellectual Property Indemnity

Datamaster will defend or settle any action brought against End User to the extent that it is based upon a third-party claim that the Software or Documentation, as provided by Datamaster under this Agreement, infringes any U.S. patent or copyright or misappropriates any trade secret of a third party, and will pay all costs, damages and reasonable attorneys' fees attributable to such claim that are awarded in final judgment against End User or are payable in settlement by End User; provided that End User: (i) promptly notifies Datamaster in writing of the claim; (ii) grants Datamaster sole control of the defense and settlement of the claim; and (iii) provides Datamaster, at Datamaster's expense, with all assistance, information and authority reasonably required for the defense and settlement of the claim. If End User defends such claim, Datamaster will not be bound by any settlement or compromise that End User enters into without Datamaster's express prior written consent.

If End User's right to use the Software hereunder is, or in Datamaster's opinion is likely to be, enjoined, then Datamaster may, at its sole option and expense: (i) procure for End User the right to continue using the Software under the terms of this Agreement; (ii) replace or modify the Software to avoid the claim or (iii) terminate this Agreement and End User's rights hereunder with respect to the Software. Upon any such termination, Datamaster's only liability shall be to refund a prorated portion of the license fee paid by End User.

Notwithstanding this Section 9 or any other provision of this Agreement, Datamaster will have no liability for any infringement or misappropriation claim of any kind to the extent that it results from: (i) modifications to the Software made by a party other than Datamaster, if a claim would not have occurred but for such modifications; (ii) the combination, operation or use of the Software with equipment, devices, software or data not specified and approved by Datamaster in the Documentation and Hardware and Software Specification, if a claim would not have occurred but for such combination, operation or use; or (iii) End User's use of the Software other than in accordance with this Agreement and the Documentation.

THE FOREGOING PROVISIONS OF THIS SECTION 9 SET FORTH DATAMASTER'S SOLE AND EXCLUSIVE LIABILITY AND END USER'S SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIMS OF INFRINGEMENT OR MISAPPROPRIATION OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS OF ANY KIND.

10. Warranty

10.1 So long as End User has paid Datamaster all amounts due and payable pursuant to this Agreement, Datamaster warrants that the Software licensed to End User will operate substantially in conformance with the Documentation for such Software for the term of this Agreement. Datamaster shall have no obligations under this Section 10 in connection with (i) any Use of any version of the Software other than a current, unaltered release of the Software; (ii) the combination, operation, or Use of the Software with software, hardware or data other than as specified and approved by Datamaster in the Documentation and Hardware and Software Specifications; (iii) where any alteration, modification or addition has been made to the Software by a party other than Datamaster; and (iv) warranty claims made outside the warranty period above.

10.2 End User's sole and exclusive remedy for breach of any of the foregoing warranties shall be either repair or replacement of the defective Software by Datamaster or, in Datamaster's sole discretion, a refund of a prorated portion of the license fee paid by End User.

In order for Datamaster to be liable to End User under this Section 10, End User must notify Datamaster within the warranty period and provide a reasonable opportunity to Datamaster to cure any alleged breach.

10.3 EXCEPT FOR THE EXPRESS LIMITED WARRANTY ABOVE, THE SOFTWARE IS PROVIDED ON AN "AS IS" BASIS, WITHOUT ANY OTHER WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE SOFTWARE, DOCUMENTATION, OR SERVICES TO BE SUPPLIED BY DATAMASTER UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER WARRANTIES ARISING BY LAW, STATUTE, USAGE OF TRADE OR COURSE OF DEALING. DATAMASTER DOES NOT WARRANT OR REPRESENT THAT THE SOFTWARE WILL BE ERROR FREE OR VIRUS FREE. END USER BEARS THE ENTIRE RISK OF THE QUALITY OF THE SOFTWARE OR THAT THE SOFTWARE WILL SATISFY ITS NEEDS.

11. Limitation of Liability; End User Responsibility

11.1. THE TOTAL LIABILITY OF DATAMASTER AND ITS OWNERS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND LICENSORS (THE "DATAMASTER PARTIES") TO END USER, INCLUDING BUT NOT LIMITED TO LIABILITY ARISING OUT OF, RESULTING FROM, OR IN ANY WAY RELATED TO, CONTRACT, TORT, BREACH OF WARRANTY, INFRINGEMENT, OR OTHERWISE, SHALL NOT EXCEED THE LICENSE FEE RECEIVED BY DATAMASTER FOR THE AFFECTED SOFTWARE. THE DATAMASTER PARTIES SHALL NOT BE LIABLE FOR LOSS OF PROFITS, DATA, OR INFORMATION OF ANY KIND, REVENUE OR INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, EVEN IF ANY OF THE DATAMASTER PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF ANY REMEDY SET FORTH HEREUNDER IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

11.2. End User is solely responsible for (i) Use of the Software in accordance with the terms of this Agreement; (ii) implementing and maintaining appropriate backup recovery procedures for the Software and all data and data files for reconstruction if lost or altered; and (iii) the protection and safeguarding of its proprietary, confidential, and classified information.

12. Software Support

12.1 Datamaster shall have no obligation to support or maintain the Software (i) for Use on any computer system other than that specified in the Documentation or Hardware and Software Specifications, (ii) for Use of any version of the Software other than a current, unaltered release of the Software; or (iii) if End User modifies the Software other than as permitted by this Agreement.

12.2 Software Support Services

A. 7 x 24 x 365 Telephone Support

Software support is available to End Users 24 hours a day, 7 days a week, 365 days a year. Support is only available during business hours (8:30 a.m.—5:00 p.m. central time) for Minor Impact or Low Impact issues.

B. Response Times

Response time is defined as the period of time between alert or call receipt and the time Datamaster support personnel begin analyzing the alert. Datamaster's response time commitment is depicted in the following table:

Priority	Description	Response Time
1. Critical Impact – Service Not Available	Service is unavailable or halted; or data is unavailable or non-functional; or service productivity or functionality is severely compromised; or there is a complete loss of service for all End Users and there is no ability to avoid or reduce the incident via a workaround.	< 2 clock hours
2. Major Impact – Severely Impaired	Service performance/functionality for all End users is seriously impaired or degraded; or data accuracy is seriously impaired; and there is no ability to avoid or reduce the effect of the incident via a workaround.	< 4 clock hours
3. Minor Impact – Minimal Degraded Performance or Functionality; Single User Issues	Service has encountered a non-critical issue with minimal loss of performance/functionality; or data accuracy is minimally degraded; or may be identified as a functional defect; or complete stoppage of a single End User; or a partial loss of service for a End User and there is a way to reduce the effect or completely avoid the impact of the incident via a workaround at a reasonable cost.	< 16 business hours
4. Low Impact – Single User Application Issue	Service is unavailable or degraded (not a complete work stoppage) for a Single End User; or there is a way to reduce the effect or completely avoid the impact of the incident via a work around at a reasonable cost.	< 24 business hours
5. No Impact	Password resets; requests for access rights; file restores; or issues of similar import.	< 48 business hours

For Priorities One and Two, Datamaster will work until the problem has been resolved. For Priorities Three, Four, and Five, Datamaster will work with End User towards a solution in a timely manner during normal working hours.

C. Software Patches/Bug Fixes:

From time to time, Datamaster may (in its sole discretion) provide End Users updates that improve function or eliminate problems. If provided, End User agrees to take all reasonably necessary actions to install the updates.

D. Software Upgrades:

From time to time, Datamaster may (in its sole discretion) provide End Users both point releases and .x releases. If provided, End User agrees to take all reasonably necessary actions to install the updates.

13. Additional Fee-based Software Support Features

The additional support services described below are not included in the Services provided under this Agreement unless End User and Datamaster so agree in writing and End User pays all applicable fees. End Users may contact Datamaster for details and pricing for all fee-based support services.

13.1 On-site Installation or Project Management Support

On site installation and/or project management services are not covered under this Agreement. Such services may be provided pursuant to a separate Statement of Work detailing the specific services to be rendered for a given project and the applicable price.

13.2 Training

Training is not covered under this Agreement. Training is available at Datamaster's prevailing rates on the date the training services are requested.

13.3 Post Installation Support Limitations and Cost

Datamaster's support obligations hereunder will not apply to any Datamaster-supported Software if correction of an error or adjustment is required because of: (i) accident, neglect, tampering, misuse, failure of electric power, (ii) failure of the End User and/or others to provide appropriate environmental conditions, relocation of hardware or software, or causes other than ordinary use; (iii) repair or alteration, or attempted repair or alteration of any Datamaster-supported Software by the End User or others; (iv) connection of another machine, device, application or interface to Datamaster-supported Software by the End User or others, which has caused damage to Datamaster-supported Software, (v) damage or destruction caused by natural or man-made acts or disasters; (vi) failure or degradation in performance of Datamaster-supported Software due to the installation of another machine, device, application or interface not specifically certified and approved by Datamaster for Use with the Software; (vii) the operation of the Software in a manner other than that currently specified by Datamaster; (viii) the failure of the End User to provide suitable qualified and adequately trained operating and maintenance staff; (ix) incompatible or faulty End User equipment; or (x) modifications made without Datamaster's written approval to the operating system, network hardware or software environment or software applications.

Telephone support and/or field engineering to rectify such unsupported failures as described above may be obtained from Datamaster on a time and materials basis. The labor rate charged will be the current Datamaster labor rate (plus expenses) at the time service is requested.

13.4 Other Services

Other services not specifically included in Support Services are not included therein.

14. Security Issues

End User shall take all action necessary to ensure that the Software and Documentation whether on media, or on its servers, or computer systems are appropriately secured so that the Software and Documentation can only be viewed and utilized by Licensed User and employees and contractors of End User who have entered into a written confidentiality agreement with End User acknowledging that the Software and Documentation constitute "Confidential Information" which is subject to the obligations under Section 8 of this Agreement.

15. General

Assignment. End User will have no right to assign or transfer this Agreement, in whole or in part, by operation of law or otherwise (including by merger or consolidation), without Datamaster's express prior written consent. Any attempt by End user to assign or transfer this Agreement without Datamaster's consent will be null and of no effect. Datamaster may freely assign its rights and/or obligations hereunder to any third party which acquires the Software. Subject to the foregoing, this Agreement will bind and inure to the benefit of each party's permitted successors and assigns.

Certification; Audit. Datamaster may from time to time request End User to provide a certification that its actual Use of the Software complies with the terms of this Agreement. At any time and without notice to End User, Datamaster may perform an audit of End User to determine its compliance with the terms of this Agreement. If the number of copies or Licensed Users or records is found to be greater than as authorized by this Agreement, Datamaster may, in its sole discretion, either charge End User the applicable current list prices for such additional users for the periods of unauthorized use or terminate this Agreement and seek all remedies permitted hereunder for End User's material breach of this Agreement.

Publicity. Datamaster will have the right to refer to End User and the general relationship established by this Agreement on Datamaster's website and in its other marketing materials. Such references may include the End User's name, logo and a brief description of activities under this Agreement with respect to the Software and Services. The parties will also cooperate in good faith, at either party's request, to issue joint press releases.

Governing Law; Venue. Except to the extent preempted by federal law, this Agreement will be governed by and construed in accordance with the laws of the Commonwealth of Kentucky excluding its conflicts of law provisions. In no event shall this Agreement be governed by the United Nations Convention on Contracts for the International Sale of Goods. Venue of any action brought to enforce or relating to this Agreement shall be brought exclusively in the state courts located in Fayette County, Kentucky or the United States District Court for the District of Kentucky and the parties consent to jurisdiction therein.

Compliance With Laws. Both parties shall comply with all federal, state and local laws and regulations applicable to this Agreement and the Software, including, without limitation, those prohibiting or restricting the export of software from the United States. Without limiting the generality of the foregoing, both End User and Datamaster shall, at their own expense, make, obtain, and maintain in force at all times during the term of this Agreement, all filings, registrations, licenses, permits and authorizations required for each company to perform its obligations under this Agreement and, if applicable, shall provide one another with English language translations thereof.

Nonexclusive Remedy. Except as expressly set forth in this Agreement, the exercise by either party of any of its remedies under this Agreement will be without prejudice to its other remedies under this Agreement or otherwise.

Restricted Rights. All Software is provided with RESTRICTED RIGHTS for U.S. Government Users. Use, duplication, or disclosure by the Government is subject to restrictions set forth in subparagraphs (b) (1) and (2) of the Commercial Computer Software Restricted Rights clause at FAR 52.227-19 or the Rights in Technical Data – Noncommercial Items Computer Software clause at DFARS 252.227-7013, and other relevant sections of the Code of Federal Regulations as applicable. Unpublished rights are reserved under the copyright laws of the United States. Manufacturer is 911 Datamaster, Inc., a Kansas corporation, having its principal place of business at 10975 Benson, Suite 350 Overland Park, KS 66210.

Export Restrictions. Even if permitted by applicable laws, End User will not allow the Software or other Intellectual Property, in whole or in part, to be exported outside of the United States or given to a foreign national within the United States in any manner or by any means, without the expressed advance written permission of Datamaster.

Severability. If for any reason a court of competent jurisdiction finds any provision of this Agreement invalid or unenforceable, that provision of this Agreement will be enforced to the maximum extent permissible and the other provisions of this Agreement will remain in full force and effect.

Waiver. The failure by either party to enforce any provision of this Agreement will not constitute a waiver of future enforcement of that or any other provision.

Notices. All notices required or permitted under this Agreement will be in writing and delivered by confirmed facsimile transmission, by courier or overnight delivery services, or by certified mail, and in each instance will be deemed given upon receipt or tender of delivery if delivery is refused. All communications will be sent to the addresses set forth above or to such other address as may be specified by either party to the other in accordance with this Section.

Force Majeure. Neither party will be responsible for any failure or delay in its performance under this Agreement (except for any payment obligations) due to causes beyond its reasonable control, including, but not limited to, labor disputes, strikes, lockouts, shortages of or inability to obtain energy, raw materials or supplies, war, terrorism, riot, or acts of God.


Relationship of Parties. The relationship of the Datamaster and End User is that of licensor and licensee. This Agreement shall not be deemed to establish a partnership, joint venture, employment, franchise, agency, independent contractor or other relationship between the parties. Neither party will have the power to bind the other or incur obligations on the other's behalf without the other party's prior written consent.

Entire Agreement. This Agreement, including the Appendices hereto, constitutes the complete and exclusive understanding and agreement between the parties regarding its subject matter and supersedes all prior or contemporaneous agreements or understandings, written or oral, relating to its subject matter. Any waiver, modification or amendment of any provision of this Agreement will be effective only if in writing and signed by duly authorized representatives of Datamaster and End User.

Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. Facsimile or scanned copies of signatures will be considered original signatures.

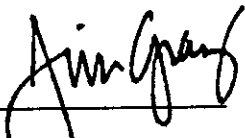
IN WITNESS WHEREOF, the following duly authorized representatives have signed this Agreement on behalf of the entities indicated below, as of the date first above written.

911 Datamaster, Inc.

 ERIC J. REONIER
Name

EXEC VP
Title

5-1-17
Date

End User

Name

Mayor JIM GRAY
Title

6-20-17
Date