PARADIGM ⟨⟩ SOLUTIONS
INTERNATIONAL

In Business to Keep You in Business

OPSPLANNER

SERVICES AND END USER LICENSE AGREEMENT

This OpsPlanner Services and End User License Agreement (the "Agreement") is made as of **January 22, 2018** (the "Effective Date") by and between **Paradigm Solutions International, Inc.**, a Maryland corporation having a principal place of business at 6701 Democracy Boulevard, Suite 300, Bethesda, Maryland 20817-1572 (**"Paradigm"**), and **Lexington-Fayette Urban County Government** for and on behalf of itself and its affiliates, having a principal place of business at 200 E. Main Street, Lexington, KY 40507 (**"Customer"**).

Paradigm agrees to furnish to Customer, and Customer agrees to accept, the use of the Licenses and Services as defined below pursuant to and in accordance with the terms and conditions of this Agreement and the Schedules attached hereto.

DEFINITIONS: Whenever used in this Agreement, the terms set forth in this Section will have the meanings below. Other terms are defined throughout this Agreement as they first appear. Where the context so indicates, a word in the singular form will include the plural and vice versa.

1. "BIA Expert " - an optional feature/module within the OpsPlanner Software Suite that seamlessly integrates Business Impact Analysis workflow and data into the business continuity process as specified in Paradigm's marketing Documentation.

2. "Business Continuity Planning" - the advanced planning and preparation which is necessary to minimize loss and insure continuity of an organization's critical business functions in the event of a disaster and/or major business disruption.

3. "Burstable Option" - an optional feature within the OpsPlanner Software, which provides the ability for the customer to extend their licensed number of concurrent users to the full extent of the number of total licensed users. This option is provided in blocks of time whereby each block is equivalent to 15 calendar days per year ("Burstable Days/Blocks").

4. "Documentation" - interface documentation to other applications and services, startup documentation required for the installation, administration, usage, and initial setup of the OpsPlanner Software Suite, help screens, user interface documentation, training materials, advertisements, marketing collateral, company information brochures, websites, and any other documentation provided by Paradigm to Customer that describes the features and functionality of the Service.

5. "FTP Sync" - an optional feature of the OpsPlanner Software Suite that provides for the ability to synchronize contact information stored in an organization's information system, with similar contact information stored within OpsPlanner.

6. "Hosting Service" - the provision of the data center, servers and other devices, bandwidth, software, and other services as applicable, contracted, and described in Schedule E.

7. "Notification Software" – an optional feature within the Recovery Manager module that allows for the automated notification of designated key persons (*i.e.*, employees, customers, vendors) via a third party communications provider.

8. "OpsPlanner Software Suite" - consists of the Plan Manager and Recovery Manager software modules as defined herein.

9. "Plan Manager" - a standard module within the OpsPlanner Software Suite that facilitates the gathering of information within an organization and the development of business continuity recovery plans.

10. "Professional Consulting Services" - business continuity consulting services, including, but not limited to, training regarding the use of the OpsPlanner Software Suite, and business continuity planning and development consulting provided by Paradigm staff or Third Party Providers.

11. "Recovery Manager" - a standard module within the OpsPlanner Software Suite that facilitates the management of an emergency event through the assignment and tracking of tasks, issues, announcements, and the automated notification of key parties.

12. "Service" - the OpsPlanner Software Suite, Professional Consulting Services, Hosting Services, and any other supplemental service(s) provided by Paradigm to Customer pursuant to this Agreement.

13. "Third Party Provider(s)" - any and all third party entities contracted by Paradigm for the purpose of providing products or services associated with and or integral to provision of the Service and/or the OpsPlanner Software Suite.

SECTION 1
SCOPE OF AGREEMENT

During the Term of this Agreement, Paradigm shall provide and Customer shall use the OpsPlanner Software Suite, Paradigm Professional Consulting Services, and all other associated functions, (collectively the "Service") as may be applicable. **Schedules A, B, and C** as applicable describe the Service in more detail and outline the obligations of each party. Paradigm may add additional features and functionality ("Additional Service") to the Service on terms determined by Paradigm (see **Schedules A, B, and C**) and such changes shall be effective immediately upon posting to the Service. Customer may choose, at its option, to use or not use such Additional Services (see **Schedule E**). All rights granted to Customer in this Agreement are extended to Customer's affiliates, for whose compliance with all applicable requirements of this Agreement Customer assumes full responsibility. Notwithstanding, Customer and Customer Affiliates are limited to the aggregate total number of OpsPlanner Software Licenses as delineated in Schedule E.

SECTION 2
USE OF THE SERVICE

Customer agrees to utilize the Service in accordance with this Agreement and the Schedules including the Terms of Use set forth in **Schedules A, B, and C** as applicable. Customer acknowledges that Paradigm and its Third Party Providers have the authority to disable or modify the access of any user of the Service in Paradigm's sole discretion if such user is in material breach of the terms of this Agreement. Customer shall not, nor without the express authorization of Paradigm, permit any party to copy, transfer, create derivative works of, or otherwise reproduce the Service, whether for redistribution, lease, assignment, or license to any third party or for any other purposes, except in connection with the uses expressly permitted by this Agreement. Customer shall not decompile or otherwise reverse engineer any portion of the Service or in any other manner attempt to obtain Paradigm proprietary database structure, indices, computer programs, and programming techniques. Customer shall agree not to remove or alter any proprietary notices or markings displayed in or on Paradigm's or any of its Third Party Providers' software products.

SECTION 3
IMPLEMENTATION OF THE SERVICE

Paradigm and Customer agree to make their reasonable best efforts to complete the implementation of the Service within thirty (30) days of execution of this Agreement.

SECTION 4
EXPIRATION AND TERMINATION

4.1   **Term of Agreement.** This Agreement shall have an initial term of **three (3)** years from the Effective Date (the "Initial Term"). Subject to the provisions of this Section 4, unless terminated in writing not less than ninety (90) days prior to the expiration of the Initial Term, or extended by written agreement signed by both Parties, this Agreement shall automatically renew for additional successive one-year terms (each a "Renewal Term" and, together with the Initial Term, collectively hereinafter referred to as the "Term") and continue to renew until terminated by either Party pursuant to the provisions herein.

Notwithstanding anything to the contrary in this Section 4 or elsewhere in this Agreement, the fees set forth in Schedule E shall be automatically increased by five percent (5%) for each Renewal Term following the Initial Term unless specifically agreed otherwise by both Parties through the execution of an amended Schedule E not less than sixty (60) days prior to the expiration of the then current term.

4.2   **Termination for Cause.** Either party may terminate this Agreement, or any part hereof, for cause in the event of any material default by the other party, or if the other party fails to comply with any material contract term or condition and such default or failure of compliance has not been remedied within thirty (30) days (or some mutually agreed timeframe) of the date of written notice of the default or failure of compliance. In the event of termination by Customer for cause, no future fees will be due or owing and Customer shall be entitled to a refund of any pre-paid fees paid to Paradigm under this Agreement. In the event of termination by Paradigm for cause, the Customer shall be liable to Paradigm for payments for all services provided up to the date of termination, and Customer shall not be entitled to a refund of any pre-paid fees.

4.3   **Termination for Bankruptcy.** Upon the filing of a petition in bankruptcy, insolvency or reorganization against or by either party, or either party becoming subject to a composition for creditors, whether by law or agreement, or either party going into receivership or otherwise becoming insolvent (such party hereinafter referred to as the "Insolvent Party"), this Agreement may be terminated by the other party by giving written notice of termination to the Insolvent Party, such termination being immediately effective upon the giving of such notice of termination.

4.4   **Effect of Termination or Expiration.** Upon any termination or expiration of this Agreement, (a) the Parties shall immediately pay to each other any and all amounts due and owing (and, except as provided in this Agreement, Customer shall not be entitled to a refund of any payments made under this Agreement prior to termination or expiration); (b) the rights and licenses granted to each Party under this Agreement shall terminate; (c) each party shall return all Confidential Information as defined herein of the other party; and (d) upon request each party shall certify in writing to the other party its compliance with the foregoing.

SECTION 5
COMPENSATION AND PAYMENT

5.1   **Compensation.** In consideration for the Service, Customer shall pay Paradigm the amounts set forth in **Schedule E** as attached hereto.

5.2   **Payment Schedule.** All fees and charges are due and payable in accordance with the Agreement as indicated below. Unless otherwise specified herein, the initial fees for Services shall be invoiced at the Effective Date of this Agreement (or order, if a follow up order), and all subsequent annual fees shall be invoiced to be due and payable on each anniversary of the Effective Date.

An initial payment equal to twenty-five percent (25%) of the "Total Fees – Year 1" contract amount as set forth in Schedule E will be due and payable immediately upon execution of this Agreement. The remaining seventy-five percent (75%) will be invoiced upon implementation of the Service and shall be due and paid in U.S. dollars within thirty (30) days of receipt of the invoice by Customer. In addition to other requirements in this Agreement, subsequent invoices shall be issued and payable in advance on an annual basis thereafter, as applicable. Paradigm may, in its sole discretion, suspend providing the Service to Customer on forty-eight (48) hours notice in the event that Customer is more than thirty (30) days past the invoice due date with respect to any sums due to Paradigm.

Invoices shall be submitted to Customer at the address and to the attention of the authorized representative noted below in Section 10.3.

5.3   **Taxes.** The payment obligations stated in this Agreement are exclusive of any federal, state, municipal or other governmental taxes, duties, excise taxes or tariffs imposed on the storage, sale, transportation, import, export, licensing or use of the Service. Such charges shall be paid by Customer, or in lieu thereof, Customer shall provide an exemption certificate acceptable to Paradigm and the applicable authorities.

SECTION 6
OWNERSHIP

Customer acknowledges that Paradigm and its Third Party Providers retain ownership of any intellectual property rights related to the delivery of the Service including, but not limited to, Paradigm software, API's, trademarks, templates, and service marks ("Paradigm IP"). Paradigm shall be the exclusive owner (including, without limitation owner of copyrights therein) of the Service, its components and derivatives.

SECTION 7
WARRANTIES & LIMITATION OF LIABILITY

7.1 **Warranty.** Paradigm warrants to Customer that it and its Third Party Providers own or has a valid license for all rights and title to the Service or is otherwise authorized to grant to Customer the rights herein.

7.2 **Disclaimers.**

(a) EXCEPT AS EXPRESSLY SET FORTH HEREIN, PARADIGM AND ITS THIRD PARTY PROVIDERS MAKE NO WARRANTIES, GUARANTEES OR REPRESENTATIONS OF ANY KIND CONCERNING THE SERVICES, EITHER EXPRESS OR IMPLIED. CUSTOMER EXPRESSLY ACKNOWLEDGES AND AGREES THAT USE OF THE SERVICES AND THE INTERNET GENERALLY IS AT ITS OWN RISK AND EXCEPT AS SET FORTH IN THIS AGREEMENT, THAT THE SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT ANY WARRANTIES OR CONDITIONS WHATSOEVER, EXPRESS OR IMPLIED. PARADIGM WILL USE COMMERCIALLY REASONABLE EFFORTS TO MAKE ACCESS TO THE SERVICES AVAILABLE TO CUSTOMER THROUGH THE REQUIRED ACCESS PROTOCOLS, BUT MAKES NO WARRANTY OR GUARANTEE THAT CUSTOMER OR ITS CUSTOMERS WILL BE ABLE TO ACCESS THE SERVICES AT ANY PARTICULAR TIME OR ANY PARTICULAR LOCATION.

(b) WITHOUT LIMITING THE GENERALITY OF THE TERMS SET FORTH ABOVE, PARADIGM AND ITS AFFILIATES, AGENTS, THIRD PARTY PROVIDERS, SERVICE PROVIDERS, AND LICENSORS:

(i) HEREBY DISCLAIM ALL EXPRESS AND IMPLIED WARRANTIES AS TO THE ACCURACY, COMPLETENESS, MERCHANTABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE OF THE SERVICES GENERALLY, AND ANY CONTENT CONTAINED THEREIN, AS WELL AS ALL EXPRESS AND IMPLIED WARRANTIES THAT THE OPERATION OF THE SERVICES GENERALLY AND ANY CONTENT CONTAINED THEREIN WILL BE UNINTERRUPTED OR ERROR-FREE; AND

(ii) SHALL IN NO EVENT BE LIABLE TO CUSTOMER OR ANYONE ELSE FOR ANY INACCURACY, ERROR, OR OMISSION IN, OR LOSS, INJURY, OR DAMAGE CAUSED IN WHOLE OR IN PART BY FAILURES, DELAYS, OR INTERRUPTIONS IN THE SERVICES GENERALLY, AND ANY CONTENT CONTAINED IN THE MESSAGES DELIVERED BY PARADIGM AS PART OF THE SERVICES.

7.3 **Limitation of Liability.** IN NO EVENT SHALL PARADIGM OR ANY OF ITS THIRD PARTY PROVIDERS BE LIABLE FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR OTHER INDIRECT DAMAGES HEREUNDER, INCLUDING BUT NOT LIMITED TO, LOSS OF PROFITS OR LOSS OF USE DAMAGES, ARISING OUT OF THE RENDERING OR RECEIVING OF THE SERVICES OR THIS AGREEMENT, EVEN IF EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES; PROVIDED THAT PARADIGM SHALL IN NO EVENT HAVE (IN THE AGGREGATE) ANY LIABILITY WHATSOEVER IN CONNECTION WITH THIS AGREEMENT IN EXCESS OF THE TOTAL AMOUNTS PAID TO PARADIGM UNDER THE AGREEMENT FOR THE 12 MONTHS PRECEDING THE CLAIM. NEITHER PARADIGM NOR ANY OF ITS THIRD PARTY PROVIDERS SHALL BE LIABLE FOR ANY WARRANTY THAT CUSTOMER OR ANY OF CUSTOMER'S EMPLOYEES OR AGENTS MAKES CONCERNING THE SERVICES, AND CUSTOMER HEREBY INDEMNIFIES PARADIGM FROM AND AGAINST ANY CLAIMS OR LIABILITIES ASSERTED BY THIRD PARTIES ARISING FROM ANY SUCH WARRANTY MADE BY CUSTOMER.

7.4 **High Risk Activities.** THE SERVICE IS NOT FAULT-TOLERANT AND IS NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE OR RESALE IN HAZARDOUS CIRCUMSTANCES REQUIRING FAIL-SAFE PERFORMANCE, INCLUDING BUT NOT LIMITED TO, USE IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION, OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, DIRECT LIFE SUPPORT MACHINES, OR WEAPONS SYSTEMS, OR IN ANY CASE IN WHICH THE FAILURE OF THE SERVICE COULD CAUSE DEATH, PERSONAL INJURY, PROPERTY DAMAGE OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE, AND ANY SUCH USE SHALL BE AT CUSTOMER'S SOLE RISK ("HIGH RISK ACTIVITIES"). IN ADDITION TO THE OTHER DISCLAIMERS AND LIMITATIONS CONTAINED WITHIN THIS AGREEMENT, PARADIGM AND ITS AFFILIATES, AGENTS, AND THIRD PARTY PROVIDERS, SPECIFICALLY DISCLAIM ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR HIGH RISK ACTIVITIES.

7.5 **Paradigm Indemnification.** Subject to Section 7.7, below, Paradigm shall defend Customer, its officers, directors and employees (collectively, the "Customer Indemnitees") at Paradigm's expense, against any third-party claim or demand for relief to the extent arising out of the infringement of any United States patent, copyright, or trade secret or any other intellectual property right of any third party directly attributable to the

Service; and Paradigm shall indemnify the Customer Indemnitees for such amounts a Customer Indemnitee is required to pay as a result of any (a) settlement of such claim negotiated by Paradigm as provided below or (b) final judgment (meaning a judgment not susceptible of any further judicial review or appeal) rendered by any court of competent jurisdiction as a result of such claim, including reasonable attorneys' fees and costs assessed or awarded in connection with such a suit, provided that: (i) the Customer Indemnitee notifies Paradigm promptly in writing of the claim, (ii) the Customer Indemnitee permits Paradigm solely to defend, compromise, or settle the claim, and (iii) the Customer Indemnitee provides all available information and assistance, at Paradigm' expense, to enable Paradigm to do so. This indemnity shall be Customer's sole remedy in the event of an infringement of patent, copyright, or trade secret or any other intellectual property right of any third party by Paradigm.

7.6 **Customer Indemnification.** Customer shall defend, indemnify and hold Paradigm and its officers, directors, employees, agents, consultants, and Third Party Providers (collectively, the "Paradigm Indemnitees") harmless from and against any and all liability, judgment, loss, damages, fines and expenses which any or all of them may hereafter suffer themselves or pay out to another by reason of any claim, action, or right of action of a third party or governmental authority, law or in equity, based on or in any way arising out of Customer's or its customers' use of the Service, or violations of this Agreement, applicable laws or regulations, provided however that Customer shall have no obligations under this Section 7.6 to the extent that such third party claim results directly from Paradigm's negligent, intentional or willful acts, or omissions to act that constitute material nonconformance with the terms contained in this Agreement, and provided in every instance that Paradigm is promptly notified in writing of such liability or claim and given full and complete authority, information and assistance, at Paradigm's expense, for the defense thereof, including any settlements or appeals related thereto.

7.7 **Exceptions.** Paradigm's duty to indemnify Customer Indemnitees shall not apply to the extent that such a claim is based on (a) unauthorized modifications to the Service if the Service without such modifications would not give rise to such claim, (b) representations, warranties or other statements made by Customer but not specifically authorized by Paradigm herein or otherwise in writing, including without limitation any violation of the terms of Schedules A, B, or C hereto, (c) use of the Service in combination with any other products, services, applications or activities, if the use of the Service alone would not give rise to such claim, (d) use of the Service in a manner inconsistent with the Documentation or in a manner not authorized under this Agreement, (e) use or marketing of the Service in a manner inconsistent with any applicable law, rule or regulation, (f) the gross negligence, intentional act or willful misconduct of Customer, or (g) Customer's material breach of its obligations or representations contained in this Agreement.

7.8 **Replace or Modify.** In the event that the use of the Service in conformance with this Agreement is found by a court of competent jurisdiction to be or is the subject of an action alleging an infringement of a United States patent, copyright, trade secret right or any other intellectual property right of any third party, which final judgment results in a discontinuance of the Service, Paradigm shall at its option and expense and to the extent commercially reasonable: (i) procure for the Customer the right to continue using the Service in accordance with this Agreement; (ii) modify the Service or appropriate part thereof, at no cost to Customer, so that the Service, when used in accordance with the Agreement is non-infringing; or, (iii) terminate this Agreement and refund to Customer any unamortized amounts prepaid to Paradigm hereunder.

7.9 **Other Stipulations.** Customer represents and warrants that its use of the Service will not during the term of this Agreement, operate in any manner that would violate any applicable law or regulation. Whenever a provision of the Service is dependent upon Customer furnishing Paradigm appropriate data, documents, information, or materials, Customer will furnish all such data, documents, information, or materials in a timely fashion, and will process such data, documents, information, or materials when necessary. Paradigm is not responsible for the validity of Customer's data in the system. The validity of the data or information presented to Customer's customers or users of the Service is the sole responsibility of Customer.

Neither Paradigm nor any of its Third Party Providers has control over any third party content which may be transmitted through, stored on, or accessed via the Service or the party to whom the communication is directed. Customer agrees that it assumes all responsibility for such third party content and the valid consent of the party receiving the communication. Customer expressly agrees not to use the Service to store, acquire, solicit, transfer, exchange or otherwise be involved with any illegal or illicit material, including, but not limited to: materials which constitute copyright infringement, materials deemed legally obscene or child pornography, materials which constitute illegally acquired proprietary information or trade secrets, materials which facilitate the commission of a crime, and material which constitutes actionable defamation.

SECTION 8
CONFIDENTIALITY

During the Term of this Agreement and for a period of three years thereafter, all Confidential Information disclosed by either party to the other party shall not be used by the receiving party (except in connection with the activities permitted by this Agreement), shall be maintained in confidence by the receiving party and shall not otherwise be disclosed by the receiving party to any other person, firm or agency, governmental or private, without the prior written consent of the disclosing party, except to the extent required to comply with applicable laws or governmental regulations. The obligation of confidentiality and non-disclosure shall not apply to such portion of the Confidential Information which:

(i) is or becomes generally available to the public other than as a result of disclosure by the receiving party or its employees, representatives or agents; or

(ii) becomes available to the receiving party on a non-confidential basis from a third party (unrelated to the receiving party) which is entitled to disclose it; or

(iii) was known to the receiving party on a non-confidential basis prior to its disclosure to the receiving party by the other party; or

(iv) is independently developed by individuals without access to the Confidential Information.

"Confidential Information" means information which the disclosing party desires to protect against unrestricted disclosure or competitive use by the receiving party and which is clearly identified as confidential to the receiving party or would be deemed as confidential by a prudent individual, including, but not limited to, customers' names, telephone numbers, email addresses, identification numbers, account numbers and passwords. Confidential Information also includes, without limitation, information concerning business methods, pricing, business plans, and customer information. Confidential Information may also include proprietary or confidential information of third parties that have granted licenses to the disclosing party. Any breach of this provision would constitute irreparable harm, and either party shall be entitled to seek specific performance or injunctive relief to enforce this provision in addition to such remedies said party might otherwise be entitled to at law or in equity. Upon termination of this Agreement, the recipient of Confidential Information will promptly, either destroy all of the disclosing party's Confidential Information in its possession, including all copies and compilations thereof and provide an officer's certificate confirming its destruction, or, if requested by the disclosing party, return all of its Confidential Information, including all copies and compilations thereof. In addition, each party will be obligated to report to the other any potential use or disclosure of confidential information they become aware of that is not provided for in this Agreement.

SECTION 9
MARKETING and CO-BRANDING

9.1   **Trademarks.** No usage of either party's trademarks will be permitted without prior written approval of the other party.

9.2   **Joint Public Relations.** By prior mutual agreement in writing, the parties may issue a joint press release announcing their collaboration, create an application story highlighting Customer's use of the Service, and/or participate in other joint marketing activities.

SECTION 10
GENERAL PROVISIONS

10.1   **Non-Sollicitation.** During the period commencing on the Effective Date and continuing until the first anniversary of the date on which this Agreement is terminated, neither party shall directly solicit for employment, employees of the other party who are involved in providing or receiving the Service. General solicitation of either party's employees (for example, advertisements in newspapers, recruiting websites, etc.) does not constitute a violation of this section. Nothing herein shall be construed to prohibit hiring of employees responding to general solicitations.
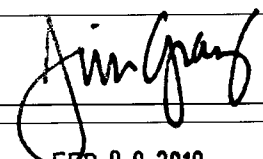
10.2 **Assignment.** Neither this Agreement nor any interest herein may be assigned, in whole or in part, by either party without the prior written consent of the other party, which consent shall not be unreasonably withheld. Notwithstanding the above, either party may assign this Agreement in connection with a merger, reorganization or sale of all or substantially all of its assets or capital stock. Customer further agrees that any assignment or transfer of its rights under this Agreement may also be subject to the approval of a Third Party Provider.

10.3 **Notices.** All notices provided for in this Agreement shall be given in writing and shall be effective when either served by personal delivery, or deposited, postage prepaid, in the United States, registered or certified mail, addressed to the parties at their respective addresses, or to such other address or addresses as either party may later specify by written notice to the other.

	Paradigm Solutions International, Inc.	Lexington-Fayette Urban County Government
Attention:	Mr. Raymond A, Huger	Mr. Mike Nugent
Title:	President & CEO	Director
Company Name:	Paradigm Solutions International	Lexington-Fayette Urban County Government
Address:	6701 Democracy Boulevard, Suite 300 Bethesda, MD 20817-1572	200 E. Main Street Lexington, KY 40507
Phone:	(301) 571-9309	859-258-3332
Fax:	(814) 946-5173	
Email:	rhuger@paradigmsi.com	miken@lexingtonky.gov

10.4 **Mergers and Amendment.** This Agreement, and Schedules hereto, constitute the entire understanding of the parties with respect to the subject matter of this Agreement and merges, replaces and supersedes all prior communications, representations, documents, understandings, and agreements. This Agreement shall not be modified except by a subsequently dated written amendment to this Agreement signed by the duly authorized representatives of each party.

10.5 **Binding Effect.** Subject to the limitations herein before expressed, this Agreement will mutually benefit and be binding upon the parties, their successors and permitted assigns. All signed copies of this Agreement shall be deemed originals.

10.6 **Severability and Waiver.** If any provisions of this Agreement shall be held by a court of competent jurisdiction to be contrary to law or public policy, the remaining provisions shall remain in full force and effect. No terms or provisions hereof shall be deemed waived and no breach consented to or excused, unless such waiver, consent or excuse shall be in writing and signed by the party claimed to have waived or consented. Should either party consent, waive or excuse a breach by the other party, such shall not constitute a consent to, waiver of, or excuse of any other different or subsequent breach whether or not of the same kind as the original breach.

10.7 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Maryland without regard to its conflicts of laws provision.

10.8 **Force Majeure.** Neither Paradigm nor Customer shall be liable for damages for any delay or failure of delivery arising out of causes beyond their reasonable control and without their fault or negligence, including, but not limited to, acts of civil or military authority, fires, riots, wars, or embargoes.

10.9 **Relationship of Parties.** The parties hereto are independent contractors and neither party is an employee, agent, partner or joint venture of the other. Neither party shall have the right to bind the other to any agreement with a third party.

10.10 **Survival.** Notwithstanding anything else in this Agreement to the contrary, the parties agree that Sections 4.4, 6, 7, 8, 9.1, and 10.1 shall survive the termination or expiration of this Agreement.

10.11 **Headings.** The section headings used herein are for convenience of reference only, and no construction or inference shall be derived there from.

10.12 **Counterparts.** This Agreement may be executed in several counterparts, all of which taken together shall constitute one single Agreement between the parties. This Agreement may be executed by facsimile signature(s).

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized representatives as of the date set forth above.

Paradigm Solutions International, Inc.	Lexington-Fayette Urban County Government
By Its Authorized Representative	By Its Authorized Representative
Signature: *Raymond A. Huger*	Signature: *[signature]*
Date: 1 - 23 - 2018	Date: FEB 0 8 2018
Name: Raymond A. Huger	Name: Mayor Jim Gray
Title: President & CEO	Title: Mayor
Address: 6701 Democracy Boulevard, Suite 300 Bethesda, MD 20817-7500	Address: 200 E. Main Street Lexington, KY 40507
Tel: (301) 571-9309 Fax: (814) 946-5173 Email: rhuger@paradigmsi.com	Tel: 859-258-3332 Fax: Email:

PARADIGM SOLUTIONS
INTERNATIONAL

In Business to Keep You in Business

SCHEDULE A

NOTIFICATION SERVICES GENERAL AGREEMENTS

"ONLY APPLICABLE IF NOTIFICATION IS DETAILED AS A LICENSED SERVICE IN THE ATTACHED OR ANY SUBSEQUENTLY AMENDED SCHEDULE E's

I. Authorized Users

This Agreement permits Customer and its employees to utilize the Service provided all users of the Service abide by the terms and conditions of this Agreement and the Terms and Conditions of Use included in this **Schedule A** hereof.

II. Content of Messages Delivered by Paradigm

The introduction or header and trailer for each delivered message delivered by Paradigm as part of the Service hereunder shall contain the following:

    A.   The name of the intended recipient;

    B.   The salutation shall be "This is the "Customer" Notification System with an important message for (name) or some other salutation as determined by Paradigm.

III. Notification Service Levels.

    A.   Service SLA. Paradigm will exercise commercially reasonable efforts to maintain a minimum of 99.8% availability of the Service measured on a monthly basis, excluding scheduled maintenance of 240 minutes per month or less. Paradigm will provide Customer with a minimum forty-eight (48) hour notice of any anticipated maintenance requirements to those person(s) specified by Customer in writing as the primary maintenance contact.

    B.   Message Delivery SLA. Where applicable, Paradigm will exercise commercially reasonable efforts to provide a message delivery performance level in which the average first attempt delivery to a minimum of 600 addresses specified in each Event shall occur 98% of the time within sixty (60) minutes of receipt of a Notification Activation from the Customer as specified herein.

    C.   Exclusions. Paradigm is not responsible where there are: a) telecommunications failures resulting from or caused by Customer or their Recipient's or any carriers or third party service providers network, equipment, or employees' or agents' actions or failures to act; (b) modifications to the Service not authorized in writing by Paradigm; (c) use of the Service in combination with other products not specifically authorized in writing by Paradigm; (d) use by Customer in violation of the Agreement or its Schedules; (e) events beyond Paradigm's direct control and force majeure events; (f) events not specifically noted as Paradigm responsibility in this Agreement; or (g) use of the Service in a manner inconsistent with the Documentation or in a manner not authorized under this Agreement or the Terms of Use included herein.

    D.   Failure to meet Service SLA and/or Message Delivery SLA. Should Paradigm fail to meet either the Service and/or Message Delivery SLA (when the failure to meet the SLA materially affects Customer), as a result of its actions in any given month, then Paradigm, as Customer's exclusive remedy and Paradigm's sole liability, shall at its discretion either: (i) add enough additional capacity by the end of the following month to remedy the failure, (ii) provide to Customer an Incident Response summary, which includes a commercially reasonable plan that mitigates the possibility of similar future failures, or (iii) provide Customer with a service credit as detailed in Schedule D.

Schedule A

IV. Customer's Responsibilities and Obligations:

1. Information Availability. Customer shall provide such information as is necessary for Paradigm to provide the Service.

2. Support Contact. Customer will designate a support contact, and contact's information, responsible for communications with Paradigm.

3. Terms of Use. Customer shall utilize the Service in accordance with the Terms of Use as set forth in Schedule A herein and shall require all of its officers, directors, employees, agents, consultants, representatives, and customers, as a condition of using the Service, to accept Paradigm's Terms of Use.

4. Problem Escalation. Customer will provide contact list for problem notification and escalation.

5. Customer Information.

   a) For Business Continuity Communications, Customer shall only direct Paradigm to communicate with those individuals with whom Customer has an established business relationship, and the communication is solely for the purpose of a non-consumer business related activity. Customer acknowledges and agrees that the communications applications of the Service shall be used solely in support of Business Continuity communications.

   b) Customer shall provide to Paradigm only those individuals and called parties from which Customer has received prior valid express consent to receive information at the address or number provided by the individuals or called parties.

   c) Customer also represents and warrants that neither it nor any of its agents will remove or in any way alter Automatic Number Identification ("ANI") or Calling Party Number ("CPN") information associated with any messages delivered pursuant to this Agreement and shall transmit in every case its telephone number and the name of the organization to the applicable caller identification service.

   d) For communications which are for commercial purposes, where there is no established business relationship, or where Customer intends to use the Service to place telephone calls using artificial or prerecorded voice to deliver a message, Customer will not, unless Customer has received prior express written consent of the called party, provide telephone numbers which are:

      i. any emergency telephone line, including any 911 line and any emergency line of a hospital, medical physician or service office, health care facility, poison control center, or fire protection or law enforcement agency;

      ii. the telephone line of any guest room or patient room of a hospital, health care facility, elderly home, or similar establishment; or

      iii. any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or other service for which the called party is charged for the call.

   e) Customer shall be responsible for insuring that all content to be used in association with this Service shall comply with all laws and regulations.

   f) Customer acknowledges that nothing in this Agreement shall require Paradigm to determine or validate the completeness or accuracy of any of the information required by this section IV.

   g) Once the implementation of the Service is completed, Customer is responsible for submitting all site content and notification notices.

   h) Without prior written agreement with Paradigm, Customer shall not use the Service for the purposes of debt collection or other bill collection activities.

6. Customer agrees and warrants that it will comply in all respects with all Federal and State telemarketing laws, including the Telemarketing Sales Rule, 16 C.F.R., Part 310, and will not engage in any deceptive or abusive telemarketing acts or practices.

Schedule A

V. Terms of Use

All messages to be delivered by Customer shall be in compliance with and subject to the terms of Paradigm's standard Terms of Use below. Paradigm reserves the right to change or modify these policies at any time to better protect our user's information.

A. Customer is advised and hereby acknowledges and agrees that it will advise its affiliated users that the following uses of the Service are unlawful or not allowed:

1. Use of the Service in connection with chain letters, junk e-mail, junk phone messages, junk faxes, spamming, or any duplicative or unsolicited messages (commercial or otherwise) or messages where the recipient is not known to the sender;

2. Harvesting or otherwise collection of information about others, including e-mail addresses, without their consent;

3. Creation of a false identity or forged e-mail, telephone, or facsimile address or header, or any other attempt to mislead others as to the identity of the sender or the origin of the message;

4. Transmission through the Service of unlawful, harassing, libelous, abusive, threatening, harmful, vulgar, obscene, pornographic, or otherwise objectionable material of any kind or nature;

5. Transmission of any material that may infringe the intellectual property rights or other rights of third parties, including trademark, copyright, or right of publicity;

6. Libeling, defaming, or slandering of any person, or infringement upon any person's privacy rights;

7. Transmission of any material that contains viruses, Trojan horses, worms, time bombs, cancel bots, or other harmful or deleterious programs;

8. Violation of any U.S. law regarding the transmission of technical data or software exported from the United States through the Service;

9. Violation of any U.S. law with respect to child pornography or solicitation of minors for sex via the Internet;

10. Violation of any applicable U.S. or state law regarding delivery of recorded voice messages by telephone.

11. Interference with or disruption of networks connected to the Service or violation of the regulations, policies, or procedures of such networks;

12. Attempting to gain unauthorized access to the Service, other accounts, computer systems, or networks connected to the Service, through password mining or any other means;

13. Interference with another user's use and enjoyment of the Service or another entity's use and enjoyment of similar services;

14. Telephone solicitation of funds utilizing computer automated voice;

15. Engagement in any other activity that any reasonable person would believe could be subject it to criminal liability or civil penalty or judgment; or

16. Violation of the federal CAN-SPAM Act of 2003 or any other anti-spam laws or regulations including without limitation all required "opt out" and "opt in" mechanisms and requirements, where applicable.

B. Paradigm Solutions may not monitor, edit, or disclose personal information of Customer or recipients, including message contents, without Customer or its recipients' prior permission, unless Paradigm Solutions has a good faith belief that such action is necessary to:

(1) conform to legal requirements or comply with legal process;

(2) protect and defend the rights or property of Paradigm Solutions;

(3) enforce this Agreement or protect Paradigm Solutions' business or reputation, including without limitation upon termination, cancellation or suspension of this Agreement by Paradigm Solutions;

Schedule A

(4) respond to request for identification in connection with claim of copyright or trademark infringement by Customer or a claim by a third party that Customer is using the Service in connection with an infringing, illegal or improper activity;

(5) act to protect against or prevent fraud, unauthorized transactions, claims or other liability, or

(6) resolve customer disputes or inquiries, or complaints, including from recipients or third parties, with respect to Customer's use of the Service.

Under U.S. law, there is an affirmative duty of service providers to the public to report to the Federal government's Cyber Tip Line knowledge of facts or circumstances of online child pornography. In the above events, Paradigm Solutions, in its sole discretion, reserves rights of disclosure to others.

SCHEDULE B

HOSTED SERVICES GENERAL AGREEMENTS

(As Applicable in Accordance with the Services detailed in Schedule E)

I. Datacenter and Network Availability

The Paradigm datacenters provide for uninterrupted power availability, redundant HVAC facilities, 24/7/365 controlled access, and sophisticated fire detection and suppression systems.

The datacenter and datacenter network infrastructure is guaranteed to be available a minimum of 99.8% of the time in a calendar month, excluding scheduled and emergency maintenance of 240 minutes per month or less per Section V below.

II. Services and Devices

Paradigm guarantees the functioning of all leased hardware components and will replace any failed component at no additional cost to Customer.

III. Data Backup

Paradigm schedules, performs, monitors, and maintains Customer data backups. Current backup policy includes weekly full backups and daily differential backups of all files to a central tape library. Four weeks of tape backups are retained at an offsite location.

IV. Monitoring and Response

Paradigm will monitor general server availability, status events on servers and network devices including network availability, and key performance metrics for the operating system, and all applications and databases.

V. Terms of Use

A. Scheduled & Emergency Maintenance. Scheduled maintenance, limited to 240 minutes per month or less, includes the installation of hot fixes, service packs, software and software upgrades, pre-failure hardware replacement, hardware upgrades, etc... It also includes shutdowns or reboots that occur in the normal course of maintaining software and hardware. Customer will be notified at least 48 hours in advance of any recurring and scheduled maintenance event unless agreed to otherwise. Notification of scheduled maintenance will take place via email to the Customer and whenever reasonably possible, maintenance will be performed during Paradigm off-peak hours. Paradigm reserves the right to perform emergency maintenance without notice. Emergency maintenance is defined as any maintenance activity that is deemed necessary by Paradigm management to protect the security or availability of Customer's hosted configuration or the security and availability of other customers of Paradigm who may be adversely and materially affected if such emergency maintenance activity is not performed.

Notwithstanding anything contained in the SLA to the contrary, scheduled and emergency maintenance outages shall be exempt from all calculations and penalties under the terms of this SLA and Customer shall not be entitled to any service credits as detailed in Schedule D.

B. Failure to meet Hosting SLA. If as a result of its actions Paradigm fails to meet this Hosting SLA in any given month (when the failure to meet the SLA materially affects Customer), then Paradigm, as Customer's exclusive remedy and Paradigm's sole liability, shall be subject to providing Customer with a service credit as detailed in Schedule D. For the purpose of this SLA, all availability calculations shall be based upon an individual calendar month.

SCHEDULE C

ADDITIONAL TERMS and CONDITIONS of USE

(Intentionally Left Blank)

SCHEDULE D

TECHNICAL SUPPORT

I. Standard Technical Support.

A. The Paradigm Technical Assistance Center (TAC) is available and will respond to phone calls or email inquiries from End User(s) between 8 AM and 6 PM ET, Monday through Friday, excluding company observed holidays.

B. Continued Response and Resolution Time – See Definitions of Severity Levels below.

C. Point of Contact from End User– up to 4 individuals

Standard Support End Users may contact Paradigm technical support regarding any issue or questions (Severity 1-4) by calling **800-558-9568** or by emailing **tac@paradigmsi.com** between the hours of 8 AM ET and 6 PM ET. In the event that Paradigm is requested to take action after hours to address an issue, the Customer will be invoiced for actual time spent during after hours to resolve the reported problem, with a minimum of two (2) hours at the rate of $250 per hour.

II. Premium Technical Support. Customer may upgrade from standard technical support to premium technical support based on the fee included in **Schedule E**.

A. Includes Standard Technical Support plus

B. Paradigm TAC will respond and provide emergency support via pager and/or cell phone for critical incidents on a 24 x 7 x 365 basis.

C. Point of Contact from Customer - up to 4 individuals

D. Continued Response and Resolution Time – See Definitions of Severity Levels below.

E. Escalation list including Account Manager and Senior Management.

F. Premium Support Customers may contact Paradigm technical support regarding any problems, issues, or questions (Severity 1-4) by calling **800-558-9568** or emailing **tac@paradigmsi.com**, 24 hours a day, 7 days a week with no additional charges.

III. Definition of Severity Levels. Response time for support calls shall be based upon Paradigm's determination of the following problem severity levels experienced by Customer:

A. **Severity 1:** Defined as an event where service is inaccessible and no procedural workaround exists. Paradigm will respond within thirty (30) minutes of notification of the problem. The goal is to resolve the problem, or reduce the severity level of the problem within ninety (90) minutes of notification.

B. **Severity 2:** Defined as an event that results in a partial loss of service, yet an existing workaround is available that lessens or removes the business or application impact; or an important function is not usable that severely restricts operation or use of the service, resulting in a significantly reduced level of performance. Paradigm will respond within one (1) hour of notification of the problem during contracted hours. The goal is to resolve the problem, or reduce the severity level of the problem within four (4) hours of notification. If outside contracted hours (Standard Support), Paradigm TAC will investigate and attempt to resolve the problem in accordance with "After Hours Support" pricing.

Schedule D

C. **Severity 3:** Inability to use a function occurs, but it does not seriously affect operation or use of the service. The problem has a minor impact on a feature. The service is predominately unaffected, and/or an acceptable workaround is available that allows the service to continue to function. Paradigm will respond within four (4) hours during contracted hours. The goal is to resolve the problem within twenty-four (24) hours of notification of problem.

D. **Severity 4:** Documentation problems, general questions, or requests for enhancements - no functional impact to the Customer. Paradigm will respond within twenty-four (24) hours during contracted hours.

IV. <u>Service Enhancements and Modifications</u>. Paradigm frequently updates, modifies, and otherwise seeks to improve or enhance the Service. Therefore, Paradigm reserves the right to change or discontinue any aspect or feature of the Service as it deems reasonably necessary and at its sole discretion. In such an event, Paradigm shall use its reasonable commercial efforts to provide Customer with a replacement that provides similar functionality. Should Customer require assistance in implementing any modified or additional Service then Customer may requisition this assistance from Paradigm in accordance with Schedule E. Paradigm will notify Customer in writing of any changes that Paradigm believes will materially affect the Service.

V. <u>Service Levels and Service Credits</u>. As a result of its actions should Paradigm fail to meet either the Notification, Hosting, and/or the Technical Support SLA's referenced in Schedules A, B, or this Schedule D in any given month (and in the event the failure to meet the SLA materially affects Customer), then Customer's exclusive remedy and Paradigm's sole liability, shall be a credit of one month extension of Service, at no charge to the Customer, for each month that Paradigm fails to meet the prescribed SLA. This credit is contingent upon the following stipulations and if approved, shall be applied at the next renewal period or at the end of the term of this Agreement, whichever occurs first.

A. <u>Written Requests</u>. Requests for credit under the terms of this SLA or other items which require a written request will be accepted at the Paradigm Technical Assistance Center via fax at 814-946-5173, or via postal mail to Paradigm Solutions International, 3900 Industrial Park Drive, Suite 9, Altoona, PA 16602. The effective date, referenced for any Customer credit as part of the subject written request, shall be the date sent/faxed/mailed by the Customer.

B. <u>Customer Service Credit Requests</u>. Customers requesting service credit must submit a written request to the Paradigm Technical Assistance Center in accordance with "WRITTEN REQUESTS" above, within 10 days following the month for which Customer is requesting credit. Paradigm shall contact customer within 7 days to submit its decision or to request additional information. If Paradigm approves Customer's credit request, such credit shall be applied at the next renewal period or at the end of the term of this Agreement, whichever occurs first. Credits shall not be granted if Customer is in payment default or in violation of the Acceptable Use Policy when SLA failure occurs.

C. <u>Limitations</u>. Notwithstanding anything contained in this SLA to the contrary, the maximum total credit for any calendar month shall not exceed 100% of Customer's total monthly recurring charge. Any service credits for a particular month to which Customer would have been entitled except for the fact that such service credits exceeded the monthly service credit limitations provided herein shall not be carried over to another month, and Customer shall have no right to receive any such service credits. SERVICE CREDITS WILL NOT BE GRANTED FOR CUSTOMER DOWNTIME OR OUTAGES RESULTING FROM DENIAL OF SERVICE ATTACKS, VIRUS ATTACKS, HACKING ATTEMPTS, OR ANY OTHER CIRCUMSTANCES THAT ARE NOT WITHIN THE DIRECT CONTROL OF PARADIGM.

D. <u>Exclusive Remedies</u>. CUSTOMER'S RIGHT TO RECEIVE SERVICE CREDITS AS DESCRIBED IN THIS SLA IS CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY FAILURE BY PARADIGM TO MEET THE GUARANTEES AND WARRANTIES PROVIDED HEREIN.

PARADIGM ⟨⟩ SOLUTIONS
INTERNATIONAL

In Business to Keep You in Business

SCHEDULE E

SERVICES and PRICING SUMMARY
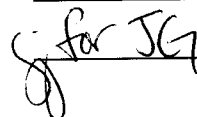
Customer Name: Lexington-Fayette Urban County Government   **Date:** __1/22/18__

Services Summary:

Subscription/Paradigm Hosted:	X		Burstable (Y/N):	Y		Notification (Y/N)[4]:	N
Purchased/Customer Hosted:			BIA/RA Expert (Y/N):	N		Option:	
# Total Users/Seats:	25		FTP Sync(Y/N):	N		Recipients:	
# Total Concurrent Users:	5					Messages/Yr::	
Add'l Languages:	N		Technical Support:			Add'l Languages:	
			Standard:				
			Premium:	Y			

Pricing Summary[1,3]:

One-Time Installation/Setup Fees [2]:	$	2,000.
Annual Subscription/Hosting Licensing Fees (Includes Burstable Option)	$	7,800.
Annual Technical Support Fees	$	780.
TOTAL FEES – YEAR 1	$	10,580.
TOTAL FEES – YEAR 2	$	8,580.
TOTAL FEES – YEAR 3	$	8,580.

TOTAL CONTRACT FEE (3 Years)	$	27,740.

[1] Quoted pricing is valid for 60 days (sixty) days from the date stated above in this Schedule E. In addition, Customer will reimburse Paradigm for any reasonable travel time and other travel related expenses associated with on-site implementation, training, and support. Travel time is invoiced separately at $55 hour along with reasonable travel related expenses which includes meals, lodging, airfare, mileage, etc...

[2] One Time Installation/Setup Fee includes up to eight (8) hours of Admin training, for up to eight (8) participants and two End-User training classes (up to 2 hours each) for up to eight (8) participants per class. Training is available through a web session or at the client site. If the client chooses to have training on-site, the client is responsible for the trainers travel time and travel related expenses. Additional training can be purchased as required at the current PSI rate of $1,200 per day plus travel related expenses.

[3] Pricing includes one (1) GB of Storage. Additional Storage is available at $500.00 annually per 500MB.

[4] Notification Services Users–If annual message limits are exceeded, additional charges ranging from $0.40 to $2.50 per minute/message may be applicable and will be invoiced on a monthly basis as incurred.

_____Initials

_____Initials