

RESOLUTION NO. 23-R-130

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS, AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT FOR OPTICOM SERVICES THROUGH GLOBAL TRAFFIC TECHNOLOGIES AND WHELEN ENGINEERING COMPANY, INC IN CONNECTION THEREWITH

WHEREAS, Schertz Fire Department desires to enter into an agreement with Global Traffic Technologies and Whelen Engineering Company, Inc. for Opticom services, described in Exhibit A and Exhibit B, which is to be effective on the same effective date of this Agreement; and

WHEREAS, City Staff recommends that City Council authorize the City Manager to enter into a contract with Global Traffic Technologies and Whelen Engineering Company, Inc. for Opticom intersection preemption services at a cost not to exceed \$33,795;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS THAT:

Section 1. The City Council hereby authorizes the City Manager to enter into a contract with Opticom for intersection preemption services as set forth in Exhibit A and Exhibit B.

Section 2. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Resolution for all purposes and are adopted as a part of the judgment and findings of the City Council.

Section 3. All resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.

Section 4. This Resolution shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

Section 5. If any provision of this Resolution or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Resolution and the application of such provision to other persons and circumstances shall nevertheless be valid, and the City Council hereby declares that this Resolution would have been enacted without such invalid provision.

Section 6. It is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by Chapter 551, Texas Government Code, as amended.

Section 7. This Resolution shall be in force and effect from and after its final passage, and it is so resolved.

Section 8. The ordinance shall be effective upon the date of the final adoption hereof and any publication required by law.

Section 9. The ordinance shall be cumulative of all other ordinances of the City of Schertz, and this Ordinance shall not operate to repeal or affect any other ordinances of the City of Schertz except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this Ordinance, in which the event such conflicting provisions, if any, are hereby repealed.

PASSED AND ADOPTED, this ____ day of _____, 2023.

CITY OF SCHERTZ, TEXAS

Ralph Gutierrez, Mayor

ATTEST:

Sheila Edmondson, City Secretary

EXHIBIT A

MASTER SALE OF GOODS AND SERVICES AGREEMENT

This Master Sale of Goods and Services Agreement (“MSA” or “Agreement”) is made as of this 24th day of August, 2022, (the “Effective Date”) by and between Global Traffic Technologies, LLC (“GTT”), with its offices at 7800 Third Street North, Building 100, Saint Paul, Minnesota, 55128 and The City of Schertz (“Customer”), having its offices at 1400 Schertz Parkway Schertz, Texas 78154. Together, GTT and Customer may be referred to as “Parties” and individually as a “Party” to this MSA.

WHEREAS, GTT is the provider of certain hardware and software products manufactured and distributed by GTT and is therefore in a unique position to provide services related to its products; and

WHEREAS, Customer desires that GTT perform services as defined herein for the Customer in relation to certain products; and GTT desires to perform such services for the Customer, subject to the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby agree as follows:

1. DEFINITIONS.

- A. “Customer” – as used herein, means any purchaser or user of any of GTT’s products and/or services, including but not limited to, contractors, dealers, end users and original equipment manufacturers.
- B. “Products” – as used herein, means any hardware and/or software, excluding any software offered as a service, as specified in any schedule, purchase order or otherwise, regardless of whether such Products are purchased, leased, or subscribed to.
- C. “Software” – as used herein, means the executable code made available to Customer as a perpetual license, including documentation and to the extent software maintenance is kept current, software updates.
- D. “Services” – as used herein is defined as the services provided by GTT or its subcontractors as outlined in the Agreement, which may include but are not limited to:
 - 1. “Up-Front Services” – as used herein, means the Services provided initially that are necessary to achieve First Productive Use (defined herein):
 - i. Site survey (intersections and/or vehicles) – GTT will survey Customer’s intersections and vehicles to determine current infrastructure and needs, including wiring, hardware mounting locations and other key information necessary to ensure a successful deployment. For avoidance of doubt, Customer agrees to make vehicles and intersections available to GTT to enable the site survey.
 - ii. Project management – GTT will assign a project manager to work with Customer to create a project plan and then manage the resources deployed to execute the plan.
 - iii. Installation (intersections) – GTT will install, configure and test phase selectors, modems, radios, antennas and/or cables, including testing to ensure proper operation and in preparation for Final Testing (defined herein).

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- iv. Installation (vehicles) – GTT will install, configure and test vehicle kits, computers, modems, radios, antennas, cables and/or software, including testing to ensure proper operation and in preparation for Final Testing.
 - v. Training (2 days, 1 trainer; includes travel) – GTT will provide two days of training at the Customer's location. Customer may have an unlimited number of participants so long as they are employees or representatives of Customer. Customer must provide the training room and any needed audio/visual equipment.
 - vi. Engineering services – GTT will provide custom work if/when applicable and included in the Agreement.
2. "Ongoing Services" – as used herein, means the Services provided subsequent to Up-Front Services:
- i. Hosting – GTT will install its software on a remote, secure, 3rd party server, to be accessed by Customer and/or GTT as a service. All maintenance of the server is included. Fees for this service are billed annually, quarterly or monthly, depending upon the payment terms outlined in the Agreement.
 - ii. Data collection and reporting – GTT will collect data, generate reports and publish as defined as appropriate by GTT, or as agreed to in writing by the Parties.
 - iii. Monitoring and optimizing – GTT will monitor Customers' systems to ensure operational status. GTT will also look for opportunities to optimize the system, which will be communicated to Customer as applicable. To the extent outages are discovered, GTT will (or alert Customers as to the need to) deploy resources to provide repair/replacement services locally. For avoidance of doubt, monitoring includes reviewing data related to vehicles and intersections, but does not include outages that aren't managed by GTT (e.g., customer-provided cellular connectivity).
 - iv. Repairs/replacements (intersections) – When outages occur, GTT will attempt to repair remotely if possible and will deploy local resources to provide services when needed. Local resources will be GTT, GTT's dealers, or other 3rd party resources approved and subcontracted by GTT.
 - v. Repairs/replacements (vehicles) – When outages occur, GTT will attempt to repair remotely if possible and will deploy local resources to provide services when needed. Local resources will be GTT, GTT's dealers, or other 3rd party resources approved and subcontracted by GTT.
 - vi. Cellular data – Machine to machine cellular connectivity. Provided by vendor of GTT's choice, but contracted by GTT for the benefit of Customer.
 - vii. "Software Maintenance" – Provides Customer with access to the customer care center, defect fixes and Software Updates.
 - viii. "Software as a Service" or "SaaS" – Hosted software made available as a Service to Customer by GTT, where no perpetual license is granted.

THE INFORMATION ABOVE CONCERNING SERVICES IS INTENDED TO DEFINE ALL AVAILABLE SERVICES OFFERED BY GTT, WHICH MAY OR MAY NOT BE INCLUDED IN THIS AGREEMENT. THE FACT THAT SUCH DEFINITIONS ARE INCLUDED IN THE AGREEMENT IN NO WAY IMPLIES OR IMPLICATES GTT TO PROVIDE SUCH SERVICES, UNLESS THE SERVICES ARE SPECIFICALLY LISTED IN SCHEDULE A.

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- E. "Services Completion" – is defined as the point at which individual Services have been delivered, as determined and documented by GTT. Services Completion represents acceptance of the individual Services delivered when Services Completion occurs.
 - F. "Final Testing" is the point at which the following can be confirmed and documented by GTT, or in the case of delays caused by the Customer, 30 days from the date Services Completion occurred, whichever is sooner:
 - 1. As applicable, the Products installed in all vehicles available for testing can send a request for priority control to the Products installed in all intersections available for testing; and all Products installed in all intersections available for testing can receive a request for priority control; and documentation of the events can be provided to Customer.
 - 2. As applicable, GTT's management software can connect with all intersections and vehicles available for testing and documentation of the event can be provided to Customer.
 - G. "First Productive Use" is the point at which the following can be confirmed and documented by GTT, or in the case of delays caused by the Customer or other third-parties not within the control of GTT, 30 days from the date Service Completion occurred, whichever is sooner:
 - 1. Services Completion has occurred.
 - 2. Successful Final Testing has occurred.
 - H. "Order" – as used herein, means any written document, signed by the Customer, to purchase Products and/or Services from GTT.
2. TERMS AND CONDITIONS. The Terms and Conditions in Schedule B are hereby incorporated into this MSA and made part thereof. The Terms apply to all purchases made by Customer, regardless of whether Customer is purchasing, leasing or subscribing to Services. In the event any term or condition in the Terms conflicts with any other term or condition of this MSA, the term or condition of this MSA shall control.
3. SALE OF GOODS AND SERVICES. To the extent Customer purchases Products and/or Services from GTT, the details regarding such purchase are specifically set forth in the attached Schedule A, which attachment is hereby incorporated into this MSA and made a part hereof ("Schedule A"). Specific terms, such as pricing, quantity and the level of service(s) being provided, shall be as set forth in Schedule A. To the extent any subsequent purchases or service offerings are requested by Customer, these additions will be added to the MSA by way of a subsequent Schedule A, which will follow sequential order; for example, Schedule A-1, Schedule A-2 and so forth. GTT agrees to use commercially reasonable efforts to perform the Services during the timeframe outlined within the Schedule A, but reserves the right to extend that timeframe if necessary to complete the work.
4. TERM. The term of this MSA will begin on the Effective Date and will continue as set forth in Schedule A or until the expiration of any subsequent schedules, whichever is longer.
5. INTELLECTUAL PROPERTY.
- A. Definition of Intellectual Property. "Intellectual Property" shall mean all intellectual property and industrial property rights and assets, however arising, pursuant to the laws of any jurisdiction throughout the world, whether registered or unregistered, including without limitation any and all: (a) trademarks, service marks, trade names, brand names, logos, trade dress, design rights and other similar designations of source, sponsorship, association or origin, together with the goodwill connected with the use of and symbolized by and all registrations, applications and renewals for, any of the foregoing; (b) works of authorship, expressions,

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designs and design registrations, whether or not copyrightable, including copyrights, author, performer, moral and neighboring rights and all registrations, applications for registration and renewals of such copyrights; (c) inventions, discoveries, trade secrets, business and technical information and know-how, databases, data collections and other confidential information and all rights therein; (d) patents (including all reissues, divisionals, provisionals, continuations and continuations-in-part, re-examinations, renewals, substitutions and extensions thereof), patent applications and other patent rights and any other governmental authority-issued indicia of invention ownership (including inventor's certificates, petty patents and patent utility models); and (e) software and firmware, including data files, source code, object code, scripts, mark-up language, application programming interfaces, architecture, files, records, schematics, computerized databases and other related specifications and documentation.

- B. Deliverables. The term "Deliverables" shall include only materials and services delivered to Customer by GTT that are expressly identified in Schedule A or any subsequent schedules, if any ("Deliverables"). Unless otherwise stated in Schedule A or any subsequent schedules, GTT owns and to the extent not owned, is hereby assigned by Customer, all right, title and interest in all Deliverables including without limitation all Intellectual Property in and to such Deliverables. Subject to the terms of this MSA, GTT grants a limited, non-exclusive, royalty-free license to Customer to the Deliverables and GTT Intellectual Property related to the Deliverables solely to extent and term necessary for Customer to use the Deliverables as contemplated under Schedule A or the applicable subsequent schedules.
- C. Trademarks. As may be required in this MSA, including Schedule A and subsequent schedules, GTT may use the trademarks and trade names of Customer in connection with its provision of Services and/or other business uses and Customer hereby licenses such trademarks and trade names to Customer for such purposes.

6. INDEMNIFICATION.

- A. Indemnification by Customer. Customer shall indemnify, defend and hold harmless GTT and its officers, directors, employees, agents, representatives, subsidiaries, parents, affiliates, vendors, resellers, independent contractors, successors and permitted assigns (collectively, "GTT Indemnified Parties") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees and attorneys' fees and the costs of enforcing any right to indemnification under this MSA and the attorneys' fees and cost of pursuing any insurance providers, incurred by GTT Indemnified Parties or awarded against GTT Indemnified Parties relating to, arising out of, or resulting from: (1) any claim of a third party arising out of or occurring in connection with Customer's gross negligence, willful misconduct, violation of any applicable law or regulation, or breach of this MSA; or (2) the ownership, licensing, selection, possession, leasing, renting, operation, control, use, maintenance, delivery, return, or other disposition of the Products or Services that results in any personal injury, wrongful death, or property damage resulting in relation to the use of the Products or Services.
- B. Indemnification by GTT. GTT shall indemnify, defend and hold harmless Customer and its officers, directors, employees, agents, representatives, subsidiaries, parents, affiliates, vendors, resellers, independent contractors, successors and permitted assigns (collectively, "Customer Indemnified Parties") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees, fees and the costs of enforcing any right to indemnification under this MSA and the cost of pursuing any insurance providers, incurred by Customer Indemnified Parties or awarded against Customer Indemnified Parties relating to, arising out of, or resulting from any claim of a third party arising out of or occurring in connection with GTT's gross negligence, willful misconduct, violation of any applicable law or regulation, or breach of this MSA.

7. INTELLECTUAL PROPERTY INDEMNIFICATION.

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- A. By GTT. GTT agrees to indemnify, hold harmless and defend Customer and its directors, officers, employees and agents from and against all losses, liabilities, damages, claims and expenses, including reasonable attorneys' fees and court costs, arising out of or relating to any claim by any third party unaffiliated with the Customer alleging that: (i) Customer's use of the Products or Services in accordance with this MSA infringes or violates the patent, copyright, trade secret, proprietary, or other Intellectual Property right of any such third party. Should Customer's use of the Products or Services in accordance with the terms and conditions of this MSA become, or in GTT's opinion be likely to become, the subject of such a claim described in the immediately foregoing clause, then, Customer will permit GTT, at GTT's option and expense, either to: (1) procure for Customer the right to continue its use in accordance with the terms and conditions of this MSA of the Products and Services, (2) replace or modify the Products and Services so that Customer's use of the Products and Services in accordance with the terms and conditions of this MSA no longer infringes or violates the Intellectual Property rights of any third party, provided such replaced or modified Products and Services provides at least substantially equivalent functionality and comparable performance characteristics in all material respects; or (3) terminate this MSA (and all licenses granted hereunder), or any addenda or portion thereof (including without limitation the license of specific software or lease of certain products) and Customer shall return the non-conforming Products and Services and GTT shall refund the purchase price of such materially impacted Products and Services. The cost of all return shipping to GTT is the sole responsibility of Customer. Notwithstanding any provision herein to the contrary, GTT shall have no obligation or liability to Customer to the extent any such third party claim of infringement or other violation of any Intellectual Property right of any such third party is caused by the unlicensed use of the Products or Services by Customer, Customer's failure to operate the Products or Services solely as a part of a system comprised entirely of GTT or GTT authorized hardware and software, use of the Products or Services with software or hardware other than as intended.
- B. By Customer. Customer agrees to indemnify, hold harmless and defend GTT and its directors, officers, employees and agents from and against all losses, liabilities, damages, claims and expenses, including reasonable attorneys' fees and court costs, arising out of or relating to any claim by any third party unaffiliated with GTT relating to, arising out of, or concerning any infringement or misappropriation of the Intellectual Property rights of a third party to the extent any such third party claim of infringement or other violation of any Intellectual Property right of any such third party is not indemnified by GTT pursuant to Section 11.3.1 of this MSA.
- C. Indemnification Procedure. The Party seeking indemnification (the "Indemnified Party") shall notify the party from which the Indemnified Party is seeking indemnification (the "Indemnifying Party") promptly after the Indemnified Party receives notice of a claim for which indemnification is sought under this MSA, provided, however, that no failure to so notify the Indemnifying Party shall relieve the Indemnifying Party of its obligations under this MSA except to the extent that it can demonstrate damages directly attributable to such failure. The Indemnifying Party shall have authority to defend or settle the claim; provided however that the Indemnified Party, at its sole discretion and expense, shall have the right to participate in the defense and/or settlement of the claim and provided further, that the Indemnifying Party shall not settle any such claim imposing any liability or other obligation on the Indemnified Party without the Indemnified Party's prior written consent.
8. GENERAL PROVISIONS.
- A. Entire Agreement. This MSA, including any documents attached hereto and incorporated by reference, supersedes any and all other prior agreements, understandings, negotiations, or communications, either oral or in writing, between the Parties or their representatives and constitutes the entire understanding of the Parties with respect to its subject matter. No form, invoice, bill of lading, shipping document, order, purchase order, receipt or other document provided by either Party shall operate to supersede, modify or amend any provisions of this MSA, even if either Party has initialed, signed or otherwise acknowledged such document regardless of the timing of the execution or presentment in relation to the execution of this MSA, unless the

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document expressly states that it modifies or amends this MSA and is signed by authorized representatives of both Parties. This MSA may not be modified, altered, or waived, in whole or in part, except in a writing signed by the duly authorized representatives of the Parties hereto. In the event of any conflict between the terms of the addenda, schedule, exhibits, terms and conditions or schedules, if any, to this MSA, the terms of the conflicting provision in the addenda, schedule, exhibits, terms and conditions shall supersede the conflicting terms in this MSA. Wherever possible, the terms of the addenda, schedule, exhibits, terms and conditions or schedules, if any, to this MSA shall be read to be in addition to and not in conflict with, this MSA.

- B. Notices. Written notices as required under this MSA shall be deemed to have been given or made on the next business day when sent by the use of overnight courier, or on the fifth business day after deposit, postage prepaid in the U.S. mail for certified or registered mail to the addresses of the Parties set forth at the beginning of this MSA, Attention: LEGAL. The address for notice may be changed at any time by giving prior written notice as above provided.
- C. Effect of Waiver. The failure of either Party to insist on strict compliance with any of the terms, covenants or conditions of this MSA by the other Party will not be deemed a waiver of that term, covenant or condition; nor will any waiver or relinquishment of that right or power be for all or any other times.
- D. Non-Solicitation. Each Party agrees during the term of this MSA and for a period of twelve (12) months thereafter, it will not directly solicit for hire the employees of the other, without the written consent of the other Party. Employees hired in response to general employment solicitations advertised in the usual and customary manner by either Party shall be excluded from this provision.
- E. Assignment. This Agreement shall be binding on the Parties and their successors and permitted assigns. However, neither Party shall have the right to grant sublicenses hereunder or to otherwise assign, alienate, transfer, encumber, or hypothecate any of its rights or obligations hereunder, in whole or in part, or delegate any of its obligations hereunder to any person without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, either Party may assign its rights or obligations in whole or in part under this Agreement to a wholly-owned subsidiary of its parent or to an entity under common control, or pursuant to a merger, consolidation, reorganization or a sale of substantially all of its assets; provided that the assigning Party shall provide written notice to the other Party, which consent shall not be unreasonably withheld of any such assignment shall not relieve either Party of its obligations under this Agreement and that the terms of this Agreement shall be performed and provided in the same fashion and in the same manner as set forth herein.

SIGNATURE BLOCK FOLLOWS.

IN WITNESS WHEREOF, GTT and Customer agree to the terms and conditions of this MSA and have duly executed this MSA as set forth below:

Global Traffic Technologies, LLC	City of Schertz
Signature: _____	Signature: _____
Printed Name: _____	Printed Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

EXHIBIT A

**SCHEDULE A
STATEMENT OF WORK**

Effective Date: Effective Date of MSA

1. For subscription or capital lease sales, the billing cycle will begin upon First Productive Use (defined herein), however the amount invoiced will be prorated on a monthly basis ("Interim Rent") to the point of the Commencement Date (defined herein), based on the number of vehicles and intersections deployed upon First Productive Use. For the purpose of determining termination of this Schedule A, the term of this Schedule A will not begin until the first day of the month following Services Completion (defined herein) for all Up-Front Services (defined herein) for all vehicles and intersections ("Commencement Date"), unless otherwise agreed to by the Parties in writing. For avoidance of doubt, Interim Rent will be invoiced monthly. For avoidance of doubt, all vehicles and intersections added after the original Commencement Date will carry their own Commencement Date, thus extending the term.
2. When included, intersection installation pricing assumes a standard configuration without complications. Not included in this proposal are the following items, which will require additional cost: a) crushed conduit or any other issues preventing cable from being installed, b) lane or road closures, c) police or other resources needed at the installation area and/or d) other third-party costs not known at the time of the proposal.
3. Proposal assumes the intersection cabinets are in good working order and contain wiring diagrams. Vehicle installation assumes standard installation and does not include: a) special mounting brackets, b) excess wiring and/or c) swapping out previously installed (replacement) vehicle hardware.
4. Proposal excludes any activities associated with: a) traffic control plan, b) water pollution control plan, c) changeable message signs/flaggers, d) permits/bonds/fees and/or e) removal/repair/replacement of concrete, asphalt, conduits or wiring.
5. Customer agrees to accept all applicable hardware and software upon shipment, where shipment is defined as the point at which hardware and/or software has been picked up from a GTT facility by the shipper ("Shipment") for delivery to Customer or its designated 3rd party, however acceptance in no way relieves GTT from its obligations as described in this Agreement or its product warranties.
6. Customer Care center phone support: GTT operates a Customer Care call center that is dedicated to supporting all GTT customers, whether in or out of warranty. To access GTT's Customer Care, customers can dial 800-258-4610 within the United States, or for callers outside of the United States, 651-789-7333. GTT's Customer Care call center will use commercially reasonable efforts to provide technical or sales support, process warranty claims and/or route calls to other GTT departments. For technical issues, a ticketing system is in place to track cases through to resolution, escalating within the organization if/where necessary to ensure calls are resolved as quickly as possible. Customer Care is not available to customers of GTT's software Products if such customer is not current on its Software Maintenance.

EXHIBIT A

	Resolution Category	Definition	Response Time Goal	Resolution Goal
	Immediate	Reported issue requires immediate attention.	Within 1 business hour	Same business day
	Moderate	Reported issue requires attention within 1-2 business days	Within same business day	2 business days
	Minor	Reported issue requires attention when convenient.	Within 1 business day	As feasible

EXHIBIT A

GLOBAL TRAFFIC TECHNOLOGIES
MAKERS OF OPTICOM™

Proposal

Direct Customer

Global Traffic Technologies
7800 Third Street North
Bldg 100
St. Paul MN 55128-5441
US

Bill To	Customer	Estimate Number	Date	Expires
Schertz (TX)	Schertz (TX)	11985	6/19/2023	12/31/2023

Ship To	Procurement Method	Term: For Ongoing Services (Years)
Schertz Fire Rescue 1400 Schertz Parkway #8 Schertz, Texas 78154 Attn: Greg Rodgers	PCaaS	10

Solution Type	Intersections	Vehicles
Emergency	17	10

Item and Description	Quantity	Unit Monthly Price (USD)	Total Annual Price (USD)
Intersection Components			
Opticom™ Signal Core - Device	17	\$42.00	\$8,568.00
Opticom Signal Core 1 year of service including support, data, and priority control	17	\$7.00	\$1,428.00
Opticom Cloud Connected Intersection	17	\$55.00	\$11,220.00
Vehicle Components			
Opticom Cloud Connected Vehicle	10	\$50.00	\$6,000.00
Services			
Installation, intersections (traffic cabinet only)	17	\$20.79	\$4,241.16
Miscellaneous			
External Cabinets	17	\$11.46	\$2,337.50
Annual Subscription Total (USD)			\$33,794.66

Please reference estimate number 11985 when submitting all purchase orders

Proposal Notes:

HGACBuy Contract Number PE05-21

Quote assumes GTT-contracted personnel will have access to intersection cabinets as needed.
 Quote assumes no additional intersection certification or design documents are required.
 Quote assumes GTT-supplied network connectivity at the intersection.
 Quote does not include formal site acceptance testing, unless otherwise noted.
 Unless otherwise noted, GTT's PCaaS solution includes one standard monthly report of system health. If custom reports are needed, they can be quoted optionally.
 Quote assumes intersection controllers are EVP-capable and/or TSP-capable as appropriate and have the proper licensing, which is to be enabled prior to GTT equipment installation.
 Quote assumes any required controller configuration is the responsibility of purchaser and configuration/programming is complete prior to final commissioning.
 Quote assumes all management software will be hosted by GTT.
 Quote assumes a VPN connection between the cloud-hosted Opticom centralized software application and the traffic network(s) of the targeted intersections.
 Quote assumes the centralized interface is agreed upon prior to the completion of the project. If changes to the interface are required after the commissioning of the system it will be quoted on a time and materials basis.

EXHIBIT A

General Notes:

To the extent this proposal is a "Budgetary Proposal," it is to be used for informational purposes only and is not intended to be a binding contract between the Parties. The prices provided in the Budgetary Proposal are estimates only and are based on information and pricing known as of the date of the Budgetary Proposal.

For services, a signed Master Service Agreement ("MSA") must accompany the order. The terms and conditions that govern the MSA are available at http://www.gti.com/sales_terms/.

When included, intersection installation pricing assumes a standard configuration without complications. Not included in this proposal are the following items, which will require additional fees: 1) crushed conduit or any other issues preventing cable from being installed, 2) lane or road closures, 3) police or other resources needed at the installation area, and/or 4) other third-party costs not known at the time of the proposal. Proposal assumes the intersection cabinets are in good working order and contain wiring diagrams.

Vehicle installation assumes standard installation and does not include: 1) special mounting brackets, 2) excess wiring, and/or 3) swapping out previously installed (replacement) vehicle hardware.

Project management expenses can increase in instances where development, if required, is not fully scoped.

Proposal excludes any activities associated with: 1) traffic control plan, 2) water pollution control plan, 3) changeable message signs/flaggers, 4) permits/bonds/fees, and/or 5) removal/repair/replacement of concrete, asphalt, conduits or wiring.

Quote does not include any applicable travel expense. A budgetary "not exceed" price can be provided upon request if required.

EXHIBIT A

**SCHEDULE B
OTHER TERMS AND CONDITIONS OF PRODUCTS AND SERVICES ("TERMS")**

1. **ACCEPTANCE OF TERMS.** These Terms are applicable to the provision of any and all Products and Services, provided by Global Traffic Technologies, LLC, Global Traffic Technologies Canada, Inc. ("GTT") or its subcontracts to the Customer (hereinafter referred to a "Party" and collectively as the "Parties"). These Terms are applicable to any Master Service Agreement ("MSA"), Schedule, quote, proposal and/or any documents incorporated by reference herein ("Contract Documents"). These Terms and any Contract Documents are the complete and exclusive statement of agreement between Customer purchasing Products and/or Services and GTT, unless otherwise agreed to by the parties in a signed agreement. GTT expressly objects to and rejects any other terms and conditions, including any additional or conflicting terms and conditions the Customer includes at any stage during the Order process, including but not limited to, quotes, purchase orders, invoices and/or any other documents submitted by Customer regarding an Order, unless otherwise set forth in the Contract Documents. Customer's acceptance of Products and/or Services will constitute its acceptance of these Terms. GTT reserves the right to update these Terms and any document referenced herein at any time.
2. **ORDERS.** A Party may request to amend an Order by requesting the change in writing and if such request results in an Order being changed, such change will be documented by GTT issuing a written document, which must be accepted and signed by the Customer and may result in additional fees. All Orders are final and may not be cancelled, returned, or exchanged, except as provided herein.
3. **PRICE, BILLING AND PAYMENT.** GTT reserves the right to change the pricing for any Product and/or Service at any time by providing written notice to Customer at least sixty (60) days prior to the change, unless otherwise stated in the Contract Documents.
 - A. If applicable, the fees for Software Maintenance will be calculated annually at fifteen-percent (15%) of the then current list price of the Software license(s).
 - B. Unless otherwise indicated by GTT, prices are exclusive of and Customer agrees to pay all foreign, federal, state, local excise, sales, use, personal property or any other taxes or duties, except taxes based on GTT's income. If GTT does not collect such amounts from Customer and is later requested or required to pay the same to any taxing authority, Customer will promptly pay GTT or such taxing authority if requested by GTT. Customer must provide any certificates or other evidence of applicable exemptions to any taxes or duties to GTT prior to invoicing or GTT will charge such taxes or duties to Customer.
 - C. GTT does not represent its prices are equal to or lower than prices charged to other customers, or its prices are comparable to prices offered by any third party. For Customers in the United States and Canada, payment is due within (thirty) 30 days of the date of GTT's invoice, unless otherwise agreed to in writing by GTT; provided however, GTT may require payment in advance if in GTT's reasonable opinion, Customer's financial condition calls for pre-payment. Payment is required in advance for all other Customers. GTT may assess a monthly service charge of one and one-half percent (1.5%) on overdue accounts. Customer will pay any collection costs incurred by GTT to collect payment from Customer, including reasonable attorneys' fees.
 - D. If Customer fails to make timely payments, has a receiving order in bankruptcy made against it, makes any arrangement with its creditors, or has a receiver appointed, GTT may, without prejudice to its other rights, demand immediate payment of all unpaid accounts, suspend further deliveries and/or cancel all Orders without liability. Payments are not subject to setoff or recoupment for any claim Customer may have.
4. **DELIVERY.** GTT will make commercially reasonable efforts to ship Products within sixty (60) days of receipt of an Order, however, delivery dates are approximate and GTT is not be liable for any damages or costs resulting from

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delays in delivery. If GTT deems necessary, Orders may be partially shipped and partially backordered, unless otherwise agreed upon in writing by the Parties.

- A. Sales within U.S./Canada. GTT will arrange for transportation of all Products and GTT will bear any expenses, including routing, handling, packaging and additional freight charges, unless Customer furnishes special transportation instructions that result in expenses beyond what GTT would normally provide.
- B. Sales outside of U.S./Canada. Customer will arrange and provide for transportation of all Products from GTT's facility(ies) at Customer's cost. Customer is the importer of record and will furnish all consular and customs declarations and is responsible for any expenses, including but not limited to, additional export packing fees, export duties, licenses, fees and any applicable taxes. Customer may not re-export the Product or items which incorporate the Product if such re-export would violate applicable export laws.
- C. Title and Risk of Loss. Products are deemed accepted upon shipment. Title and risk of loss or damage to the Products or any part of the Products will pass to Customer upon shipment and Customer will be responsible for filing any damage claims with the carrier.
- D. Inspection of Products. Customer is responsible for inspecting and filing any claims for Product loss or damage directly with GTT's Customer Care Center or the carrier within ten (10) days of delivery, unless otherwise specified by the carrier. All claims must be based on a complete inspection of the shipment and include any documents applicable to the claim. If Customer timely notifies GTT of any Product loss or damage, GTT may, in its sole discretion (i) replace the Product or (ii) issue a credit or refund for the price of the Product. Customer acknowledges and agrees that the remedies set forth in these Terms are Customer's sole and exclusive remedies for the loss or damage of Products.

5. SOFTWARE.

- A. Federal Government End User. This Section applies to all acquisitions of this Software by or for the federal government, or by any prime contractor or subcontractor (at any tier) under any contract, grant, cooperative agreement or other activity with the federal government. The government hereby agrees that the Software qualifies as "commercial" computer software within the meaning of the acquisition regulations applicable to this procurement. The terms and conditions of this Agreement shall apply to the government's use and disclosure of this Software and shall supersede any conflicting contractual terms and conditions. If this Agreement or the license granted hereunder fails to meet the government's needs or is inconsistent in any respect with federal law, the government agrees to return the Software, unused, to GTT.
- B. Customer Responsibility. Customer is solely responsible for all actions taken by Customer, its employees, agents and others accessing or using the Software. Customer is solely responsible for all necessary software, hardware, Internet connection and network and all other equipment and services necessary to access and use the Software.
- C. Software Performance and Limited Warranty. GTT represents and warrants that the Software will substantially conform in all material respects to and perform substantially in accordance with its documentation and these Terms and/or any Contract Documents for a period of one (1) year from the date the Order was placed, provided that: (i) Customer gives GTT written notice of any claimed breach of this warranty while this warranty is in effect; (ii) any such breach is not, in GTT's reasonable opinion, a result of any modification of or damage to the Software or its operating environment by any party other than GTT or a party acting under GTT's control or direction; and (iii) Customer is in compliance with these Terms. For any breach of the foregoing warranty, Customer's sole and exclusive remedy shall be as follows: (a) GTT will endeavor to repair or replace the non-conforming Software within thirty (30) days, or such longer period as the parties may mutually agree, such that the Software conforms to the foregoing warranty; or (b) if GTT is unable to repair or replace the non-

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conforming Software within such period such that the Software conforms to the foregoing warranty, either party may terminate this Agreement (and all licenses granted hereunder), Customer shall return the non-conforming Software and GTT shall refund the license fee paid hereunder less depreciation calculated on a five-year straight-line basis. GTT's warranty (including without limitation any extended warranty) applies solely to the Software and its documentation as it existed at the time of installation and warranties covering any follow-on versions, all updates, or upgrades are subject to a further written agreement by the Parties.

- D. **Viruses and Disabling Codes.** GTT represents and warrants that to the best of GTT's knowledge, the Software shall not contain viruses, worms, or spyware (collectively, "Malicious Code"); provided, however, that, notwithstanding the foregoing, Customer acknowledges and agrees that GTT reserves the right to remotely prevent access to and/or use of the Software in the event that (i) GTT becomes aware, from Customer or otherwise, of unauthorized access or use of the Software by any third party, or (ii) this Agreement is terminated. Notwithstanding any provision of this Agreement to the contrary, in no event shall GTT be in breach of the warranty set forth above if, at the time any Malicious Code was introduced into the Software, GTT employed commercially-reasonable measures, consistent with the standards of GTT's industry, to detect such Malicious Code in order to prevent its introduction into the Software.
- E. **Audit Rights.** Customer shall, while using GTT's Products and Services and for one year thereafter, keep true and accurate accounts and records in sufficient detail to enable an audit of the manner and extent of the use, sublicensing, transfer, or other disposition of the licensed Software, its derivatives, or any product or service based upon or incorporating or using all or portions of the Software to confirm Customer's compliance with the Terms and/or any Contract Documents. At the reasonable request of GTT, but no more than once per year, unless there is a reasonable suspicion of a breach of these Terms and/or any Contract Documents, Customer shall allow GTT to inspect and audit such information and Customer facilities as is necessary to ensure Customer's compliance with these Terms.
6. **HAZARDOUS MATERIALS.** Customer acknowledges that certain materials provided by GTT may be considered hazardous materials under various laws and regulations. Customer agrees to familiarize itself (without reliance on GTT, except as to the accuracy of special safety information furnished by GTT), with any hazards of such materials, their applications and the containers in which such materials are shipped and to inform and train its employees and customers to such hazards. Customer will hold GTT harmless against any claims by its agents, employees or customers relating to any such hazards, except to the extent such claims arise solely and directly from GTT's failure to meet its written specifications or the inaccuracy of safety information furnished by GTT.
7. **WARRANTY.** GTT warrants its Products in accordance with its limited warranty, available at www.gtt.com/support/warranty-repair and as otherwise provided herein. GTT warrants all Services will be performed in a professional and workmanlike manner in accordance with applicable industry standards, in the event that any Product fails to conform to the terms of GTT's warranty, the sole and exclusive remedy shall be limited to the return of the non-conforming Product to GTT for repair or replacement of the non-conforming components, as determined by GTT in its sole discretion. The cost of return shipping to GTT is the responsibility of the Customer. All claims for non-conformance are returned to GTT. All claims for non-conformance or breach of warranty shall be deemed waived, unless the non-conforming components are returned to GTT within 30 days of discovery of the alleged non-conformance.

THESE WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR ANY IMPLIED WARRANTY ARISING OUT OF A COURSE OF DEALING OR PERFORMANCE, CUSTOM OR USAGE OF TRADE AND NON-INFRINGEMENT. IN ADDITION TO THE EXCLUSION OF AFOREMENTIONED WARRANTIES, SERVICES, ARE PROVIDED "AS IS" AND GTT DOES NOT WARRANT THE SERVICES WILL MEET CUSTOMER'S REQUIREMENTS, BE UNINTERRUPTED, OR BUG OR ERROR-FREE. NO EMPLOYEE OR AGENT OF GTT,

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OTHER THAN AN OFFICER OF GTT BY WAY OF A SIGNED WRITING, IS AUTHORIZED TO MAKE ANY WARRANTY IN ADDITION TO THE FOREGOING. EXTENDED WARRANTIES MAY BE AVAILABLE UPON REQUEST.

8. LIMITATION OF LIABILITY. IN NO EVENT WILL GTT BE LIABLE FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES, WHETHER ASSERTED IN TORT, CONTRACT, WARRANTY, STATUTORY OR OTHER THEORY OF LIABILITY. GTT SHALL ALSO NOT BE LIABLE FOR ANY PERSONAL INJURY, WRONGFUL DEATH OR PROPERTY DAMAGES CAUSED BY OR ARISING FROM ANY ALLEGED DEFECT, NON-CONFORMANCE, OR FAILURE OF ITS SYSTEMS TO FUNCTION, OPERATE OR PERFORM, WHETHER ASSERTED IN WARRANTY, CONTRACT, TORT OR OTHER THEORY OF LIABILITY.

IN ANY EVENT, GTT SHALL BE SOLEY LIABLE FOR ACTUAL DAMAGES CAUSED BY GTT'S BREACH AND GTT'S TOTAL LIABILITY HEREUNDER, REGARDLESS OF THE LEGAL THEORY, WILL NOT EXCEED THE AMOUNT PAID TO GTT PURSUANT TO THE RESPECTIVE ORDER FOR PRODUCTS AND SERVICES IN THE ONE YEAR IMMEDIATELY PRECEDING THE START OF THE EVENT GIVING RISE TO THE CLAIM. IN NO EVENT WILL GTT BE REQUIRED TO INDEMNIFY CUSTOMER OR ANY OTHER PARTY. NO ACTION, REGARDLESS OF FORM, ARISING OUT OF OR ALLEGING EITHER A BREACH OF ANY WARRANTY OR A BREACH OF ANY CONTRACTUAL TERM OR LEGAL DUTY BY GTT MAY BE BROUGHT MORE THAN ONE YEAR AFTER THE CAUSE OF ACTION ACCRUES.

9. SUSPENSION. Without waiving any other rights or remedies, GTT may suspend performance hereunder and/or under any Order or other contract if: (i) Customer fails to pay any invoice within sixty (60) days from the invoice date; (ii) GTT reasonably believes Customer's use of the Products or Services may violate any applicable law, rule or regulation, or infringes upon third party rights; or (iii) GTT is entitled to terminate this Agreement for cause.
10. PROPRIETARY RIGHTS. GTT and its licensors will retain all intellectual property rights to the Products and Services, including without limitation, all designs, drawings, patterns, plans, specifications, technology, technical data and information, technical processes and business methods, whether patentable or not, arising from the provision of Products and/or Services to Customer, including GTT rendering engineering services to and designing systems and goods for Customer's use. Customer agrees not to enforce against GTT or GTT's customers any patent rights that include any system, process or business method utilizing or otherwise relating to the Products and/or Services.
11. RESALE. Customer, by placing an Order and accepting these Terms, hereby expressly agrees, acknowledges, represents and warrants to GTT that Customer is purchasing the Products and Services for its own internal business use and not for resale and in the event Customer breaches the foregoing by selling the Products or Services that are the subject of the Order. Notwithstanding the foregoing, nothing in this Terms is intended to restrict a Customer that is an authorized GTT dealer, contractor, or original equipment manufacturer from reselling, if such Customer is authorized to do so pursuant to GTT's acceptance of an Order.
12. COMPLIANCE WITH LAWS/ANTI-CORRUPTION. Customer will fully comply with all applicable laws, rules and regulations, including without limitation, those of the United States and any and all other jurisdictions globally ("Laws") that apply to Customer's activities in connection with an Order. Specifically, Customer must comply with all Laws relating to anti-corruption, bribery, extortion, kickbacks, or other similar matters that are applicable to Customer's business activities in connection hereunder and/or with any Orders or the Contract Documents, including without limitation the U.S. Foreign Corrupt Practices Act and the UK Bribery Act. Customer will take no action that may cause Customer, GTT, or their affiliates to violate any Laws.
- A. Products and Services will comply with applicable federal legal requirements in the United States and Canada. If they must comply with any additional legal requirements, such as a state or local municipality, or another country, Customer is solely responsible for identifying all such requirements to GTT in writing.

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13. CONFIDENTIAL INFORMATION. As used herein, "Confidential Information" means all information of a party ("Disclosing Party"), obtained by or disclosed to the other party ("Receiving Party") that by its nature would reasonably be considered as confidential or is identified as confidential by the Disclosing Party.
- A. Confidential Information excludes information that: (a) is or becomes public knowledge through no fault of Receiving Party; (b) was in Receiving Party's possession before receipt from Disclosing Party; (c) is rightfully received by Receiving Party from a third party without any duty of confidentiality; (d) is independently developed by Receiving Party without reference to or use of Confidential Information; or (e) is related to the terms and conditions of this Agreement and is disclosed by GTT to an authorized GTT dealer in the course of normal business operations, provided that said dealer was involved in the sales process pertaining to this Agreement..
 - B. Receiving Party Obligations. The Receiving Party agrees (i) not to use Confidential Information of Disclosing Party other than in furtherance of the Order; (ii) to hold Confidential Information of the Disclosing Party in confidence and to protect the Confidential Information using the same degree of care it uses to protect its own Confidential Information but in no event with less than reasonable care and to restrict disclosure of the Confidential Information to its employees and agents who have a "need to know"; and (iii) Confidential Information of Disclosing Party may be disclosed in response to a valid court order or other legal process only to the extent required by such order or process and only after the Receiving Party has given the Disclosing Party written notice of such court order or other legal process promptly, if allowed by law and the opportunity for the Disclosing Party to seek a protective order or confidential treatment of such Confidential Information. Upon Disclosing Party's request, Receiving Party will return Confidential Information to Disclosing Party or destroy the same if requested by Disclosing Party. Receiving Party agrees its breach of this section may cause irreparable damage and Disclosing Party may seek equitable remedies, in addition to other remedies hereunder or at law.
14. GOVERNING LAW; VENUE; ACTIONS; ATTORNEYS FEES. The Order and these Terms will be governed by and construed in accordance with the laws of the State of Minnesota without regard to conflicts of laws provisions. The parties consent to the sole and exclusive venue and jurisdiction of the federal and state courts situated in or having jurisdiction over Ramsey County, Minnesota. The United Nations Convention on Contracts for the International Sale of Goods will not apply. Customer must commence all actions relating to an Order within one (1) year from the initial date of occurrence of the event giving rise to any claim or such claim will be forever barred. If GTT substantially prevails in any dispute, Customer will pay all reasonable costs incurred by GTT, including but not limited to collection costs, attorneys' fees and costs of legal action.
15. FORCE MAJEURE. GTT will not be liable for damages of any kind resulting from any delays in performance, in whole or in part, or any loss, damage, cost or expense, including any loss or damage to the Product that may prevent GTT from performing any obligations hereunder, resulting from causes beyond its reasonable control, such as acts of God, fire, strikes, epidemics, embargos, acts of government, war, riots, vandalism, theft, delays in transportation, difficulties in obtaining necessary labor, materials, or manufacturing facilities or other similar causes ("Force Majeure Event"). In such event, the Party delayed will promptly give notice to the other Party. In the event of a delay, the Parties, through mutual agreement, may: (a) extend the time for performance for the duration of the Force Majeure Event, or (b) cancel all or any part of the unperformed part of the Order if such Force Majeure Event exceeds sixty (60) days. If GTT's costs are increased as a result of such Force Majeure Event, GTT may increase pricing upon written notice to Customer.

GTT reserves the right to charge Customer reasonable, additional fees that occur as a result of: 1) a report of an outage or disruption that is later determined to be unrelated to GTT's Products or Services and/or 2) Services or Product replacements that become necessary as a result of loss or damage due to Customer's (or Customer's other suppliers') removal of Products or negligence.

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16. TECHNOLOGY REQUIREMENTS.

- A. If GTT's North American variant has been requested, Customer acknowledges that North American radio equipment is certified to North American standards (e.g., the FCC) and not international standards (e.g., ETSI). Customer has specifically requested the North American variant and accepts all responsibility for obtaining the necessary waivers from the appropriate agencies in the country in which the equipment will be operated, before the equipment is installed and/or made operational; and purchaser accepts all associated liability for not doing so.
- B. Customer is responsible for ensuring that the traffic infrastructure, including the traffic controller, is compatible with the Products.
 - 1. When integration services are proposed (for transit applications), integration assumes: a) route and run information is available on the vehicle via J-1708 or RS485, whenever driver updates either the route or run; schedule data is available in standard GTFS format via an IP portal accessible to the Opticom Central Management Software (CMS); b) connectivity is available to all transit vehicles. If any of the preceding is not available, pricing for integration services may be affected.
- C. In instances where GTT is providing PCaaS or any ongoing services requiring remote access, GTT assumes the presence of and access to a customer-provided connectivity network for remote access to intersections and vehicles, unless a GTT-provided cellular data plan has been included amongst the listed services.

17. MISCELLANEOUS. If any provision of these Terms to any extent is declared invalid or unenforceable, the remainder of these Terms will not be affected thereby and will continue to be valid and enforceable to the fullest extent permitted by law. Any modifications hereto must be in writing and signed by both parties. GTT's failure to strictly enforce any of these terms will not be considered a waiver of any of its rights hereunder. Neither Party will assign these Terms nor any of its obligations hereunder without the prior written consent of the other Party, except in the case of a reorganization, merger, acquisition, or sale of substantially all its assets. These Terms will be binding on and inure to the benefit of each Party's successors and assigns. The termination or expiration of any Order and/or any the Contract Documents, will not affect the survival or continuing validity of any provision that expressly or by implication is intended to continue in force after such termination or expiration.

18. SERVICES. Customer is responsible for Up-Front Services and Ongoing Services, unless such services are included in the Order or a subsequent Order. Prices for Up-Front Services and Ongoing Services are charged at the then-prevailing rates, unless otherwise agreed to in writing in the Contract Documents. Services excludes integration of GTT's Products with third party products, unless otherwise agreed to in writing by GTT. Customer is responsible for any delays due to failure to comply with its portion of any applicable project plan related to Services.

- A. Ongoing Services required due to the following are excluded and subject to an additional fee: (1) modification of Products or Services without GTT's written consent; (2) use of parts and/or supplies not approved by GTT for use with the Products or Services; (3) misconduct, accident, neglect or misuse; (4) failure of installation site to conform to GTT's applicable specifications; (5) failure or inadequacy of electric power, humidity or air control; (6) failure to follow operating procedures provided by GTT; (7) Customer's failure to ensure that the traffic infrastructure, including the traffic controller, is compatible with the Products; and (8) service or maintenance performed by an unauthorized representative of GTT.
- B. GTT's performance of Ongoing Services at its expense, is contingent upon the Customer: (1) exercising reasonable care in the operation of the Products; (2) operating the Product within GTT's published specifications; (3) maintaining the Product in conformance with GTT's maintenance standards; (4) properly

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maintaining the operating environment; and (5) providing necessary utility services for use of the Product in accordance with accompanying specifications.

- C. Customer acknowledges that it is aware that in order to install Products and perform Services it may be necessary to drill holes and/or connect to a vehicle's electrical system and/or traffic cabinet's electrical system and agrees that GTT shall not be liable for any costs, expenses or damages arising from such work.
19. REPLACEMENT PARTS. In performing PCaaS services, GTT reserves the right to use replacement parts that are new, refurbished or equivalent in performance to new parts, at no extra charge to Customer. Parts being replaced will be the property of GTT. Customer acknowledges certain parts may be subject to discontinuance by the manufacturer, in which event GTT's obligation will be limited to making reasonable efforts to replace such discontinued parts with an equivalent part.
20. DATA. Customer warrants that it has sufficient rights, title and interests in and to all means of information, data and/or files Customer transmits or uploads to or stores on any environment, in connection with its use of the Products or Services ("Customer Data"). Customer will not transmit or upload any personally identifiable information and will be solely responsible for the security of such information. GTT may view, store, copy, delete or otherwise process any Customer Data to provide the Products and/or Services to Customer and unless prohibited by law, GTT may also collect, analyze and otherwise use anonymized versions of Customer Data for its own business purposes.
21. SUPPORT. GTT will provide helpdesk support during GTT's normal business hours, which are 8:00 am to 5:00 pm central time, Monday through Friday, excluding holidays.
- A. Warranty Support. Contact your authorized Opticom dealer, or contact GTT technical service at 800-258-4610 or download a warranty & services request form at www.gtt.com. Outside of the United States, please contact our headquarters in St. Paul, MN at 651-789-7333 for assistance in locating an authorized repair facility servicing your country.
22. TERMINATION. Either party may terminate the Services for cause immediately upon written notice if the other party is in material breach of these Terms, any schedules and/or Contract Documents and fails to cure within thirty (30) days of receipt of a written demand to cure, or if the other party (a) is liquidated, dissolved, or adjudged to be in a state of bankruptcy or receivership, (b) is insolvent, unable to pay its debts as they become due, makes an assignment for the benefit of creditors or takes advantage of any law for the benefit of debtors, (c) ceases to conduct business for any reason on an ongoing basis, leaving no successor in interest or (d) for convenience, in which case Customer will be responsible to pay GTT for all Product and Services delivered, all costs incurred by GTT that have not yet been amortized and any other operating expense incurred by GTT that are specifically applicable to this Agreement.
23. OTHER. GTT reserves the right to publicly disclose Customer as a customer of GTT, without the need for additional approval by Customer. Notwithstanding, case studies, personnel quotes and other references to Customer will require explicit permission by Customer.

Order Form

Customer Information:			
Name/Customer:	Schertz Fire Rescue	Principal Contact Person:	Greg Rodgers
Address:	1400 Schertz Parkway #8 Schertz, TX 78154	Title:	Chief
		Phone:	979-229-6625
		Fax:	
		Email Address:	grodgers@schertz.com
Billing Information:		Shipping Information (if different from billing):	
Name/Customer:		Name/Customer:	
Address:		Address:	

ORDER DETAILS

Application Services: Whelen Cloud Platform, a cloud-based vehicle communication platform that sends and receives data through cellular networks and provides the following functionality: fleet tracking, equipment configuration management and remote equipment control.

Subscription Term: The subscription period commences on the last date of signature below and, unless earlier terminated in accordance with the terms and conditions of the Master Services Agreement, expires 12/31/2024 (the “Promotional Period”). Upon expiration of the Promotional Period Customer’s access to the Application Services may be continued upon execution of a subsequent order form. Without limiting the terms and conditions set forth in the Master Services Agreement, the Promotional Period may be terminated at any time prior to expiration thereof by either Party upon no less than thirty (30) days’ prior written notice to the other Party.

Subscription Fees: There are no fees for Whelen Cloud Platform services within the Promotional Period (the “Promotional Rate”); provided that the Promotion Rate is available to Customer for up to 100 vehicles or 25% of Customer’s fleet, whichever is larger (the “Promotional Cap”). If Customer will use the Application Services for a number of vehicles larger than the Promotional Cap, Customer must execute an additional Order Form for such additional vehicles; additional fees and charges may apply.

Software:

10 Vehicles

Whelen Field Solutions Engineer: Christian Brewer, cbrewer@whelen.com, (860) 227-6544

Other Information: Whelen Engineering Company, Inc. may offer additional services throughout the Promotional Period. Access to, or use of, these additional services may require a separate fee to be determined by Whelen Engineering Company, Inc. and Customer may be required to execute an additional Order Form to receive access to such additional services.

This order form (the “**Order Form**”) is entered by and between Whelen Engineering Company, Inc. and the customer set forth on this Order Form (“**Customer**”) as of the last date of signature below. Each of Whelen Engineering Company, Inc. and Customer may be referred to herein individually as a “**Party**” and collectively as the “**Parties**.” The terms and conditions set forth in the Master Services Agreement attached hereto, including all exhibits and attachments thereto (the “**Master Services Agreement**”), govern the relationship between the Parties with respect to the Application Services ordered pursuant to this Order Form and are hereby incorporated herein by reference. By executing this Order Form Customer accepts and is bound by the terms and conditions set forth in the Master Services Agreement.

The Parties have caused their duly authorized representatives to execute this Order Form as of the dates set forth below.

Customer	
Signature	
Name	
Title	
Date	

Whelen Engineering Company, Inc.	
Signature	
Name	
Title	
Date	

Master Services Agreement

This Master Services Agreement, including all exhibits and attachments hereto (collectively, this “**Agreement**”) governs the relationship between Whelen Engineering Company, Inc., (“**Whelen**”) and the customer identified in the Order Form (“**Customer**”) (each of Whelen and Customer, a “**Party**” and together, the “**Parties**”). This Agreement will become effective when the Order Form referencing this Agreement is executed by authorized representatives of both Parties (the “**Effective Date**”).

1. DEFINITIONS. Certain capitalized terms, not defined elsewhere in this Agreement, have the meanings set forth below.

1.1. “Access Protocols” means the passwords, access codes, technical specifications, connectivity standards or protocols, or other relevant procedures, as may be necessary to allow Customer to access the Application Services.

1.2. “Application Documentation” means the user manuals, published specifications, online guides, and other materials and documentation provided to Customer or Authorized Users by Whelen or its third party vendors relating to the Application Services, as may be changed from time to time with or without notice to Customer.

1.3. “Application Services” means the hosted software-as-a-service services ordered by Customer hereunder as set forth in the Order Form and provided by Whelen by means of access to certain content and use of the features and functionality of software applications available and accessible within the website designated by Whelen, solely to the extent set forth and further described in, and as limited by, the applicable terms of this Agreement.

1.4. “Authorized User” means any individual who is an employee, consultant, contractor, or agent of Customer who is authorized by Customer, to access and use the Application Services pursuant to Customer’s rights, and subject to the restrictions, under this Agreement.

1.5. “Confidential Information” means all written or oral information, disclosed by either Party to the other, related to the business or operations of either Party or a third party that has been identified as confidential or proprietary or that by the nature of the circumstances surrounding disclosure ought reasonably to be treated as confidential or proprietary, regardless of whether such information was disclosed intentionally or unintentionally or marked as “confidential” or “proprietary”, including, without limitation: (a) source and object code, prices, trade secrets, mask works, databases, hardware, software, designs and techniques, programs, engine protocols, models, displays and manuals, and the selection, coordination, and arrangement of the contents of such materials, and (b) any unpublished information concerning research activities and plans, customers, marketing or sales plans, sales forecasts or results of marketing efforts, pricing or pricing strategies, costs, operational techniques, strategic plans, and unpublished financial information, including information concerning revenues, profits, and profit margins.

1.6. “Customer Content” means all data, media, content, and other information provided or made available by Customer to Whelen, including any data, media, content, and other information input, made available or included in, any communications sent through the Application Services, including vehicle identifiable data which may include precise geolocation information collected through global positioning system or similar technologies relating to one or more vehicles owned or leased by Customer and used by its employees, consultants, contractors, agents or other users it authorizes, including Authorized Users. Customer Content does not include aggregated or anonymized data derived from Customer Content or Customer’s use of the Services, provided that Whelen only uses such aggregated or anonymized data for internal purposes.

1.7. “Customer Systems” means Customer’s information technology infrastructure, including the computers, software,

databases, electronic systems (including database management systems) and networks, of Customer or any of its designees.

1.8. “Intellectual Property Rights” means any and all now known or hereafter existing (a) rights associated with works of authorship throughout the universe, including exclusive exploitation rights, copyrights, Moral Rights, and mask works; (b) trademark and trade name rights; (c) trade secret rights; (d) patents, designs, algorithms, and other industrial property rights; (e) other intellectual property and proprietary rights of every kind and nature throughout the universe, whether arising by operation of law, by contract or license, or otherwise; and (f) all registrations, applications, renewals, extensions, combinations, divisions, or reissues of the foregoing.

1.9. “Moral Rights” means any right to claim authorship of a work, any right to object to any distortion or other modification of a work, and any similar right, existing under the law of any country in the world, or under any treaty.

1.10. “Objectionable Content” means any viruses, malware, spyware, or similar harmful, destructive, or malicious code, as well as any content or links to web sites that contain content (or further links to content) which may be construed as illegal, unethical, defamatory, obscene, hateful, libelous, or that otherwise may reflect negatively upon Whelen’s reputation or that of Whelen’s customers or vendors, or that infringes upon the rights of any third party.

1.11. “Services” means the Application Services and Support Services.

1.12. “Third Party Items” means third party data, products, and services made available to Customer through the Application Services, as may be changed from time to time by Whelen in its sole discretion.

1.13. “Third Party Terms” means the terms and conditions that govern use of Third Party Items.

2. SUBSCRIPTION; SERVICES

2.1. Order Form. Customer has requested a subscription to the Application Services on the terms and subject to the conditions set forth in this Agreement by executing an Order Form that references and incorporates this Agreement (“**Order Form**”).

2.2. Application Services

(a) Provision of Access. Subject to the terms and conditions contained in the Order Form and this Agreement, and Customer’s payment of all relevant fees, Whelen hereby grants to Customer and its Authorized Users a non-exclusive, non-transferable right to access the features and functions of the Application Services during the Term in accordance with the Application Documentation, the Order Form, and the terms and conditions of this Agreement solely for Customer’s internal business purposes. As soon as commercially practicable after the Effective Date, Whelen shall provide to Customer the necessary Access Protocols.

(b) Usage Restrictions. Customer and its Authorized Users may only use the Application Services as described in this Agreement and in the then-current Application Documentation. Customer is responsible for ensuring its Authorized Users comply with all relevant terms of this Agreement and any failure to comply will constitute a breach by Customer. Customer will not, and will not allow any Authorized User or other third party to, (i) decompile, disassemble, reverse engineer, or otherwise attempt to obtain, perceive, or derive the trade secrets embodied in the

Application Services or the source code from which any software component of the Application Services are compiled or interpreted, and Customer acknowledges that nothing in this Agreement will be construed to grant Customer or any Authorized User any right to obtain or use such code; (ii) create any derivative product from any of the foregoing, or use the Application Services or any of Whelen's Confidential Information to develop or build, exploit, sell or offer to sell, license or offer to license, or use a competing product or service, except with the express prior written consent of Whelen; (iii) allow third parties other than Authorized Users to gain access to the Application Services or use the Application Services as a service bureau; (iv) assign, sublicense, sell, resell, lease, rent or otherwise transfer or convey, or pledge as security or otherwise encumber, Customer's rights under this Agreement; (v) remove any copyright, trademark, proprietary rights, disclaimer, or warning notice included on or embedded in any part of the Application Documentation and/or Application Services, including any screen displays, etc., or any other products or materials provided by Whelen hereunder; (vi) access the Application Services for purposes of monitoring availability, performance, or functionality of the Application Services, performing security penetration tests or stress tests on the Application Services, or for any other benchmarking or competitive purposes; (vii) do anything that could disable, overburden, or impair the proper working or appearance of the Application Services; or (viii) use the Services or Application Documentation in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law. Unless otherwise specifically agreed by the Parties in writing, Customer hereby agrees that the Application Services are not authorized for use as, and Customer shall not use the Application Services as critical components in any device, application, system, or service where it is reasonably foreseeable that failure of the Application Services would cause death, bodily injury or catastrophic property damage, such as (x) any medical, life-saving or life support device, system, or service, (y) any air or other traffic control device, application, system, or service, or (z) any weapons device, application, system, or service (the "**Life Critical Applications**"). Certain features of the Application Services may allow Customer or Authorized Users to connect and/or permit communication with one or more vehicles or equipment in one or more vehicles (each a "Connected Vehicle"). Customer acknowledges and agrees that at any time the information provided by the Application Services with respect to a Connected Vehicle may be incomplete, incorrect, or out of date. Except as otherwise set forth herein, Customer's use of the Application Services, including Customer's or its Authorized Users reliance on any information provided by the Application Services with respect to any Connected Vehicle is at Customer's sole risk and discretion. Customer and its Authorized Users are solely responsible at all times for the acts or omissions of Customer's Authorized Users with respect to Connected Vehicles. Use of the Application Services does not relieve Customer or any Authorized User of responsibility for safe vehicle operation or observation of relevant traffic laws. If safe operation of a Connected Vehicle is not possible while using the Application Services, the Authorized User should not use the Application Services while operating the Connected Vehicle. Further, use of the Application Services does not relieve Customer or any Authorized User of responsibility for vehicle maintenance. Notwithstanding anything to the contrary herein, Whelen shall have no responsibility or liability for any failure of Customer or any Authorized User to safely operate or properly maintain a Connected Vehicle. Customer will ensure that its and its Authorized Users' access to and use of the Application Services and the Application Documentation complies with all

applicable laws, statutes, regulations, and rules. Under no circumstances will Whelen be liable or responsible for any use, or any results obtained by the use, of the Application Services in conjunction with any products, services, software, or hardware that are not provided by Whelen. All such use will be at Customer's sole risk and Customer shall bear full responsibility for liability with respect thereto. Whelen reserves all rights not expressly granted to Customer in this Agreement.

(c) **Third Party Terms.** The Application Services may provide Customer with access to Third Party Items. Customer acknowledges and agrees that certain Third Party Terms may apply with respect to the Third Party Items. Whelen will use commercially reasonable efforts to identify any applicable Third Party Terms and Customer shall be responsible for compliance with such Third Party Terms to the extent any are identified by Whelen.

(d) **Communications Responsibilities.** Customer shall not, and shall not permit its Authorized Users or any third party to, directly or indirectly use the Application Services to communicate on its behalf, by way of electronic communication or otherwise, any message or material that (a) is libelous, harmful to minors, obscene, or constitutes pornography; (b) infringes the copyrights, patents, trade secrets, trademarks, trade names, or other proprietary rights of a third party, or is otherwise unlawful; or (c) would otherwise give rise to civil liability, or that constitutes or encourages conduct that could constitute a criminal offence, under any applicable law or regulation. Customer is solely responsible for the content of any communications sent by or on behalf of Customer or its Authorized Users through Customer's or any Authorized Users' use of the Application Services and, without limiting the foregoing, Customer agrees that such communications will comply with all laws.

(e) **Future Functionalities.** From time to time Whelen, in its sole discretion, may offer new or additional features subject to the payment of additional fees. Such new or additional features may not be made available to all customers of Whelen. Customer agrees that its purchase of a subscription to the Application Services is neither contingent upon the delivery of any future functionality or features nor dependent upon any oral or written public comments made by Whelen with respect to future functionality or features.

2.3. Support Services; Updates. Whelen will provide support services for the Application Services in accordance with its standard support offerings during Whelen's regular business hours solely for the particular Application Services ordered under this Agreement ("**Support Services**"), provided that all fees due under this Agreement have been paid. Such Support Services will only be provided to Customer's administrative users (who are Authorized Users) and Customer will identify by written notice to Whelen in accordance with Section 13.3 the names of such administrative users to whom Whelen will supply the support, which names may be changed by Customer upon reasonable notice to Whelen. Customer can request Support Services by contacting the applicable Whelen Field Solutions Engineer identified in the Order Form. Any support requested by Customer in excess of Whelen's standard support offerings or outside of Whelen's regular business hours may incur additional fees that will be billed to client pursuant to Whelen's standard billing practices at Whelen's then-current pricing. The Parties acknowledge and agree that Whelen will have no obligation to provide support to Customer with respect to use of the Application Services other than according to the then-current Application Documentation or the terms of this Agreement. Customer acknowledges that the Application Services may be updated by Whelen from time to time and that updates may result in changes to the Application Services, including changes in the appearance, functionality, and/or the

addition, modification, or removal of functionality or features. Whelen shall provide reasonable prior notice to Customer of any updates that are intended to result in the removal of any material functionality or feature.

3. PROPRIETARY RIGHTS

3.1. Ownership of Application Services. Subject to the express rights granted to Customer in this Agreement, and Customer's rights in its Customer Content as set forth herein, Whelen and its licensors and suppliers retain all right, title, and interest in and to the Application Services, including any upgrades, enhancements, new releases, changes, or modifications made to the Application Services performed in connection with this Agreement, together with all Intellectual Property Rights embodying the Application Services or related thereto, and Customer acknowledges that it neither owns nor acquires any right, title, or interest in or to the Application Services or the related Intellectual Property Rights not expressly granted by this Agreement. Customer will preserve all Services from any liens, encumbrances, and claims of any individual or entity. Customer will not use any Confidential Information disclosed by Whelen to Customer in connection with this Agreement to contest the validity of any Intellectual Property Rights of Whelen or its licensors. Any such use of Whelen's Confidential Information will constitute a material, non-curable breach of this Agreement.

3.2. Data Rights.

(a) Customer Content.

(i) Customer has and will retain sole responsibility for all Customer Content, including, the collection, accuracy, currency, quality, legality, completeness, and use of the Customer Content, and including Customer Content that is transmitted, processed, stored, accessed, and/or used by or on behalf of Customer or any Authorized User through or in connection with the Application Services. For the avoidance of doubt, Customer is solely responsible for providing any legally required notices and obtaining any legally required consents from Authorized Users or other individuals about whom information, including Customer Content or Usage Data (see below), may be collected by, transferred to, received, or otherwise used by Whelen or Customer in conjunction with the Application Services. Customer shall not provide or make available to Whelen any Objectionable Content in connection with this Agreement.

(ii) Except for the licenses granted under this Agreement, as between the Parties, Customer retains all right, title, and interest in and to the Customer Content and any usage data generated by Whelen in the performance of the Services ("**Usage Data**"), and Whelen acknowledges that it neither owns nor acquires any additional rights in and to the Customer Content and Usage Data not expressly granted by this Agreement. Whelen further acknowledges that Customer retains the right to use the Customer Content for any purpose in Customer's sole discretion. Subject to the foregoing, Customer hereby grants to Whelen and its third party service providers a non-exclusive, irrevocable, world-wide, fully-paid-up, royalty-free right and license to use the Customer Content and Usage Data to perform Whelen's obligations hereunder. In addition to sharing Customer Content with its service providers, Whelen may disclose Customer Content to other entities with whom it partners to create customer offerings that are part of, or in addition to, the Application Services, including jointly branded offerings available to Customer. The Parties further acknowledge and agree that no valuable consideration, monetary or otherwise, is being provided by Whelen to Customer in exchange for Customer Content and Usage Data. However, in addition to the uses of Customer Content authorized in this Agreement, Whelen may remove all personally identifiable and vehicle identifiable information from the Customer Content and Usage Data to create "**Sanitized Data**" or aggregate the Customer

Content and Usage Data in an anonymous or deidentified manner to create "**Aggregate Data**." Customer grants Whelen a perpetual, non-exclusive, world-wide, fully-paid-up, royalty-free, sublicensable, transferable right and license to commercialize and otherwise use the Sanitized Data and the Aggregate Data to perform Whelen's obligations hereunder and for Whelen's business purposes (which, for clarity, includes but is not limited to enhancing or improving the Services or other products and services of Whelen or its affiliates, and for analytical and marketing purposes). Customer also grants Whelen the right to disclose the Customer Content to Whelen's third party service providers and grant such third party service providers the right (i) to use the Customer Content to perform the applicable service and (ii) to use the Sanitized Data and Aggregate Data for Whelen's or such third party's internal business purposes. Notwithstanding the foregoing, nothing in this Section 3.2 shall limit Whelen's rights to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law or to address an emergency situation or as set forth in Section 7.3 below. For all of the purposes above, Customer consents to Whelen's tracking of Customer owned or leased vehicles through global positioning system technology as Customer understands such tracking is part of the Application Services. Customer shall not include within the Customer Content any personally or individually identifiable information of any natural person ("**PII**"). The inclusion of PII within the Customer Content may be considered by Whelen to be a material breach of this Agreement in accordance with Section 11.2 hereof. Customer acknowledges and agrees that it is solely responsible for compliance with the requirements of this Section and that Whelen has no affirmative obligation to review or audit Customer's compliance with this Section. Whelen shall have no obligations whatsoever in the event Customer includes PII in the Customer Content, including but not limited to with respect to notifications.

(b) **Data Models.** Notwithstanding anything to the contrary in this Agreement, to the extent that Whelen develops models, analytics, and/or algorithms ("**Analytical Tools**") during the Term and in the course of providing Services under this Agreement (such as propensity models, etc.), Whelen shall retain all right, title, and interest in and to such Analytical Tools.

(c) **Feedback.** Customer may provide suggestions, comments, or other feedback (collectively, "**Feedback**") to Whelen with respect to its products and services, including the Services. Feedback is voluntary. Whelen may use Feedback for any purpose without obligation of any kind. To the extent a license is required under Customer's Intellectual Property Rights to make use of the Feedback, Customer grants Whelen a non-exclusive, perpetual, irrevocable, world-wide, fully-paid-up, royalty-free license to use the Feedback in connection with Whelen's business, including the enhancement of the Services.

4. ADDITIONAL WHELEN OBLIGATIONS

4.1. Access to Application Services; Implementation.

The applicable Whelen Field Solutions Engineer identified in the Order Form will provide reasonable assistance to Customer to enable initial access to Customer's account, but Whelen is not responsible for any implementation, supplementation, modification, or configuration of Customer Systems or equipment, or the Application Services, for or on behalf of Customer.

4.2. Responsibility for Application and Content Hosting.

Whelen shall, at its own expense, provide for the hosting of the Application Services which is accessible as part of the Application Services, provided that nothing herein shall be construed to require Whelen to provide for, or bear any responsibility with respect to, any telecommunications or computer network hardware required by Customer to provide access from the Internet to the Application Services. Customer and Authorized Users are solely responsible

for all telecommunication or Internet connections required to access the Services, as well as all Customer Systems and other hardware and software at Customer's site. Except for the costs to Whelen for the hosting of the Application Services as set forth above, in addition to other third party costs that may apply, Customer agrees to pay for all telecommunications, Internet, and other connectivity costs, fees, and services required for and dedicated to Customer's access to the Services.

4.3. Third Party Hosting Provider Requirements. Customer understands and agrees that (i) Whelen uses a third-party hosting provider in connection with the Services; (ii) the security of the Services is limited by the terms offered by such third-party hosting provider; and (iii) Whelen's agreement with the hosting provider cannot be modified regarding the requirements of this Agreement, nor can Whelen grant any audit or other access rights to the facilities or systems of the host. As such, the provisions of this Agreement shall apply only to Whelen's systems and facilities, not those of the hosting provider.

5. ADDITIONAL CUSTOMER OBLIGATIONS.

5.1. Authorized Users' Access to Services. Customer may permit any Authorized Users to access and use the features and functions of the Application Services as contemplated by this Agreement. Customer will ensure that any such Authorized Users will be obligated, by contract or otherwise, to protect Whelen's Confidential Information, and to comply with the access and use restrictions for the Application Services and the Application Documentation, as are provided by the terms hereof.

5.2. Provision of Support to Authorized Users. Except as expressly set forth in Section 2.3, Customer will provide all maintenance and technical support services as may be required by its Authorized Users, with respect to provision of access to, and use of, the Application Services.

5.3. Customer Control and Responsibility for Data, Access, and Security. Customer and its Authorized Users shall have access to the Customer Content and Customer shall be responsible for all changes to and/or deletions of Customer Content. Furthermore, Customer has and will retain sole responsibility for: (a) the security and use of all of Customer's and its Authorized Users' passwords and other Access Protocols; (b) all information, instructions, and materials provided by or on behalf of Customer or any Authorized User in connection with the Services; (c) Customer Systems; and (d) all access to and use of the Services and Application Documentation directly or indirectly by or through the Customer Systems or its or its Authorized Users' passwords or other Access Protocols, with or without Customer's knowledge or consent, including all results obtained from, and all conclusions, decisions, and actions based on, such access or use. Customer shall employ all physical, administrative, and technical controls, screening, and security procedures and other safeguards necessary to securely administer the distribution and use of all Access Protocols and protect against any unauthorized access to or use of the Application Services.

6. FEES AND EXPENSES; PAYMENTS.

6.1. Fees. In consideration for the access and use rights granted to Customer and the Services performed by Whelen under this Agreement, Customer will pay to Whelen without offset or deduction, all fees set forth in the Order Form (or Whelen's then-current pricing as applicable for certain support services as set forth herein) invoiced in accordance with this Section 6.1. Whelen will submit invoices to Customer with respect to such fees, and each invoiced amount will be due and payable within thirty (30) days of Customer's receipt of the relevant invoice. All fees are non-cancelable and non-refundable.

6.2. Price Escalations. Whelen shall have the right to increase the fees for the Services at any time after the Effective Date to reflect any increase in Whelen's costs to provide the

Services. Whelen shall provide Customer with written notice of such price adjustments at least thirty (30) days prior to the date any such price adjustment is to become effective. If Customer does not agree to such increase in fees, Customer may terminate this Agreement with written notice to Whelen effective upon the day prior to the date that such price adjustment would have taken effect.

6.3. Taxes. Customer will be responsible for payment of any applicable sales, use, and other taxes and all applicable export and import fees, customs duties, and similar charges (other than taxes based on Whelen's income), and any related penalties and interest for the grant of access rights hereunder, or the delivery of related services. Customer will make all required payments to Whelen free and clear of, and without reduction for, any withholding taxes. Any such taxes imposed on payments to Whelen will be Customer's sole responsibility, and Customer will, upon Whelen's request, provide Whelen with official receipts issued by appropriate taxing authorities, or such other evidence as Whelen may reasonably request, to establish that such taxes have been paid. Customer shall supply Whelen with documentation evidencing Customer's exemption from taxation if applicable.

6.4. Late Payments; Interest. Any portion of any amount payable hereunder that is not paid when due will accrue interest at one and one-half percent (1.5%) per month or the maximum rate permitted by applicable law, whichever is less, from a date thirty (30) days after the due date until paid. In the event any invoice remains unpaid forty-five (45) or more days from the due date, Whelen may, in its discretion, suspend the Services until the invoice is paid in full.

6.5. Auditing Rights and Required Records. Customer agrees to maintain complete and accurate records in accordance with generally accepted accounting principles during the Term and for a period of two (2) years after the termination or expiration of this Agreement with respect to matters necessary for accurately determining amounts due hereunder. Whelen may, at its own expense, on reasonable prior notice, periodically inspect and audit Customer's records with respect to matters covered by this Agreement, provided that if such inspection and audit reveals that Customer has underpaid Whelen with respect to any amounts due and payable during the Term, Customer shall promptly pay the amounts necessary to rectify such underpayment, together with interest in accordance with Section 6.3. Customer shall pay for the costs of the audit if the audit determines that Customer's underpayment equals or exceeds ten percent (10%) for any quarter. Such inspection and auditing rights will extend throughout the Term of this Agreement and for a period of two (2) years after the termination or expiration of this Agreement.

7. TREATMENT OF CONFIDENTIAL INFORMATION.

7.1. Ownership of Confidential Information. The Parties acknowledge that during the performance of this Agreement, each Party will have access to certain of the other Party's Confidential Information or Confidential Information of third parties that the disclosing Party is required to maintain as confidential and/or proprietary. Both Parties agree that all items of Confidential Information are confidential and/or proprietary to the disclosing Party or such third party, as applicable, and will remain the sole property of the disclosing Party or such third party.

7.2. Mutual Confidentiality Obligations. Each Party agrees as follows: (a) to use Confidential Information disclosed by the other Party only for the purposes of meeting its obligations or exercising its rights under this Agreement; (b) that such Party will not reproduce Confidential Information disclosed by the other Party, and will hold in confidence and protect such Confidential Information from dissemination to, and use by, any third party except as necessary for the purposes of meeting its obligations or exercising its rights under this Agreement; (c) to restrict access to the Confidential Information disclosed by the other Party to such

of its personnel, agents, and/or consultants, if any, who have a need to have access for the purposes of meeting its obligations or exercising its rights under this Agreement and who have been advised of and have agreed in writing to treat such information in accordance with terms substantially similar to the terms of this Agreement; and (d) subject to Section 12, to the extent practicable and except to the extent the receiving Party has continuing rights with respect to such Confidential Information, return or destroy, all Confidential Information disclosed by the other Party that is in its possession upon termination or expiration of this Agreement for any reason, provided that to the extent a Party retains Confidential Information of the other Party as permitted under this part (d) such Party shall maintain the confidentiality of such retained Confidential Information for so long as it is retained.

7.3. Confidentiality Exceptions. Notwithstanding the foregoing, the provisions of Sections 7.1 and 7.2 will not apply to Confidential Information that (a) is publicly available or in the public domain at the time disclosed; (b) is or becomes publicly available or enters the public domain through no fault of the recipient; (c) is rightfully communicated to the recipient by persons not bound by confidentiality obligations with respect thereto; (d) is already in the recipient's possession free of any confidentiality obligations with respect thereto at the time of disclosure; (e) is independently developed by the recipient without reference to the Confidential Information of the discloser; or (f) is approved in writing for such use, release or disclosure by the disclosing Party. Notwithstanding the foregoing, each Party may disclose Confidential Information to the limited extent required (x) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the Party making the disclosure pursuant to the order shall first have given written notice to the other Party to enable the other Party to attempt to obtain a protective order; or (y) to establish a Party's rights under this Agreement, including to make such court filings as it may be required to do. Notwithstanding any such compelled disclosure by the receiving Party, such compelled disclosure will not otherwise affect the receiving Party's obligations hereunder with respect to Confidential Information so disclosed.

7.4. Non-Exclusive Equitable Remedy. Customer acknowledges and agrees that due to the unique nature of Whelen's Confidential Information, there is no adequate remedy at law for any breach of its obligations hereunder, that any such breach or threatened breach may allow Customer or third parties to unfairly compete with Whelen, resulting in irreparable harm to Whelen, and therefore, that upon any such breach or any threat thereof, Whelen shall be entitled to appropriate equitable and injunctive relief from a court of competent jurisdiction without the necessity of proving actual loss or posting a bond, in addition to whatever remedies Whelen might have at law or in equity under this Agreement. Any breach of this Section 7 by Customer or an Authorized User will constitute a material breach of this Agreement and be grounds for immediate termination of this Agreement in the exclusive discretion of Whelen.

8. REPRESENTATIONS AND WARRANTIES.

8.1. Mutual Representations and Warranties. Each Party hereby represents and warrants (a) that it is duly organized, validly existing, and in good standing under the laws of its jurisdiction of incorporation or organization; (b) that the execution and performance of this Agreement will not conflict with or violate any provision of any law having applicability to such Party; and (c) that this Agreement, when executed and delivered, will constitute a valid and binding obligation of such Party and will be enforceable against such Party in accordance with its terms.

8.2. Whelen Representations and Warranties. Whelen hereby represents and warrants that (a) Whelen will use

commercially reasonable efforts to prevent the transmission of any virus or malicious code through the Application Services; (b) as accessed and used by Customer or any Authorized User in accordance with this Agreement, the Application Services will perform substantially in accordance with the Application Documentation; and (c) the Support Services will be performed in a professional and workmanlike manner in accordance with generally accepted industry standards and practices for similar services using personnel with the requisite skill, experience, and qualifications.

8.3. Customer Representations and Warranties. Customer hereby represents and warrants that (a) Customer has and will have all necessary licenses, approvals, and consents required to perform its obligations hereunder, (b) without limiting the foregoing, Customer has and will have adequate authority to share the Customer Content with Whelen as set forth herein and permit Whelen to use and disclose the Customer Content as contemplated herein, and (c) any Customer Content provided by Customer to Whelen for use in connection with the Services does not and will not infringe the intellectual property, publicity, or privacy rights of any person and is not defamatory, obscene, or in violation of applicable foreign, federal, state, municipal, and local laws, rules, regulations, and judicial orders (including, but not limited to, applicable policies, laws, and orders related to spamming, privacy, and consumer protection).

9. DISCLAIMERS, EXCLUSIONS, AND LIMITATIONS OF LIABILITY.

9.1. Disclaimer. EXCEPT AS EXPRESSLY REPRESENTED OR WARRANTED IN SECTION 8, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE APPLICATION SERVICES, THE APPLICATION DOCUMENTATION, AND ALL SERVICES ARE PROVIDED "AS IS" AND "AS-AVAILABLE", WITH ALL FAULTS, AND WHELEN DISCLAIMS ANY AND ALL OTHER PROMISES, REPRESENTATIONS, AND WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, QUIET ENJOYMENT, SYSTEM INTEGRATION, AND/OR DATA ACCURACY. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY WHELEN OR ITS AUTHORIZED REPRESENTATIVES (INCLUDING FIELD SOLUTIONS ENGINEERS) WILL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF WHELEN'S OBLIGATIONS HEREUNDER. WHELEN DOES NOT WARRANT THAT THE APPLICATION SERVICES OR ANY OTHER SERVICES WILL MEET CUSTOMER'S REQUIREMENTS OR THAT THE OPERATION OF THE APPLICATION SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ALL ERRORS WILL BE CORRECTED. THE SERVICES MAY BE USED TO ACCESS AND TRANSFER INFORMATION OVER THE INTERNET. CUSTOMER ACKNOWLEDGES AND AGREES THAT WHELEN AND ITS VENDORS AND LICENSORS DO NOT OPERATE OR CONTROL THE INTERNET AND THAT: (I) VIRUSES, WORMS, TROJAN HORSES, OR OTHER UNDESIRABLE DATA OR SOFTWARE; OR (II) UNAUTHORIZED USERS (E.G., HACKERS) MAY ATTEMPT TO OBTAIN ACCESS TO AND DAMAGE CUSTOMER CONTENT, CUSTOMER'S DATA, OR CUSTOMER SYSTEMS. WHELEN WILL NOT BE RESPONSIBLE FOR SUCH ACTIVITIES. CUSTOMER IS RESPONSIBLE FOR PRESERVING AND MAKING ADEQUATE BACKUPS OF ITS DATA AND CUSTOMER CONTENT.

9.2. Exclusions of Remedies; Limitation of Liability. EXCEPT WITH RESPECT TO CUSTOMER'S BREACH OF SECTION 2.2 AND EACH PARTY'S INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 10, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, REGARDLESS OF THE NATURE OF THE CLAIM, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, COSTS OF DELAY, ANY FAILURE OF DELIVERY, BUSINESS INTERRUPTION, COSTS OF LOST OR DAMAGED DATA OR DOCUMENTATION, OR LIABILITIES TO THIRD PARTIES ARISING FROM ANY SOURCE, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT WITH RESPECT TO CUSTOMER'S BREACH OF SECTION 2.2 AND EACH PARTY'S INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 10, THE CUMULATIVE LIABILITY OF EACH PARTY TO THE OTHER PARTY FOR ALL CLAIMS ARISING FROM OR RELATING TO THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY CAUSE OF ACTION SOUNDING IN CONTRACT, TORT, OR STRICT LIABILITY, WILL NOT EXCEED THE GREATER OF (I) THE TOTAL AMOUNT OF ALL FEES PAID TO WHELEN BY CUSTOMER UNDER THIS AGREEMENT DURING THE TWELVE (12)-MONTH PERIOD PRIOR TO THE ACT, OMISSION OR OCCURRENCE GIVING RISE TO SUCH LIABILITY OR (II) TEN THOUSAND DOLLARS (\$10,000). THESE LIMITATIONS OF LIABILITY ARE INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE OR THERE IS AN ADEQUATE REMEDY AVAILABLE.

9.3. Essential Basis of the Agreement. Customer acknowledges and understands that the disclaimers, exclusions, and limitations of liability set forth in this Section 9 form an essential basis of the agreement between the Parties, that the Parties have relied upon such disclaimers, exclusions, and limitations of liability in negotiating the terms and conditions in this Agreement, and that absent such disclaimers, exclusions, and limitations of liability, the terms and conditions of this Agreement would be substantially different.

10. INDEMNIFICATION.

10.1. Whelen's Indemnity Obligations. Whelen agrees to indemnify, defend, and hold harmless Customer from and against any and all losses, liabilities, costs (including reasonable attorneys' fees) or damages finally awarded by a court or agreed upon in settlement ("**Damages**") resulting from any claim by any third party (a) that Customer's licensed use of the Application Services and/or the Application Documentation in accordance with the terms and conditions of this Agreement infringes such third party's U.S. patents issued as of the Effective Date, or infringes or misappropriates, as applicable, such third party's copyrights or trade secret rights under applicable laws of any jurisdiction within the United States of America, or (b) arising out of Whelen's gross negligence or willful misconduct. Customer shall promptly notify Whelen in writing of the claim, cooperate with Whelen, and allow Whelen sole authority to control the defense and settlement of such claim; provided that Whelen will not settle any third-party claim against Customer unless such settlement completely and forever releases Customer from all liability with respect to such claim or unless Customer consents to such settlement, and further provided that Customer will have the right, at its option, to defend itself against any such claim or to participate in the defense thereof by counsel of its own choice at its own cost. If a claim for infringement is made or appears possible, Whelen may, at

Whelen's sole discretion, obtain adequate rights to enable Customer to continue to use the Application Services, or modify or replace any such infringing material to make it non-infringing. If Whelen determines that none of these alternatives is reasonably available, Customer shall, upon written request from Whelen, cease use of, and, if applicable, return, such materials as are the subject of the infringement claim. The indemnification for infringement provided under this Section 10.1 shall not apply if the alleged infringement arises, in whole or in part, from (i) modification of the Application Services or the Application Documentation by Customer, (ii) combination, operation, or use of the Application Services with other software, hardware, or technology not provided by Whelen or explicitly contemplated by this Agreement, (iii) use of the Application Services not in accordance with the Application Documentation or this Agreement, or (iv) the Customer Content (any of the foregoing circumstances under clauses (i), (ii), (iii) and (iv) a "**Customer Indemnity Responsibility**"). THIS SECTION STATES WHELEN'S AND ITS LICENSORS AND SUPPLIERS SOLE AND EXCLUSIVE OBLIGATIONS AND LIABILITY WITH RESPECT TO ANY CLAIM OF INFRINGEMENT ARISING OUT OF OR RELATING TO THE SERVICES OR THIS AGREEMENT AND ARE IN LIEU OF ANY IMPLIED WARRANTIES OF NON-INFRINGEMENT, ALL OF WHICH ARE EXPRESSLY DISCLAIMED.

10.2. Customer's Indemnity Obligations. Customer agrees to hold harmless, indemnify, and, at Whelen's option, defend Whelen from and against any Damages resulting from (a) breach by Customer or its Authorized Users of any term or condition of this Agreement, (b) Customer's gross negligence or willful misconduct, (c) Whelen's use of the Customer Content as permitted herein, (d) use of the Application Services in Life Critical Applications, (e) personal injury or damage to Whelen property arising at the Customer's location, or (f) a Customer Indemnity Responsibility. Whelen shall promptly notify Customer of the claim, cooperate with Customer, and, if elected by Whelen, allow Customer sole authority to control the defense and settlement of such claim; provided that Customer will not settle any third-party claim against Whelen unless such settlement completely and forever releases Whelen from all liability with respect to such claim or unless Whelen consents to such settlement, and further provided that Whelen will have the right, at its option, to defend itself against any such claim or to participate in the defense thereof by counsel of its own choice at its own cost.

11. TERM AND TERMINATION.

11.1. Term of the Agreement. The term of this Agreement will commence on the Effective Date and will continue for the duration set forth in the Order Form (the "**Term**"). The Term may be extended or renewed by mutual written agreement of the Parties.

11.2. Termination for Breach. Either Party may terminate this Agreement in the event of a material breach by the other Party, by providing written notice to the breaching Party, specifically identifying the breach on which such notice of termination is based. The breaching Party will have a right to cure such breach within thirty (30) days of receipt of such notice, and this Agreement will terminate in the event that such cure is not made within such thirty (30)-day period.

11.3. Termination Upon Bankruptcy or Insolvency. Either Party may, at its option, terminate this Agreement immediately upon written notice to the other Party, in the event that (a) the other Party becomes insolvent or unable to pay its debts when due; (b) the other Party files a petition in bankruptcy, reorganization or similar proceeding, or, if filed against, such petition is not removed within ninety (90) days after such filing; (c) the other Party discontinues its business; or (d) a receiver is

appointed or there is an assignment for the benefit of such other Party's creditors.

11.4. Additional Whelen Termination and Suspension Rights. Upon written notice to Customer, Whelen may suspend or terminate this Agreement, in whole or in part, with respect to the Application Services (or certain features thereof) if any Third Party Item made available through the Application Services or Whelen's right to use such Third Party Item, expires or is terminated or is modified in any manner that Whelen believes would impair its ability to provide such Application Services. In addition, Whelen reserves the right, in its sole discretion, to suspend Customer's access to any Application Services (i) upon notice to Customer if Whelen reasonably suspects that Customer has breached this Agreement; or (ii) for any of the following reasons: (a) to prevent damages or risk to, or degradation of, the Application Services; (b) to comply with any law, regulation, court order, or other governmental request; (c) to otherwise protect Whelen from potential legal liability; or (d) in the event an invoice remains unpaid for forty-five (45) or more days from the invoice due date, and Whelen will use reasonable efforts to provide Customer with notice prior to or promptly following any such suspension of the Application Services pursuant to the foregoing ((a)-(d)). Whelen will promptly restore access to the Application Services as soon as the event giving rise to suspension has been resolved. Any suspension of the Services will not result in the tolling or any extension of the Term to account for the period of such suspension and Whelen will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Customer or any Authorized User may incur as a result of such suspension. This Section will not be construed as imposing any obligation or duty on Whelen to monitor use of the Application Services.

11.5. Effect of Termination. Upon any expiration or earlier termination of this Agreement, Customer will (a) immediately discontinue all use of the Application Services and any Whelen Confidential Information; and (b) promptly pay to Whelen all amounts due and payable under this Agreement. Termination of this Agreement prior to expiration of the Term shall not affect any other agreement between Whelen and Customer in place at the time of such termination, and Customer shall remain responsible for the payment of any amounts due to Whelen or its designee pursuant to such other agreement(s).

11.6. Survival. The expiration or termination of this Agreement for any reason will not release either Party from any liabilities or obligations set forth herein which (a) the Parties have expressly agreed will survive any such expiration or termination; or (b) remain to be performed or by their nature would be intended to be applicable following any such expiration or termination. In addition to the foregoing, upon termination or expiration of this Agreement, the Parties' respective obligations under the provisions of Sections 1, 3, 6.4, 7, 9, 10, 11.5, 11.6, 12, and 13 will survive the termination of this Agreement. In addition, any provisions of the Third Party Terms that by their nature survive termination of this Agreement shall so survive.

12. DATA DELETION.

12.1. Request to Delete. Whelen shall delete or return Customer Content in its custody or control in accordance with Customer's instructions, including any applicable retention periods instructed by Customer or upon receipt of Customer's written request via the Organization Data Deletion Form. If Customer does not instruct a retention period for Customer Content or submit an Organization Data Deletion Form, then Whelen will delete Customer Content in accordance with Whelen's data retention policy.

12.2. Deletion Exceptions. Notwithstanding anything to the contrary, Customer acknowledges and agrees that any obligation

to delete Customer Content excludes any Customer Content (a) that Whelen is required to retain, or prohibited from deleting, under applicable law, (b) reasonably related to any pending or reasonably likely legal claim or defense, (c) within Whelen's logs or archived on Whelen's back-up systems (which shall be deleted in the normal course according to Whelen's policies and procedures), or (d) that is aggregated or anonymized data. For so long as Whelen retains any Customer Content under this Section, Whelen's obligations under Sections 5 and 7 shall survive and apply to the retained Customer Content, and, when Whelen retains any Customer Content for purposes of (a) or (b) of this Section, Whelen shall only process the retained Customer Content for the purpose for which it was retained and delete the Customer Content as soon as the purpose for which it was retained no longer applies. Whelen acknowledges that Customer Content retained under this Section may be subject to subpoenas or requests under the federal Freedom of Information Act or analogous state laws, and Whelen will reasonably assist Customer by providing the relevant retained Customer Content in accordance with Customer's reasonable instructions in order for Customer to respond to any such subpoena or request to the extent required by applicable law.

12.3. Certification of Deletion. The Parties acknowledge and agree that the Organization Data Deletion Form, once executed and returned by Whelen, serves as a written certification of destruction designed to prevent retrieval or recreation of data according to Whelen's standards and policies.

12.4. Option for Return. Within ten (10) days of termination of this Agreement, in the event Customer wishes for Customer Content to be returned, Customer shall notify Whelen in writing requesting the return of Customer Content. Except for any Customer Content that Customer requested to delete, Whelen will return Customer Content in a structured format reasonably agreed upon by the Parties within sixty (60) days of receipt of a request under this Section 12.4.

13. MISCELLANEOUS.

13.1. Entire Agreement. This Agreement together with the Order Form sets forth the entire agreement and understanding between the Parties with respect to the subject matter of this Agreement and, supersedes and merges all prior oral and written agreements, discussions and understandings between the Parties with respect to the subject matter of this Agreement, and neither of the Parties will be bound by any conditions, inducements or representations other than as expressly provided for in this Agreement. In the event of any conflict between the terms and conditions set forth in the body of this Agreement, any exhibits or attachments hereto, and the Order Form, the terms and conditions set forth in the body of this Agreement shall control unless an exception is expressly stated in as such in an exhibit, attachment, or the Order Form.

13.2. Independent Contractors. In making and performing this Agreement, Customer and Whelen act and will act at all times as independent contractors, and, except as expressly set forth herein, nothing contained in this Agreement will be construed or implied to create an agency, partnership or employer and employee relationship between them. Except as expressly set forth herein, at no time will either Party make commitments or incur any charges or expenses for, or in the name of the other Party.

13.3. Notices. All notices required by or relating to this Agreement will be in writing and will be sent by means of certified mail, postage prepaid, to Whelen as set forth below and to Customer at its address set forth in the Order Form, or addressed to such other address as the receiving Party may have given by written notice in accordance with this provision. All notices required by or relating to this Agreement may also be communicated by email, provided that such Party will promptly thereafter send a duplicate of such notice in writing by means of

certified mail, postage prepaid, to the receiving Party, addressed as set forth above or to such other address as the receiving Party may have previously substituted by written notice to the sender.

Whelen, Inc.
51 Winthrop Rd.
Chester, CT 06412
Attn: CFO

13.4. Amendments; Modifications. This Agreement may not be amended or modified except in a writing duly executed by authorized representatives of both Parties.

13.5. Assignment. Customer shall not assign any of its rights or duties under this Agreement without the prior written consent of Whelen, and, absent such consent, any attempted assignment will be null, void and of no effect.

13.6. No Third Party Beneficiaries. The Parties acknowledge that, except as expressly set forth in this Agreement, the covenants set forth in this Agreement are intended solely for the benefit of the Parties, their successors and permitted assigns. Except as expressly set forth in this Agreement, nothing herein will confer upon any person or entity, other than the Parties, their successors and permitted assigns, any legal or equitable right whatsoever to enforce any provision of this Agreement.

13.7. Severability. If any provision of this Agreement is invalid or unenforceable for any reason in any jurisdiction, such provision will be construed to have been adjusted to the minimum extent necessary to cure such invalidity or unenforceability. The invalidity or unenforceability of one or more of the provisions contained in this Agreement will not have the effect of rendering any such provision invalid or unenforceable in any other case, circumstance or jurisdiction, or of rendering any other provisions of this Agreement invalid or unenforceable whatsoever.

13.8. Waiver. No waiver under this Agreement will be valid or binding unless set forth in writing and duly executed by the Party against whom enforcement of such waiver is sought. Any such waiver will constitute a waiver only with respect to the specific matter described therein and will in no way impair the rights of the Party granting such waiver in any other respect or at any other time. Any delay or forbearance by either Party in exercising any right hereunder will not be deemed a waiver of that right.

13.9. Force Majeure. Except with respect to payment obligations hereunder, if any, if a Party is prevented or delayed in performance of its obligations hereunder as a result of circumstances beyond such Party's reasonable control, including, by way of example, war, riot, fires, floods, epidemics, or failure of public utilities or public transportation systems, such failure or delay will not be deemed to constitute a material breach of this Agreement, but such obligation will remain in full force and effect, and will be performed or satisfied as soon as reasonably practicable after the termination of the relevant circumstances causing such failure or delay, provided that if such Party is prevented or delayed from performing for more than ninety (90) days, the other Party may terminate this Agreement upon thirty (30) days' written notice and the Agreement shall terminate if such performance has not resumed within those thirty (30) days.

13.10. Governing Law. This Agreement will be governed by and interpreted in accordance with the laws of the state of Connecticut, without regard to conflicts of law principles thereof or to the United Nations Convention on the International Sale of Goods. The Parties agree that all actions or proceedings arising in connection with this Agreement shall be tried and litigated

exclusively in the state or federal courts (if permitted by law and a Party elects to file an action in federal court) located in Middlesex County, Connecticut. This choice of venue is intended by the Parties to be mandatory and not permissive in nature, and to preclude the possibility of litigation between the Parties with respect to, or arising out of, this Agreement in any jurisdiction other than that specified in this Section. Each Party waives any right it may have to assert the doctrine of forum non conveniens or similar doctrine or theory or to object to venue with respect to any proceeding brought in accordance with this Section. No action, regardless of form, arising out of this Agreement, may be brought by either Party more than one (1) year after the cause of action has arisen. The prevailing Party in any action or proceeding will be entitled to recover its reasonable attorneys' fees and costs.

13.11. Publicity. Subject to Customer's prior review and approval, Whelen may use Customer's name and logo in marketing materials and on its website to identify Customer as a Whelen client. Except as provided in this Section and as required by applicable law, neither Party will use the other Party's name or logo in any advertisement, news release, or other public communication without the consent of the other Party which will not be unreasonably withheld, delayed, or qualified.

13.12. U.S. Government End-Users. Each of the Application Documentation and the software components that constitute the Application Services is a "commercial item" as that term is defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end users acquire the Application Services and the Application Documentation with only those rights set forth therein.

13.13. Counterparts. The Order Form to which this Agreement is attached and incorporated may be executed in any number of counterparts via electronic or facsimile means, each of which when so executed will be deemed to be an original and all of which when taken together will constitute one Agreement.

13.14. Affiliates, Subcontractors, and Vendors. Some or all of the Services, including support, may be provided by Whelen's affiliates, agents, subcontractors, and information system vendors. The rights and obligations of Whelen may be, in whole or in part, exercised or fulfilled by the foregoing entities.

13.15. USA Patriot Act Notice. The U.S. federal USA Patriot Act ("*USA Patriot Act*") provides generally for the operator of a communication host and law enforcement to be able to monitor any content, upon request of the operator. Whelen anticipates fully complying with all its obligations, and availing itself of all its rights, under the USA Patriot Act.

13.16. Export Compliance. Customer acknowledges that the Application Services may be subject to export control laws. Customer will not, directly or indirectly, export or permit use of any portion of the Application Services outside of the United States without prior government authorization to the extent required by applicable regulation.

13.17. Electronic Execution. Each Party acknowledges and agrees that the Order Form may be executed by the Parties in electronic form (e.g., by an electronic or digital signature or other means of demonstrating assent). Customer acknowledges and agrees it will not contest the validity or enforceability of the Order Form, this Agreement or any related documents, including under any applicable statute of frauds, due to such execution in electronic form.

CONFIDENTIAL

EXHIBIT B
[End of Terms]