

City of Fayetteville Staff Review Form

2018-0715

Legistar File ID

12/18/2018

City Council Meeting Date - Agenda Item Only
N/A for Non-Agenda Item

Brad Fulmer

11/29/2018

INFORMATION TECHNOLOGY (170)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

A resolution to authorize a one year contract with NOVAtime Technology, Inc. for upgrades to the city's electronic employee time keeping system in the amount of \$3,700.00 for setup costs and estimated discounted monthly fees of \$2,064.00 for the first year plus applicable sales taxes based on the number of city employees, and to approve future automatic renewals of the contract with rate increases not to exceed 5% above the standard estimated monthly fee of \$2,820.00

Budget Impact:

1010.170.1710-5309.02

General Fund

Account Number

Fund

Project Number

Project Title

Budgeted Item? Yes

Current Budget \$ 11,000.00

Funds Obligated \$ -

Current Balance **\$ 11,000.00**

Does item have a cost? Yes

Item Cost \$ 9,464.00

Budget Adjustment Attached? NA

Budget Adjustment

Remaining Budget **\$ 1,536.00**

V20180321

Purchase Order Number: _____

Previous Ordinance or Resolution # _____

Change Order Number: _____

Approval Date: _____

Original Contract Number: _____

Comments:



MEETING OF DECEMBER 18, 2018

TO: Mayor and City Council

THRU: Keith Macedo, IT Director
Don Marr, Chief of Staff

FROM: Brad Fulmer, Assistant IT Director

DATE: November 28, 2018

SUBJECT: NOVAtime Upgrade

RECOMMENDATION:

A resolution to authorize a one year contract with NOVAtime Technology, Inc. for upgrades to the city's electronic employee time keeping system in the amount of \$3,700.00 for setup costs and estimated discounted monthly fees of \$2,064.00 for the first year plus applicable sales taxes based on the number of city employees, and to approve future automatic renewals of the contract with rate increases not to exceed 5% above the standard estimated monthly fee of \$2,820.00

BACKGROUND:

In 2010, the City purchased time and attendance software from NOVAtime Technologies, Inc. This software has increased efficiency and accuracy of timekeeping records by reducing errors, reducing staff workload, improved reporting of staff time, and time auditing capabilities. NOVAtime serves as a management tool to ensure the City is compliant with the Family and Medical Leave Act and Fair Labor Standards Act. Since 2010 the system has enabled Human Resources, Payroll, and supervisors to accurately track, monitor, and manage staff hours in an efficient manner.

DISCUSSION:

Staff is pleased with NOVAtime as a time keeping software vendor but is requesting to upgrade the software to take advantage of new features and functionality. The City's current NOVAtime software is installed on a City server, which NOVAtime no longer supports. The latest version of NOVAtime is only offered as a Software as a Service model (cloud). This proposal includes first year discounts of \$756 per month with the per user cost of \$3.60 per month. The new software offers additional functionality allowing the use of a robust mobile platform to eliminate aging timeclock hardware and save an estimated \$63,000 in hardware replacement cost. This purchase is exempt from bidding under Arkansas State law Title 19 Chapter 11 Subchapter 203.

BUDGET/STAFF IMPACT:

This project was budgeted in the Information Technology Operating budget for 2018 and included in the 2019 proposed budget.

Attachments: Staff Review Form, Staff Review Memo, NOVAtime Contract

NOVAtime Technology, Inc.

NOVAtime Technology, Inc – CONTRACT – SaaS Based

Customer Information		Shipping Information	
Company:	City of Fayetteville, AR	Company:	SAME
Address:		Address:	
City, State, ZIP		City, State, ZIP	
Contact:		Contact:	
Phone:		Phone:	
Fax:		Fax:	
Description		PE/PM	Monthly Total
Software:			
NOVAtime 5000 Suite - 700 Employees		\$3.60	\$2,520.00
-User Accounts			Included
-Employee Self Service			Included
-Payroll Interface -			Included
-Employee Benefit Tracking			Included
NOVAtime Leave Management Module			Included
NOVAtime 5000 Base Scheduling Interface			Included
Discount			(\$756.00)
Telephony		\$1.00	\$200.00
Per Line (Non Toll Free)		1	\$100.00
		Software Total	\$2,064.00
Services			
Implementation Services and Activation - Current STAR Client			\$2,200.00
SaaS Server Setup			\$1,500.00
		Total Services	\$3,700.00
Maintenance and Support			
Annual Maintenance SW - 1 Year			Included
		1st Year Grand Total	\$28,468.00
		Monthly Total	\$2,064.00
		Due with Contract	\$5,764.00
		Due Beginning Month 2	\$2,064.00

Customer acknowledges and agrees that this Agreement shall not be binding on NOVAtime Technology, Inc. ("NOVAtime") until signed by NOVAtime and delivered to Customer. This Agreement is the entire understanding of the parties with respect to the purchase of the Products and shall govern in the event any inconsistent terms and conditions as set forth in any Customer purchase order, confirmation, or memorandum, unless NOVAtime signs such document.

NOVATIME TECHNOLOGY, INC.

By: 
 Name: Peter J. Goepfrich
 Title: CFO
 Date: December 4, 2018

CUSTOMER: City of Fayetteville, AR
 By: _____
 Name: _____
 Title: _____
 Date: _____

NOVAtime 5000 SaaS Terms and Conditions

SaaS Services Agreement

This Hosting Software Agreement applies to any online hosted software services provided by NOVAtime Technology, Inc. ("Licensor") subscribed to and used by an end user _City of Fayetteville, AR_ ("Licensee"). **BY ACCESSING AND/OR USING ANY OF THE SERVICES, LICENSEE AGREES TO BE BOUND BY ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT WHICH SUPERCEDES THE TERMS OF ANY OTHER PRIOR WRITING OR UNDERSTANDING BETWEEN THE PARTIES.**

Definitions - As used in this Agreement, the following definitions shall apply:

"Agreement" means these online terms of use, any Order Form as defined herein, and any materials available on Licensor's website specifically incorporated herein by reference, as such may be updated by Licensor from time to time in its sole discretion.

"Customer Data" means any data, information or material submitted or provided by Licensee to Licensor through the use of the Services.

"Effective Date" means the earlier of either Licensor's invoice or the date the Services are available for use by Licensee.

"Licensed Program" means all of Licensor's proprietary technology (including software, hardware, processes, user interfaces, algorithms, know-how, techniques, and other tangible or intangible technical material or information, and specifications describing the features, functionality or operation of the Services,) made available to Licensee by Licensor in providing the Services to Licensee.

"Services(s)" means the online hosting, maintenance and support services and any other services or products provided by Licensor to Licensee as set forth on an Order Form.

"Service Fees" has the meaning set forth in Section 3.

"Order Form(s)" means a Licensor's quote or , invoice or proposal evidencing a subscription for the Services specifying the Services and the applicable Service Fees, each such Order Form is incorporated herein by reference (in the event of any conflict between the terms of this Agreement and the terms of any such Order Form, the terms of this Agreement shall prevail).

"Users" mean Licensee's employees, representatives, consultants, contractors or agents who are authorized to use the Services on behalf of Licensee.

Services. Subject to the terms and conditions of this Agreement, including the payment of all applicable Service Fees, Licensor agrees to use commercially reasonable efforts to (a) provide Licensee with the Services, (b) to make the Services available for use in accordance with the Services Level Agreement set forth on **Schedule A** attached hereto, and (c) provide commercially reasonable levels of security for the Services in accordance with the Hosting Infrastructure set forth on **Schedule B** attached hereto.

1. Restrictions & Title to Intellectual Property.

a. License Use Restrictions. Licensee agrees to (a) use the Licensed Program solely for its own internal business purposes and agrees not to rent, lease, sublicense, time-share, or otherwise distribute the Licensed Program for resale, or to host applications to provide service bureau, time-sharing, or other computer services to third parties, or otherwise make available the Licensed Program to any third parties, (b) not to reverse-engineer, decompile, disassemble, modify, create derivative works of, or copy the Licensed Program, and (c) to take appropriate actions to protect the Licensed Program and all parts thereof from unauthorized copying, modification, or disclosure by its Users and other third parties. Licensee may not use the Licensed Program or access the Services if Licensee is a direct competitor of Licensor or for purposes of monitoring the availability, performance or functionality of the Services, or for any other benchmarking or competitive purposes.

b. Title to Intellectual Property. Licensee hereby acknowledges that all right, title and interest in all intellectual property rights, including patent, unpatented inventions, copyright, trademark, trade secret, proprietary information and technology used in or comprising the Licensed Program and the Services and any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Licensee relating to the Services (collectively, the "Licensor Intellectual Property") are owned by, and are vested in, Licensor (or its applicable licensors/suppliers). Other than as expressly set forth in this Agreement, no license or other rights in the Licensor Intellectual Property are granted to Licensee and all such rights are hereby expressly reserved by Licensor. Licensor Intellectual Property does not include any Customer Data.

2. Licensee Obligations.

a. Access and Security Guidelines. Use of the Services is conditioned on Licensee obtaining and maintaining access to the internet, and all equipment necessary for proper operation of the Services. Licensee shall use commercially reasonable efforts to prevent unauthorized access to, or use of, the Services and shall notify Licensor immediately of any such unauthorized use or other

known breach of security. Licensee is responsible for all activities that occur under Licensee's user names and passwords. Licensee shall report to Licensor immediately and use reasonable efforts to stop immediately any copying or distribution of the Licensed Programs that is known or suspected by Licensee. **Acceptable Use.** Licensee shall abide by all applicable local, state, national and foreign laws, treaties and regulations in connection with Licensee's use of the Services, including those related to data privacy, international communications and the transmission of technical or personal data and in accordance with Licensor's Acceptable Use Policy set forth on **Schedule C** attached hereto. Licensor reserves the right to update such policy as set forth therein. Any use of the Services in violation of Licensor's Acceptable Use Policy shall be a material breach of this Agreement.

b. Customer Data. Licensee will be solely responsible for providing all Customer Data required for the proper operation of the Services. Licensee shall have sole responsibility for the accuracy, quality, integrity, reliability, appropriateness, and intellectual property ownership or right to use of all Customer Data, including as outlined in Licensor's Acceptable Use Policy. Licensor is under no obligation to review Customer Data for accuracy, acceptability or potential liability. Licensee grants to Licensor all necessary nonexclusive licenses in and to such Customer Data solely as necessary for Licensor to provide the Services to Licensee.

3. Service Fees

a. Service Fees. In consideration of the Services provided, Licensee shall pay Licensor those fees itemized on any Order Form for the Services and all applicable excise, sales, use, or other taxes, fees or charges applicable to the Services (the "**Service Fees**"). Recurring subscription Services purchased by Licensee will automatically renew on an annual basis at Licensor's then current prevailing rates and shall be payable in accordance with this Section 3, unless a party sends to the other party a notice of non-renewal pursuant to Section 4a. Licensor may suspend Services during any period in which Service Fees remain past due and/or terminate this Agreement in accordance with Section 4(b). Services may be restored at Licensor's sole discretion upon payment in full of past due amounts and applicable reconnection and other fees.

NOVAtime 5000 SaaS Terms and Conditions

b. Payment Method. Licensee hereby agrees that all payments under this Agreement shall be made by check.

c. Partial Delivery of Services. If Services require delivery to multiple locations and Services delivery is delayed definitely or indefinitely due to circumstances beyond the immediate control of Licensor, as deemed in good faith by Licensor, Licensee shall pay such partial fees for those portions of the Services which are not so delayed. Partial delivery of Services, in this manner, shall not be deemed a material breach of this Agreement by Licensor.

4. Term and Termination.

a. Term. This Agreement shall become effective on the Effective Date and shall remain in effect for the initial term designated on the initial Order Form or as amended by any subsequent Order Form, unless earlier terminated in accordance with Section 4 (b) below.

b. Termination. This Agreement may be terminated earlier in its entirety without liability to the terminating party as follows: (a) by Licensor upon fifteen (15) days written notice for failure to timely pay any undisputed Service Fees, (b) by Licensor immediately upon notice upon the institution of any insolvency, bankruptcy or similar proceeding by or against the other party including an assignment for the benefit of creditors, the appointment of a receiver over assets, an attachment of assets lasting more than thirty (30) days, or the party ceases to conduct its business operations in the ordinary course of business. The parties' rights and obligations under this agreement shall survive termination of this Agreement. Licensor may suspend access to Licensee's Customer Data or use of the Services upon a material breach of this Agreement by Licensee prior to termination.

5. No Warranties. LICENSOR MAKES NO WARRANTIES REGARDING THE SERVICES PROVIDED HEREUNDER. LICENSEE ACKNOWLEDGES THAT LICENSOR'S SOLE OBLIGATION IS TO PROVIDE THE SERVICES IN ACCORDANCE WITH SECTION 2 AND THE SCHEDULES REFERENCED THEREIN. THEREFORE, THE SERVICES ARE PROVIDED AND ACCEPTED BY LICENSEE "AS-IS," WITHOUT ANY WARRANTY WHATSOEVER. ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, ARE SPECIFICALLY EXCLUDED AND DISCLAIMED.

6. Quality and Accuracy of Available Information. Licensee acknowledges that the information available from the use of the Services, Licensor's systems and/or through the interconnecting networks may not be accurate. Licensor makes no representation or warranty of any kind, either express or implied, regarding the quality, accuracy or validity of the data and/or information available from or through use of the Services and such systems and networks. Use of information obtained from or through Licensor's system and networks and the use of the Services are at Licensee's sole and absolute risk. LICENSOR SPECIFICALLY DISCLAIMS AND DENIES ANY RESPONSIBILITY FOR THE COMPLETENESS OR ACCURACY OF THE SERVICES PROVIDED BY IT UNDER THE TERMS OF THIS AGREEMENT.

7. Limitation of Liability. LICENSOR SHALL NOT BE LIABLE TO LICENSEE, ITS USERS, OR ANY THIRD PARTIES FOR ANY INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, ANY LOSS OF USE, LOSS OF BUSINESS, LOSS OF PROFIT, LOSS OR CORRUPTION OF DATA, INTERRUPTION OF BUSINESS, LOSS OF GOODWILL OR ANY AND ALL OTHER SIMILAR DAMAGES OR LOSS WHETHER IN CONTRACT, TORT, PRODUCT LIABILITY, OR OTHERWISE IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT OR THE USE OF THE SERVICES EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Licensor shall not be liable for any loss resulting from a cause over which Licensor does not have direct control, including but not limited to failure of electronic or mechanical equipment or communication lines; telephone or other interconnect problems; bugs, errors, configuration problems or

incompatibility of computer hardware or software; failure or unavailability of Internet access; problems with Internet service providers or other equipment or services relating to Licensee's computer; problems with intermediate computer or communications networks or facilities; problems with data transmission facilities, telephone or telephone service; or unauthorized access, theft, operator errors, severe weather, earthquakes or labor disputes. Licensor is not responsible for any damage to Licensee's computer, software, modem, telephone or other property resulting from Licensee's use of the Services.

8. Confidentiality. Each party shall have access to information that is confidential to the other party ("Confidential Information") including but not limited to with respect to Licensor, the Licensed Program and the Services, and with respect to Licensee, the Customer Data, and any other information which is not otherwise readily available in the public domain and specifically including all information marked "confidential", and the pricing terms of this Agreement. The parties agree (i) not to make each other's Confidential Information available to any third party, (ii) not to use each other's Confidential Information except to perform this Agreement, (iii) to hold each other's Confidential Information in confidence during the term of this Agreement and thereafter, and (iv) no adequate remedy at law exists for breach Section 11 and any such breach would cause irreparable harm to the non-breaching party whom shall be entitled to seek immediate injunctive relief, in addition to whatever remedies it has at law or otherwise. Either party may make such disclosures as may be necessary by reason of legal, accounting or regulatory requirements beyond either party's reasonable control. Confidential Information shall not include information that (i) is in the public domain through no act or omission of the other party, (ii) was in the other party's lawful possession prior to the disclosure, (iii) is lawfully disclosed to the other party by a third party without restriction on disclosure, or (iv) is independently developed by the other party.

9. Title to Equipment. Unless otherwise specified on any Order Form, and in such case only after payment in full of applicable fees as set forth in that Order Form, Licensor or its suppliers shall retain the title to any and all equipment or other facilities utilized in connection with delivery of the Services (collectively the "Equipment"), and this Agreement shall not, and shall not be deemed to, convey title to the Equipment to Licensee. LICENSEE ACKNOWLEDGES THAT THE PRODUCTS ARE NOT MANUFACTURED BY LICENSOR. LICENSOR WILL EITHER DELIVER THE MANUFACTURER'S WARRANTY DIRECTLY TO LICENSEE OR PASS THROUGH THE MANUFACTURER'S WARRANTY TO LICENSEE DEPENDING UPON THE APPLICABLE MANUFACTURER'S POLICY.

10. Force Majeure. If Licensor's performance of any obligation under this Agreement is prevented, restricted or interfered with by causes including failure or malfunction of Licensee-supplied equipment, disruptions of Internet protocol ("IP") service through intermediate carriers other than Licensor, acts of God, explosions, vandalism, cable cut, storms, fires, floods or other catastrophes, power failure, national emergencies, insurrections, riots, wars, strike, lockouts, boycotts, work stoppages or other labor difficulties, or any law, order, regulation or other actions of any governmental authority, agency, instrumentality, or of any civil or military authority, then Licensor shall be excused from such performance on a day-to-day basis during such restriction or interference.

11. Notices. All notices required or permitted to be given hereunder shall be in writing and deemed given (a) when personally delivered, (b) one (1) day after delivered to an overnight courier guarantying next day delivery, or (c) three (3) days after deposited in the United States mail, postage prepaid, sent certified or registered. All notices shall be addressed to the parties at the addresses specified below or to such other address as hereafter designated in writing by the applicable party in the manner provided in this Section 11 for the giving of notices.

NOVAtime 5000 SaaS Terms and Conditions

NOVAtime Technology, Inc.
9680 Haven Avenue Suite
Suite 200
Rancho Cucamonga, CA 91730

12. General Provisions.

a. Entire Agreement. This Agreement, together with the attached Schedules, constitutes the entire understanding and agreement between Licensee and Licensor with respect to the subject matter hereof and supersedes all proposals and prior agreements and understandings, oral or written, and any other communications between the parties regarding this subject matter. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto (and their respective successors, legal representatives and permitted assigns) any rights, remedies, liabilities or obligations under or by reason of this Agreement.

b. Assignment; Subcontract. No part of this Agreement may be assigned without the prior written consent of the other party except either party may assign this Agreement without prior written consent in the event of a merger, a reorganization, a sale of all or substantially all of its assets or a similar event. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors, legal representatives and permitted assigns.

c. No Amendment or Waiver. No provision of this Agreement will be deemed waived, amended or modified unless made in writing and signed by both parties. No waiver of rights shall constitute a subsequent waiver of any rights whatsoever. The failure of either party to enforce any provision hereof shall not constitute the permanent waiver of such provision.

d. Severability. The provisions of this Agreement are severable and any provision determined to be void or unenforceable shall be ineffective to the extent of such invalidity only, without in any way affecting the remaining parts of this Agreement and such invalid provision shall be replaced with an enforceable provision which achieves to the greatest extent possible the parties' original intent.

e. Remedies. No remedy conferred by any of the specific provisions of the Agreement is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder, now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies by either party shall not constitute a waiver of the right to pursue other available remedies.

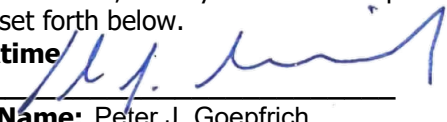
f. Execution and Counterparts. This Agreement may be executed in writing in counterparts or the terms and conditions accepted electronically by the parties in counterparts, which in either case taken together shall constitute one legal instrument. .

g. Attorneys' Fees. If a proceeding is brought for the enforcement of this Agreement or because of any alleged or actual dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, the prevailing party shall be entitled to recover reasonable out-of-pocket attorneys' fees and other costs and expenses incurred in engagement of outside legal resources in such action or proceeding in addition to any other relief to which such party may be entitled.

h. Governing Law. This Agreement shall be governed by the State of Arkansas without regard to conflicts of law principles.

i. Publicity. Licensor shall not use Licensee's name in customer lists and other promotional materials naming Licensee as a customer of Licensor and a user of the Services without the prior written approval of Licensee.

IN WITNESS WHEREOF, a duly authorized representative of each party has executed this Agreement as of the Effective Date set forth below.

NOVAtime
By: 
Print Name: Peter J. Goepfrich
Title: CFO
Date: December 4, 2018

Company
By: _____
Print Name: _____
Title: _____
Date: _____

Schedule A – Service Level Agreement

This Schedule is part of the "Hosting Software Agreement" (the "Agreement") entered into by and between Licensor and Licensee as such terms are defined in the Agreement. Licensor reserves the right to make reasonable modifications to this policy at any time by emailing a new version of this document to Licensee. Revisions are effective immediately.

Licensor's Services Level Agreement ("SLA") is to provide the Licensee with uninterrupted access to the purchased Services 99.9% of the time. In the event that the Monthly Uptime of the Licensed Program is less than 99.9%, Licensee will be eligible for a Services Credit against its prorated Services subscription fee for that month in the amount set forth in this table:

Monthly Uptime	Credit
90.0% - 99.8%	10%
85.0% - 89.9%	20%
84.9% or less	30%

Services Credits: Services Credits are limited to the prorated subscription fee of the Services corresponding to the calendar month in which the Monthly Uptime is less than 99.9%. In order to receive a Services Credit, the Licensee must notify Licensor by opening a Trouble Ticket within 24 hours of an outage, and Licensor must verify that the outage was a result of Unscheduled Downtime. Further, the Licensee must submit an e-mail request for a credit, including the trouble ticket number, to Licensor within ten (10) days of opening the Trouble Ticket. Should the Licensee not claim the credit during this period, the Licensee will be deemed to have waived the credit.

Monthly Uptime: Monthly Uptime means the percentage calculated as 100% less the ratio of total Unscheduled Downtime in a given calendar month to the total number of hours in that month, rounded to the nearest one-tenth percent (0.1%). For example, if total Unscheduled Downtime is 1.5 hours during a given calendar month, and total number of hours in that month is 744, the Monthly Uptime would be 99.8% ($100\% - (1.5 / 744)$).

Unscheduled Downtime: Unscheduled Downtime is defined as a period of time where the Services are unavailable to the Licensee. Unscheduled Downtime does not include periods where the Services is unavailable to the Licensee as a result of: (a) Scheduled Maintenance, (b) interruptions caused by the negligence, error or omission of Licensee or others authorized by Licensee to use or modify the Services, (c) Licensee's applications, equipment, or facilities including Licensee premise wiring, (d) acts or omissions of Licensee, or any use of the Services authorized by Licensee, (e) reasons of Force Majeure (as defined in the Agreement), (f) interruptions from Licensee's use of Services in violation of the Licensor's Acceptable Use Policy (Schedule C), (g) interruptions resulting from a Licensor disconnect for non-payment, (h) problems in the Licensed Program application that do not preclude use of primary application functions, (i) interruptions during any period when Licensee has released Services to Licensor for maintenance or rearrangement purpose, or for the installation of a Licensee service order; and/or (j) interruptions during any period when Licensee elects not to release the Services(s) for testing and/or repair and continues to use the Services on an impaired basis. Unscheduled Downtime is measure from the time Services unavailability is reported to Licensor to the time that Services availability is restored.

Scheduled Maintenance: Scheduled Maintenance shall mean any maintenance performed by Licensor or its Partners (a) for which Licensee is notified in advance, or (b) that is performed during a standard maintenance window outside North American standard business hours (Mondays-Fridays 6AM – 8PM US Central Standard Time). Monthly Maintenance is performed on the first Friday of every month from 8:00PM – 2:00AM Saturday US Pacific Standard Time. Notice of Scheduled Maintenance will be provided to Licensee's designated point of contact by email. Licensee agrees that it is Licensee's obligation to make sure Licensor has correct contact information for Scheduled Maintenance notification purposes.

Schedule B – Hosting Infrastructure

This Schedule is part of the "Hosting Software Agreement" (the "Agreement") entered into by and between Licensor and Licensee as such terms are defined in the Agreement. Licensor reserves the right to update the hosting infrastructure at any time. Licensor or its partners will deliver Services via the Licensor hosting infrastructure, which is designed to provide commercially reasonable levels of security and availability. This infrastructure includes:

Physical Infrastructure

1. Bunker-type fire-proof facility features 24-hour manned security, biometric access control, video surveillance and physical locks.
2. Power supplied by redundant grids, with redundant UPS and backup generators.

Network Level

1. Highly scalable and redundant online infrastructure with failover capabilities.
2. Real-time monitoring of all network, server and application stability and security.
3. Best-of-class firewall and router technology, and a Network Intrusion Detection System that monitors and proactively blocks worms, hackers, and other undesirable access.
4. All log files retained and analyzed to proactively monitor network activity.

Server Infrastructure

1. State-of-the-art Server technology.
2. Storage area network uses RAID and production servers use RAID for primary internal OS disk subsystems. Mirroring assures consistent availability.
3. Servers run carrier-class network operating systems and are updated to latest patch levels. Servers are hardened by removing all unnecessary software and services.

Application Level

1. Each user is assigned a unique user name and password that must be entered at each login.
2. Licensee identifies an internal administrator to manage users and login accounts. Licensor will not provide access or passwords to any person other than Licensee's designated internal administrator.
3. After authentication at the login level, user identity accompanies every request to strictly enforce segregation of customer data.
4. Session "cookies" only record encrypted authentication information for the duration of a specific session. The session "cookie" does not include username or password.
5. The Application does not use "cookies" to store other confidential information, but instead implements advanced security methods based on dynamic data and encoded session IDs.

Data Security

1. Application security ensures complete segregation and privacy of customer data.
 2. Licensee owns their data; Licensor will provide Microsoft SQL Server formatted backups upon request for a nominal fee.
 3. Incremental daily, weekly and monthly backups are made of all production systems and databases.
 4. Backups, verification and restores are handled offsite from the hosting facility.
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Schedule C – Acceptable Use Policy

This Schedule is part of the "Limited Use License Agreement" (the "Agreement") entered into by and between Licensor and Licensee as such terms are defined in the Agreement. This Acceptable Use Policy ("Policy") outlines unacceptable uses of the Services. Licensor may make reasonable modifications to this Policy from time to time by emailing a new version of this document to the Licensee. Revisions are effective immediately upon posting.

The Policy:

Licensee agrees to use the Services in accordance with all applicable local, state and federal laws, and this Policy which shall specifically include, as determined by Licensor in its reasonable judgment, NOT using the Services to:

1. conduct any business or activity or solicit the performance of any activity that is prohibited by law, tortuous, or interferes upon the use of Licensor's system by other licensees and customers.
2. disseminate, display, send, transmit or receive any material that, to a reasonable person may be abusive, obscene, pornographic, defamatory, harassing, grossly offensive, vulgar, threatening, malicious, or violent, regardless of whether the material or its dissemination is unlawful;
3. disseminate or transmit unsolicited messages, chain letters or unsolicited commercial email including unintended sending of unsolicited commercial email due to unauthorized access to Licensee's use of the Services, whether or not the recipient wishes to receive such mailings;
4. access, send, receive, display, disclose, or store any content in violation of any copyright, right of publicity, patent, trademark, service mark, trade name, trade secret or other intellectual property right or in violation of any applicable agreement, or without authorization;
5. create a false identity or to otherwise attempt to mislead any person as to the identity, source or origin of any communication;
6. export, re-export or permit downloading of any message or content in violation of any export or import law, regulation or restriction of the United States and its agencies or authorities, or without all required approvals, licenses and/or exemptions;
7. interfere, disrupt or attempt to gain unauthorized access to any computer system, server, network or account for which Licensee does not have authorization to access or at a level exceeding Licensee's authorization;
8. knowingly disseminate or transmit any virus, worms, trojan horse or other malicious, harmful or disabling data, work, code or program;
9. engage in any other activity deemed by Licensor to be in conflict with the spirit or intent of the Agreement or any Licensor policy as examples listed in this Policy are not exhaustive.

Failure to Comply:

Failure to comply with this Policy in Licensor's reasonable judgment may result in the immediate termination of Services or any other action deemed necessary by Licensor in order to protect its network, customer relationships, and commitment to the highest possible quality of service. Licensor will cooperate with law enforcement in cases where the Services are being used for any suspected illegal activity.

Reporting Violations:

Violations of this Policy are unethical and may be deemed criminal offenses. Licensee shall report to Licensor any information Licensee may have concerning instances in which this Policy has been or is being violated. Licensor may at anytime initiate an investigation of any use of the Services for compliance with this Policy and Licensee agrees to cooperate.

Malicious Activity:

Intended: Attempts to exploit other devices or services on and off of Licensor's hosted service without the permission or implied permission of that party are not permitted. Violations of system or network security may result in criminal and civil liability. Licensor will cooperate with law enforcement if a criminal violation is suspected. Licensor will limit any traffic from the offending device or network immediately.

Unintended: Licensor will notify customers of an exploited device being used for potential malicious activity. If the activity is causing severe damage or strain to other devices or networks, Licensor will limit traffic to and from that device immediately. Otherwise Licensor will notify the customer and give a reasonable amount of time to secure the device before limiting traffic to and from that device.