RESOLUTION

Whereas, N.J.S.A. 40A:11-12 (a) permits the City of Trenton to utilize the services and make purchases without the necessity of competitive bidding under the State of New Jersey Cooperative Purchasing Program; and

WHEREAS, the Division of Purchasing has reviewed and verified New Jersey State Contract No. T-0790 80948 for Software License & Related Services awarded to PCMG, Inc., 14120 Newbrook Drive, Ste. 100, Chantilly, Virginia 20151 awarded from September 1, 2015 to June 30, 2020; and

WHEREAS, the City of Trenton, Trenton Water Works, Department of Water & Sewer has a need to utilize New Jersey State Contract No. M-0003 89857 to provide Code RED Reverse 911 Services awarded will be purchase from PCMG, Inc., 14120 Newbrook Drive, Ste. 100, Chantilly, Virginia 20151 in an amount not to exceed $37,875.00; and

WHEREAS, funds in amount not to exceed $36,245.72 have been certified to be available in account number 09-05-55-5500-899 ($13,745.72) from November 20, 2018 to June 30, 2019; 00-05-55-5500-899 ($22,500.00) from July 1, 2019 to June 30, 2020, contingent upon the adoption FY’2019 temporary and or final budget.

NOW, THEREFORE, IT IS RESOLVED, by the City Council of the City of Trenton as follows:

1. The Purchasing Agent is hereby authorized to execute a purchase order in an amount not to exceed $36,245.72 to PCMG, Inc., 14120 Newbrook Drive, Ste. 100, Chantilly, Virginia 20151 for Software License & Related Services for the City of Trenton, Trenton Water Works, Department of Water & Sewer.

2. The contract is awarded without competitive bidding pursuant to N.J.S.A. 40A:11-12(a) of the Local Public Contracts Law.

<table>
<thead>
<tr>
<th></th>
<th>Aye</th>
<th>Nay</th>
<th>Abstain</th>
<th>Absent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Blakeley</td>
<td></td>
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<tr>
<td>Caldwell Wilson</td>
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<tr>
<td>Harrison</td>
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</tbody>
</table>

This Resolution was adopted at a Meeting of the City Council of the City of Trenton on December 2, 2018.
CITY OF TRENTON
DEPARTMENT OF FINANCE

CERTIFICATION OF FUNDS

I, Janet Schoenhaar, Chief Financial Officer of the City of Trenton, do hereby certify, to the best of my knowledge and belief, that there are now sufficient funds to Contract with:

Vendor Name: PCMGI, INC.
Address# 1: 14120 NEWBROOK DRIVE, STE. 100
City: CHANTILLY
State: VIRGINIA
Zip Code: 20151

Purpose: REVERSED 911 SERVICES
Fund: OPERATING
Account Number(s): 09-05-55-5500-899 ($13,745.72) (NOVEMBER 20, 2018 TO JUNE 30, 2019)
00-05-55-5500-899 ($22,500.00) (JULY 1, 2019 TO JUNE 30, 2020)

Vendor ID: PCMGI005
Requisition Number:
Amount not to exceed: $36,245.72

Chief Financial Officer

[Signature]
Date
This Agreement, entered into this 21st Day of December 2018 between the City of Trenton, a municipal corporation of the State of New Jersey, 319 East State Street, Trenton, New Jersey 08608 ("City") and PCMG, INC., 13755 Sunset Valley Drive, Suite #750, Herndon, Virginia 20171 ("Contractor"), witnesseth that:

WHEREAS, Contractor has bid, proposed or offered to furnish and deliver to the City the materials, supplies and/or goods to perform the services described below in an amount not to exceed $36,245.72 from November 20, 2018 to June 30, 2019 contingent upon the FY 2019 ADOPTION OF THE TEMPORARY AND FINAL BUDGET; from July 1, 2019 to June 30, 2020, contingent upon the FY 2020 TEMPORARY AND FINAL BUDGET.

FIRST, Contractor, under the penalty expressed in the bond hereinafter mentioned, will furnish, supply and deliver to the City of Trenton the following materials, supplies or services as authorized by:

RESOLUTION AWARDING A CONTRACT TO PCMG, INC., 13755 SUNRISE VALLEY DRIVE, SUITE #750, HERNDON, VIRGINIA 20171 TO PROVIDE CODE RED REVERSE 911 SERVICES AWARDED THROUGH STATE CONTRACT M-0003 89854 FOR THE CITY OF TRENTON, TRENTOON WATER WORKS, DEPARTMENT OF WATER & SEWER

below in strict accordance with the terms and conditions of the bid specifications, the bid response and the authorizing resolution, which are included above and is incorporated by reference. Additionally, Contractor will furnish good and amble security in a sum equal to the said contract price for the said articles and services.

SECOND. The City of Trenton will pay Contractor the total sum mentioned herein when the appropriate Department Director has executed a certification that the said articles or services have been furnished, delivered and accepted in full conformity to the aforementioned specifications and offer or proposal.

THIRD. The City of Trenton reserves the right to order a greater or lesser quantity, not to exceed twenty-five percent, of any or all of the articles named in the said offer or proposal than is stated herein, and it is distinctly agreed between the said parties that the price quoted in the offer or proposal of Contractor shall be regarded as a standard of prices, and the total sum mentioned herein as the consideration of this contract shall not be regarded as limiting the right of the City of Trenton to order such greater or lesser quantity.

FOURTH. In the event of the failure of Contractor to deliver to the City of Trenton, such articles or perform such work or labor as described in such quantities as ordered at the time stated for such delivery by the City of Trenton, or in the event that such articles as are delivered or work and labor performed do not meet the specifications or standards, as established by the City of Trenton for such articles or acceptance of such work and labor, then such delivery shall be rejected by telephone or written notice to the Agent or address indicated by the Contractor and by simultaneous and like notice to his surety. Additionally, if Contractor or his surety does not cure the default within the time set by the said Agent on behalf of the City of Trenton, then the said Agent on behalf of the City, shall have the right to procure such services or purchase such articles in their place and stead in the open market as are needed for replacement, and from the best source available in the judgment of the said Agent and to charge the expense of such articles or work performed to Contractor and to deduct the amount thereof from any moneys due or to become due to Contractor by virtue of this agreement. Provided, however, that the surety on the bond of Contractor for the faithful performance of this agreement shall be first notified of the necessity for such replacement, and given the same time allowance for such replacement as is given Contractor.

FIFTH. This contract shall not be amended, assigned or subcontracted without the consent of the City of Trenton in writing (if the total compensation payable thereunder shall thereby exceed $2,500.00, approval by Resolution of the Governing Body shall be required), and any breach of this covenant shall authorize the City of Trenton, by its said Agent, to declare this contract null and void and to refuse to make any further payments thereunder to Contractor.
SIXTH. In case of any conflict between the provisions of this agreement and of any of the provisions of the specifications, the latter shall govern and control.
Applicable for Public Construction Contracts Only: “Dispute Resolution Procedures (NJSA 40A:11-5).” Disputes arising under this contract shall be subject to mediation or non-binding arbitration at the sole discretion of the City of Trenton, before a construction industry mediator or arbitrator or panels thereof. The City of Trenton shall have the right to select a third party to mediate any disputes arising under this agreement and the mediation shall be conducted informally in a manner decided upon by the mediator.”

SEVENTH. Contractor hereby agrees to pay all workmen as a minimum the prevailing wages rate in accordance with Chapter 150 of the New Jersey Laws of 1963, Prevailing Wages on Public Contracts and U.S. Department of Labor Wage Rates with the higher rate for any given occupation being the governing rate, and N.J.S.A. 102-1 et seq., prohibiting discrimination in employment on public contracts.

EIGHTH. During the performance of this contract, the contractor agrees as follows:

a. CONTRACTOR or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, or sex. CONTRACTOR will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation, disability, nationality or sex. Such action shall include, but not be limited to the following: employment, up-grading, demotion, or transfer; recruitment or retraining; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause. (N.J.S.A. 10:5-33; N.J.A.C. 17:27-3.4)

b. CONTRACTOR or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of CONTRACTOR, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation, disability, nationality or sex. (N.J.S.A. 10:5-33; N.J.A.C. 17:27-3.4)

c. CONTRACTOR or subcontractor where applicable, will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers’ representative of CONTRACTOR’s commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment. (N.J.S.A. 10:5-33; N.J.A.C. 17:27-3.4)

d. CONTRACTOR or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to P.L. 1975, c.127, as amended and supplemented from time to time. (N.J.A.C. 17:27-3.4) (c)

Note: A public works contract for a subcontractor with a total work force of four or fewer employees or for a contractor or subcontractor performing under an existing Federally approved or sanctioned affirmative action program shall contain as mandatory language only paragraphs a, b, and c above, and the contract shall not contain any other mandatory language prescribed by N.J.A.C. 17:27.
(N.J.A.C. 17:27-3.4) (c)

e. All bidders and all contractors who are negotiating for a procurement or service contract with the public agency which is not subject to a federally approved or sanctioned affirmative action program are required to submit to the public agency, prior to or at the time the contract is submitted for signing by the public agency (in accordance with N.J.A.C. 17:27-4.3 promulgated by the Treasurer pursuant to P.L. 1975, c. 127), one of the following three documents:

1. Appropriate evidence that the contractor is operating under an existing federally approved or sanctioned affirmative action program; or
2. A certificate of employee information report approval issued in accordance N.J.A.C. 17:27-4; or

3. An initial employee information report consisting of forms provided by the affirmative action office and completed by the contractor in accordance with N.J.A.C. 17:27-4. (N.J.A.C. 17:27-3.3) (a)

f. CONTRACTOR or subcontractor agrees to attempt in good faith to employ minority and female workers consistent with the applicable county employment goals prescribed by N.J.A.C. 17:27-5.2 promulgated by the Treasurer pursuant to P.L. 1975, c. 127, as amended and supplemented from time to time or in accordance with a binding determination of the applicable county employment goals determined by the affirmative action office pursuant to N.J.A.C. 17:27-5.2 promulgated by the Treasurer pursuant to P.L. 1975, c. 127, as amended and supplemented from time to time. (N.J.A.C. 17:27-5.3) (a) (1)

G. CONTRACTOR or subcontractor agrees to inform in writing appropriate recruitment agencies in the area, including employment agencies, placement bureaus, colleges, universities, labor unions, that it does not discriminate on the basis of age, creed, color, national origin, ancestry, marital status or sex, gender identity or expression, and that it will continue the use of any recruitment agency which engages in direct or indirect discriminatory practices. (N.J.A.C. 17:27-5.3) (a) (2)

h. CONTRACTOR or subcontractor agrees to revise any of its testing procedures if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions. (N.J.A.C. 17:27-5.3) (a) (3)

i. CONTRACTOR or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, creed, color, national origin, ancestry, marital status or sex, and conform with the applicable employment goals, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions. (N.J.A.C. 17:27-5.3) (a) (4)

j. CONTRACTOR agrees that in the hiring of persons for the performance of work under this contract or any subcontract hereunder, or for the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under this contract, no contractor, nor any person acting on behalf of such contractor or subcontractor, shall, by reason of race, creed, color, national origin, ancestry, marital status, gender identity, or expression, affectional or sexual orientation or sex, discriminate against any person who is qualified and available to perform the work to which the employment relates. (N.J.S.A. 10:2-1) (a)

k. No contractor, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee engaged in the performance of work under this contract or any subcontract hereunder, or engaged in the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under such contract, on account of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex. (N.J.S.A. 10:2-1) (b)

l. There may be deducted from the amount payable to the contractor by the contracting public agency, under this contract, a penalty of $50.00 for each person for each calendar day during which such person is discriminated against or intimidated in violation of the provisions of the contract. (N.J.S.A. 10:2-1) (c)

m. This contract may be canceled or terminated by the contracting public agency, and all money due or to become due hereunder may be forfeited, for any violation of this section of the contract occurring after notice to the contractor from the contracting public agency of any prior violation of this section of the contract. (N.J.S.A. 10:2-1) (d)

n. The parties of this contract do hereby agree that the provisions of N.J.S.A. 10:2-1 through 10:2-4, dealing with discrimination in employment on public contracts, and the rules and regulations
promulgated pursuant thereunto, are hereby made a part of this contract and are binding upon them.
(N.J.A.C. 13:6-1.1)

o. Contractor and subcontractor agree and guarantee to afford equal opportunity in performance of the contract and, except with respect to affectional or sexual orientation, and gender identity or expression in accordance with an affirmative action program approved by the State Treasurer.
(N.J.S.A. 10:5-32 and 10:5-35) (a)

p. The parties of this contract do hereby agree that the provisions of Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. Section 12101 et seq., which prohibits discrimination on the basis of disability by public entities in all services programs and activities provided or made available by public entities, and the rules and regulations promulgated pursuant thereto, are made a part of this contract. The contractor agrees to conduct all activities in compliance with the provisions of Title VI of the Civil Rights Act of 1964, the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, and the U.S. Department of Labor's regulations at 29 CFR Parts 31, 32 and 34.

Contractor shall cooperate with any state or federal reviews aimed at determining compliance with nondiscrimination laws and regulations authorized by State Law and expressly specified herein.

IN WITNESS WHEREOF, the City of Trenton has caused this agreement to be signed by the Mayor of the City of Trenton and its corporate seal to be hereto affixed, attested by the City Clerk, and Contractor has likewise caused this agreement to be executed the day and year first above written.

CITY OF TRENTON

Attest: W. Reed Gusciora, Esq., Mayor

Date

2-14-19

and

PCM.G, INC., 13755-SUNRISE VALLEY DRIVE, SUITE #750, HERNDON, VIRGINIA 20171

Attest: 

Date

1/31/2019

President
This Service Agreement (the "Agreement") by and between Provider (as defined below) and Customer (as defined below) is made as of December 20, 2018 (the “Effective Date”).

<table>
<thead>
<tr>
<th>Provider Information: (“Provider”)</th>
<th></th>
<th></th>
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</thead>
<tbody>
<tr>
<td>Provider Name: ONSOLVE, LLC</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Entity Type: Limited Liability Company</td>
<td></td>
<td></td>
</tr>
<tr>
<td>State of Incorporation: Delaware</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Provider Address: 780 W. Granada Boulevard Ormond Beach, FL. 32174</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Customer Information: (“Customer”)</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Customer Name: Department of Water and Sewer d/b/a Trenton Water Works</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Entity Type: Municipal utility</td>
<td></td>
<td></td>
</tr>
<tr>
<td>State of Incorporation: New Jersey</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Customer Address: 333 Cortland Street Trenton, NJ. 08618</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Business Contact/Title: Dr. Shing-Fu Hsieh P.E., P.P./Director</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Phone: (609) 989-3055</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Email: <a href="mailto:shsieh@trentonnj.com">shsieh@trentonnj.com</a></td>
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</table>

<table>
<thead>
<tr>
<th>PV Contact:</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>PV Name: PCMG</td>
<td></td>
<td></td>
</tr>
<tr>
<td>PV Address: 14120 Newbrook Drive Suite 100 Chantilly, VA 20151</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Please complete below if the Primary User is different from the Business Contact

**Primary User Name:** Mike Walker/Management Specialist

**Phone:** (609) 989-3033

**Email:** mwalker@trentonnj.com

Unless otherwise specified on a Customer purchase order or below, Provider will send invoices to the Customer Business Contact address above.

<table>
<thead>
<tr>
<th>Customer Invoice Name:</th>
<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td>Attention:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Address:</td>
<td></td>
<td></td>
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<tr>
<td>City, State, Zip:</td>
<td></td>
<td></td>
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<tr>
<td>Phone:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Email:</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Preferred method of receiving invoices: [ ] Email [ ] US Mail

<table>
<thead>
<tr>
<th>DETAILED SERVICE DESCRIPTION</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Initial Term (commencing on Effective Date)</td>
<td>One (1) Year and One hundred ninety-three (193) Days</td>
<td></td>
</tr>
<tr>
<td>Renewal Term(s)</td>
<td>One (1) Year</td>
<td></td>
</tr>
</tbody>
</table>

If the Agreement is renewed, the first Renewal Term shall commence as of July 1, 2020

<table>
<thead>
<tr>
<th>CodeRED On-Demand Notification Service – Standard - System Minutes - Customer Supplied Data Only</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual Notification Subscription Fee:</td>
<td>$22,500.00</td>
<td></td>
</tr>
<tr>
<td>Initial Term Cost for Notification Service:</td>
<td>$34,396.52</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Additional Features</th>
<th></th>
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</thead>
<tbody>
<tr>
<td>One (1) annual Provider-assisted traditional import for Customer data</td>
<td>Included</td>
<td></td>
</tr>
<tr>
<td>Annual Cost for all Additional Features:</td>
<td>Included</td>
<td></td>
</tr>
<tr>
<td>Initial Term Cost for all Additional Features:</td>
<td>Included</td>
<td></td>
</tr>
</tbody>
</table>

| Annual Subtotal: | $22,500.00 |   |
| Initial Term Subtotal: | $34,396.52 |   |

May be paid in installments:
Due upon signing $11,896.52
Due on or before 07/01/2019 $22,900.00

All amounts are stated in United States Dollars unless specifically indicated otherwise.

- GIS (Target Recipients by Geographic Location) in New Jersey: City of Trenton and those areas within the Townships of Hamilton, Ewing, Lawrence, and Hopewell for which Customer provides water services as of the Effective Date (the "Notification Area")
  - Customer shall be required to provide a custom shape file or work with Provider to draw the proper mapping boundaries to define the Notification Area, and, notwithstanding the Effective Date, the provision of the Notification Services hereunder shall not commence until this has been completed.
- Notification Subscription Fee includes the following number of Message Units for Notifications sent via phone:
  - 198,788 Message Units for the first 193 Days. Unused Message Units do not carry over.
  - After this period, Message Units will be re-set to 375,000 Message Units per year. Unused Message Units do not carry over year to year.
- Notification Subscription Fee includes unlimited Notifications sent via email or SMTP text.
- Use that exceeds the included Message Units will be billed at $0.21 per Message Unit in blocks of 37,500 Message Units.
- Provider reserves the right to increase the fees for any Renewal Term in an amount not to exceed five percent (5%) of the prior Initial Term or Renewal Term (as applicable).

ATTACHMENTS: EXHIBIT A – GENERAL SERVICE DESCRIPTION, EXHIBIT B – TERMS AND CONDITIONS, EXHIBIT C – ACCEPTABLE USE POLICY

PV Payments:
All Fees due under the Agreement shall be paid as follows:
- Provider shall issue a proposal to PV listing any Fees due from Customer;
- PV shall issue a quote to Customer, with a copy to Provider, which shall include the amounts on the proposal, as well as any additional amounts due from Customer to PV;
- Within fifteen (15) days from Customer's receipt of the quote, Customer shall issue a purchase order to PV, with a copy to Provider, based upon the quote from PV;
- PV shall issue an invoice to Customer based upon the provided purchase order, and Customer shall remit payment for such invoice to the PV within thirty (30) days from the date of the invoice.
- Provider shall direct PV to remit all Fees due to Provider.

In the event Provider is required to issue any refunds under the Agreement, such refunds shall be sent to PV. PV's failure to pay to Provider any amounts due under the Agreement shall be deemed to be a breach of the Agreement by Customer. In the event Customer elects to use a PV other than the PV listed above, Customer understands and agrees that it shall be required to sign a new Services Order. By signing the Agreement, Customer authenticates its good standing relationship with PV. Customer understands that PV may charge Customer additional amounts which are not otherwise in this Agreement, including without limitation state fees or percentage points due to the PV, and that such amounts shall be governed between a separate agreement by and between Customer and PV. Provider has no control or input on the additional amounts charged by PV. Customer further acknowledges and agrees that PV is not an agent for Provider, and does not have authority to modify the terms and conditions of this Agreement.

ONSOLVE, LLC
Signed: Amanda J Bowman
Printed Name: Amanda J Bowman
Title: Assistant Secretary
Date: January 30, 2019

CUSTOMER: DEPARTMENT OF WATER AND SEWER
D/B/A TRENTON WATER WORKS
Signed: W. Reed Guscire
Printed Name: W. Reed Guscire
Title: Mayor
Date: 2/14/19
EXHIBIT A
GENERAL SERVICE DESCRIPTION – CODERED®

Description of On-Demand Notification Service: The Service is an on-demand alerting and response software-as-a-service (SaaS) for the Notification Area. Use of the Service is by subscription and does not require Customer to purchase, install or maintain any dedicated hardware or software. The Service allows any Initiator to send a single alert to thousands of Contacts simultaneously via a combination of familiar communication devices including the ability to capture real-time responses.

Customer can access and activate the Service using any of the following methods:
- Web: log in 24/7/365 at https://www.onsolve.com/login/ to send alerts or to modify your account.
- Phone: call (866) 939-0911 for live operator assistance 24/7/365.

Description of Service. With subscription, Customer receives:
- Up to the number of Message Units stipulated on Service Order of the Agreement, which can be used as described on the Service Order and in Exhibit B.
- Unlimited messaging via SMTP-based messages, email and to the CodeRED Mobile Alert App. SMTP messaging is carrier-specific, as opposed to true, carrier agnostic, end-to-end two-way wireless transmission.
- **500** Message Units for testing. Message Units used for testing are deducted from Customer’s Message Units. Customer may request reimbursement of testing Message Units with notice to Provider within sixty (60) days from testing. Provider has the final right, with reasonable discretion, to determine whether the Message Units qualify for testing.
- “Message Unit” or “System Minute” means sixty (60) seconds or less of connected call time in the Service. As an example, a call connected for ninety (90) seconds shall be equal to two (2) Message Units.
- Transaction Fee (as defined on Exhibit B) for unlimited Service (for refund purposes only, where applicable) is equal to $0.09. Transaction Fee for Message Unit-based Service is equal to the Original Message Unit price set forth on the Service Order.
- Unlimited Initiators (those with role-based ability to access and activate the Service).
- Unlimited groups within accounts. A group is an alert distribution list.
- Standard upgrades. Standard upgrades include all maintenance releases.
- For optional features purchased (e.g. Conference Bridge, Bulletin Board) up to the number of Message Units stipulated on Service Order of the Agreement.
- Absent separate purchase of Commercially Available Data from Provider, Customer is responsible to provide data for use in the Service, and Provider shall not be responsible for Customer’s inability to use the Service due to Customer’s delay in providing data.
- Customer may purchase professional services (“Professional Services”), such as installations, implementations, software testing, custom modifications, data services or international training sessions from Provider. Professional Services will be described in a separate statement of work.

Contact List Maintenance. Provider provides multiple ways for Customer to enter and maintain the Contact list at no additional charge:
- Community Notification Enrollment (“CNE”) Page (public self-registration): Contacts may sign up on the CNE Page and enrollment information will be transferred to Customer. Customer acknowledges and agrees that Provider may notify such individuals that their data will be transmitted to Customer, and that the transmission of such data to Customer may render it public record and is subject to Customer’s privacy policies. Customer agrees that it will be solely responsible for providing such privacy policies to these individuals and that Provider shall not be responsible for the individual contribution of contact information through the CNE page.
- Contact Group Enrollment Page (internal self-registration): Customer’s internal Contacts may sign up on the Contact Group Enrollment Page and enrollment information will be transferred to Customer.
- Provider agrees that it will, upon termination of the Agreement and Customer’s request, provided all Fees are paid in full, transmit in Provider’s standard format any Community Notification Enrollment data received on or after the Effective Date and all Contact Group Enrollment data, one (1) time, to Customer at no charge.
- Traditional Import: For its initial population of the Contact list, Customer may supply Provider with a spreadsheet (flat-file format) of Contact list data. Customer Support will scrub (examine) the submission as a courtesy for discernible data exceptions, or errors in formatting or content that might interfere with the proper loading of data or use of the Service. Provider generally updates data provided via traditional import within two (2) business days after receipt of such data. Customer may utilize this traditional flat-file import no more than one (1) time per year at no additional cost, unless otherwise set forth on the Service Order.
- On-Demand Entry: Customer may enter or edit Contact data directly within the Service through the User interface.

Customer Support. Provider provides Customer with 24/7/365 live phone support at no extra charge. Customer may dial (866) 939-0911, or the local support number provided to you by Provider. At Provider’s reasonable discretion, non-urgent after hours and off hours (“AHOR”) inquiries may be deferred until conventional business hours to facilitate best handling.

Training. All training is customized and individual to the Customer. Provider training included with subscription at no extra charge:
- One (1) annual Initiator training session;
- Unlimited pre-recorded, web-based remote trainings;
- New features training sessions; and
- Best practices feature training sessions (whenever applicable).
Provider Customer Support works with Customer to schedule training flexibly and to accommodate Customer's schedule. All training is conducted via Web meeting/conference call.

Customer may request additional sessions, or onsite training in lieu of Web-based training. Such training is billable at a base $1,500 day rate (minimum half day fee applies). For any onsite training, Customer is responsible for all of Provider’s reasonable and pre-approved travel/lodging/ incidental expenses.

Support Documentation. Service documentation appears online. In addition to other online help documentation, Customer may download/print the current version of the Provider User Guide at any time.

Description of Additional Features. Customer may purchase (if set forth on the Services Order):

- **Commercially Available Data.** Provider shall include commercially available data (the "Commercial Data") for use by Customer in the Service. Provider will perform Commercial Data updates 3 to 4 times per year. Commercial Data is subject to licensing requirements that do not permit Provider to transfer ownership to Customer.

- **Foreign Message Translation.** All Notifications must be input in English. Once specified, languages may not be changed, absent execution of an updated Schedule 1. ONLY those Users that have opted-in to the Service will receive their selected FMT. Translation is supplied by a third party and is AS-IS.

- **CodeRED Weather Warning® ("CRWW")** - Includes automated Notifications generated from severe weather bulletins issued by the National Weather Service ("NWS"). CRWW Notifications are sent by matching the geographic locations associated with Users against the geographic polygon(s) associated with severe weather bulletins issued by NWS. CRWW Notifications are automatically launched 24 hours a day in response to the issuance of NWS severe weather bulletins. ONLY those Users that have opted-in to CRWW will receive CRWW Notifications. Consent for opt-in is required as set forth in the Agreement. CRWW Notifications are not deducted from Message Units.

- **Integrated Public Alert Warning System ("IPAWS") Submission App ("IPAWS App").** Permits Customer to submit Notifications to IPAWS. IPAWS Notifications may be reviewed by the Federal Emergency Management Agency ("FEMA") to determine appropriate dissemination. Initiators with access to the IPAWS App shall be authorized by FEMA to use IPAWS. In order to use the IPAWS App, Customer agrees to provide Provider, using best practices and secure means, with a copy of its IPAWS digital signature ("Signature") along with its associated keystore, Signature pass codes, application for IPAWS, and any other information reasonably requested by Provider. Customer authorizes Provider to use and keep such information on Provider's servers for the purpose of allowing Customer and Provider to access, use and test IPAWS through the IPAWS App. Customer acknowledges and agrees that: (a) the dissemination of Notifications through IPAWS is not guaranteed nor controlled by Provider, and is the sole responsibility of FEMA; (b) Provider shall not be responsible or liable for the failure of Notifications to be disseminated through IPAWS; and (c) IPAWS may include additional features which are not supported through the IPAWS App (eg, the receipt of messages) and Provider shall not be required to provide such additional features. IPAWS App Notifications are not deducted from Message Units.

- **Bulletin Board.** Bulletin Board allows Customer to record messages by dialing an interactive voice response system. Customer may promote its assigned number, and callers may call to listen to the prerecorded messages. Bulletin Board will capture the caller's spoken responses and/or keypress information and provide a report in the Service. Upon termination or expiration of the Agreement, Provider will retain any numbers provided. Message Units for Bulletin Board will be deducted in sixty (60) second increments. All incoming calls whether made for the purpose of recording or listening to Notifications will result in call time deduction.

- **Conference Calling.** Conference lines are available on a first come, first serve basis. Conference lines are supplied by a third party and are AS-IS. Message Units for Conference Calling will be deducted in sixty (60) second increments. Each line invited into the call will result in call time deduction.

- **GIS Custom Map.** GIS information must be in a standard format recognizable and electronically transferable to the Service. A full GIS map must be provided by Customer for hosting by Provider in order to be used in the Service.
1. DEFINITIONS.

1.1. “Affiliate” means any entity which directly or indirectly controls, is controlled by, or is under common control with, a party to this Agreement, where “control” means the control, through ownership or contract, of more than 50% of the voting power of the shares entitled to vote for the election of the entity’s directors or members of the entity’s governing body, provided that such entity shall be considered an Affiliate only for the time during which such control exists. Customer’s Affiliates do not have authority to make changes to Customer’s account.

1.2. “API” means the application program interface for the Service.

1.3. “API Contacts” means an individual person whose information is stored in an external third party application database (not in the Service database) capable of only receiving and responding to Notifications. API Contacts are not permitted to log in to the Service. All API Contacts are included in Customer’s total number of Contacts as set forth on the Service Order, whether or not they are transmitted to the Service.

1.4. “Applicable Law” means any domestic and/or foreign statute, ordinance, judicial decision, executive order, or regulation having the force and effect of law, including US-EU Privacy Shield (where applicable).

1.5. “Contact” means an individual person capable of only receiving and responding to Notifications and, if permitted, updating its own profile. Contact includes API Contacts.

1.6. “Content” means content, data, text, messages and other material contained in a Notification.

1.7. “Data Processing Addendum” means Provider’s data processing addendum (if applicable) that is executed by the Parties under this Agreement.

1.8. “Documentation” means any official, applicable documentation that Provider provides to Customer (electronic or written) regarding the Service.

1.9. “EU or Swiss Personal Data” means Standard Personal Information of any European Economic Area (EEA) resident as defined under Directive 95/46/EC, and any successor thereto, or of any Swiss resident as the Swiss Federal Data Protection Act of 1992, and any successor thereto.

1.10. “Fees” means any fees due hereunder, including without limitation all Transaction Fees and Subscription Fees.

1.11. “Initiator(s)” means an individual person or application capable of creating and issuing Notifications through the Service. Only Customer and its Representative may act as Initiators.

1.12. “Notification(s)” means messages issued by an Initiator through the Service, whether or not responded to by Contact.

1.13. “Representatives” means Customer’s employees and consultants and Customer’s Affiliates and their employees.

1.14. “Sensitive Data” means any personally identifiable information relating to health/genetic or biometric information; religious beliefs or affiliations; political opinions or political party membership; labor or trade union membership; sexual preferences, practices or marital status; national, racial or ethnic origin; philosophical or moral beliefs; criminal record, investigations or proceedings or administrative proceedings; financial, banking or credit data; date of birth; social security number or other national id number; drivers’ license information; or any other “sensitive data” category specifically identified under any Applicable Laws.

1.15. “Service” means Provider’s software-as-a-service, Internet-accessed notification service to set up and send Notifications, including but not limited the software, hardware, and infrastructure collectively used by the Provider, which may include third-party components.

1.16. “Service Order” means the service order commencing on the first page of the Agreement, which describes the Service provided hereunder.

1.17. “Standard Personal Information” means name, business contact details (work telephone number, cell phone number, e-mail address and office address and location), personal contact details (home telephone number, cell phone number, other telephone, e-mail address and physical address), geolocation, and employee ID or other non-identifying ID number.

1.18. “Subscription Fee” means the fees for access to and use of the Service, including but not limited to any activation fees.

1.19. “Transaction Fee” means the fees for individual transactions of sending and/or receiving Notifications and from devices.

1.20. “User” is the collective term for Initiator(s) and Contact(s).

2. SCOPE OF THE SERVICE.

2.1. Service. Subject to the terms and conditions of this Agreement, including the Exhibits hereto, which are incorporated into this Agreement by reference, Provider shall provide Customer with access to the Service in accordance with Provider’s Documentation. Customer may not, and may not allow or assist any other entity to, sublicense, assign, transfer, distribute, rent or sell use or access to the Service, or remove, alter or obscure any product identification, copyright or other notices. Only Customer’s and its Affiliates’ employees and consultants may act as Initiators and all use of the Service by Customer’s Affiliates and its and their employees and consultants are subject to the restrictions set forth in this Agreement.

2.2. Ownership and Service Components. All rights not expressly granted to Customer herein are expressly reserved by Provider. The Service is and shall remain the exclusive property of Provider and its licensors. Customer represents and warrants it has the right and authority to provide Provider with the Content for use in connection with the Service and Provider agrees that Content shall be owned by Customer. Provider and its third-party providers shall have a royalty-free, worldwide, transferable, sublicenseable, irrevocable, perpetual license to use the Content to perform the Service or to use any suggestions, enhancement requests, recommendations or other feedback provided by Customer, including Users, to incorporate into the Service. Provider may gather Service data for the purpose of optimizing the Service. This information includes, but is not limited to, data regarding memory usage, connection speed and efficiency. Users are subject to Provider’s terms of service and privacy policy available on Provider’s website, www.onesolve.com/privacy-statement. Customer shall not, and shall not allow or assist any other entity to, create derivative works, modify, decompile, disassemble, or otherwise reverse engineer or attempt to discover any source code or underlying ideas of any component of the Service, except to the extent (but only to such extent) that Applicable Law prohibits such restrictions.
2.3. Contact Limit. During this Agreement and for a period of one (1) year thereafter, Provider shall have the right (at its own expense, upon reasonable notice, and no more frequently than once per calendar year unless prior breach has been uncovered) to inspect the number of Customer’s Contacts. In the event the review determines that Customer has exceeded its number of Contacts, Customer shall pay Provider for the additional Contacts and the costs of such review within ten (10) days.

3. PAYMENT AND TAXES

3.1. Payment. Customer shall pay the Fees as set forth on the Service Order to this Agreement without setoff or deductions, net thirty (30) days from the invoice date. Payment shall be in advance, excluding any Fees billed in arrears. Unpaid balances will be subject to interest at one and a half percent (1.5%) per month or the highest rate permitted by Applicable Law, whichever is greater, commencing on the date that payment was due.

3.2. Taxes. Unless otherwise itemized, all payments hereunder are exclusive of all taxes, and Customer agrees to pay any taxes (including any VAT or sales tax), whether foreign, federal, state, local or municipal that may be imposed upon or with respect to the Service exclusive of taxes on Provider’s net income. Any such taxes may not be deducted from the Fees owed to Provider hereunder.

3.3. Message Surcharge. Under no circumstances shall Provider be liable to Customer, to any Contact or to any other person for any charges or fees that arise from Customer’s or an individual person’s sending or receipt of a Notification using the Service, including, without limitation, as a result of increases in pass-through charges by telecommunications providers.

4. TERM AND TERMINATION

4.1. Term. Unless earlier terminated in accordance with the terms of this Agreement, the Initial Term of this Agreement shall begin on the Effective Date and continue for the period set forth on the Service Order of this Agreement. Upon completion of the Initial Term, this Agreement shall automatically renew for successive renewal terms (each a “Renewal Term”) as set forth on the Service Order, unless either party provides at least thirty (30) days’ written notice that the Agreement will expire at the end of the Initial Term or then-current Renewal Term. Renewal Terms shall be on the same terms as herein.

4.2. Termination. If either party defaults in any of its material obligations under this Agreement and such default has not been remedied or cured within thirty (30) days after written notice of such default, or if either party makes an assignment for the benefit of creditors, files a voluntary petition in bankruptcy, is adjudicated bankrupt or insolvent, is subject to appointment of a receiver or is a party in any proceeding in any jurisdiction to which it is subject that has an effect similar or equivalent to any of the events mentioned, the non-defaulting party may immediately terminate this Agreement in addition to its other rights and remedies.

4.3. Suspension. Provider may suspend the Service: (a) effective immediately upon notice if Customer breaches any provision under Section 5. (Customer Obligations); or (b) if payment for any portion of the Fees is not received by Provider within fifteen (15) days after receipt of written notice that payment is past due. Such suspension shall not modify or lengthen the term of this Agreement, nor shall any rights or obligations hereunder be waived during the suspension period.

4.4. Effects of Termination. Upon termination or expiration of this Agreement: (i) Provider shall upon written request of Customer, erase Customer data from the production servers controlled by Provider, except that: (a) any data stored on Provider’s backup servers shall be deleted as soon as technically feasible, and in any event within ninety (90) days from deletion from production, and Provider agrees that it (1) shall discontinue processing such data; and (2) shall maintain the confidentiality of such data in accordance with this Agreement; and (b) Provider may retain report data (eg. date/time of Notification and number of Notifications sent) necessary to support its billing and accounting records; (ii) Customer will immediately pay to Provider all amounts due and payable prior to the date of termination; (iii) Customer shall immediately cease all use of the Service and return or destroy all copies, extracts, derivatives and reflections of the Service, and upon Provider’s request, provide written notice that Customer has fully complied with this clause, and (iv) remedies for breach, rights to accrued payments and Sections 1 (Definitions), 2.2 (Ownership and Service Components), 2.3 (Contact Limit), 3. (Payment and Taxes), 4.4 (Effects of Termination), 5 (Customer Obligations), 6 (Confidentiality and Security), 8 (Indemnification and Responsibility), 9 (Limitation of Liability), and 10 (General) will survive. Upon termination of this Agreement for Customer’s breach: (a) Customer will immediately pay to Provider all unpaid Fees that would become due under the then-current term if such termination did not occur; and (b) Provider shall retain any Fees paid to date. Upon termination of this Agreement for Provider’s breach, Provider will refund an amount equal to the prorated amount of Fees paid for the remainder of the then-current term, less any expenses for transactions completed prior to the date of termination, which shall be calculated based upon the Transaction Fees.

5. CUSTOMER OBLIGATIONS

5.1. Customer obligations. This Section includes pass-through terms from certain telephony, facsimile, GIS and/or Short Message Service (SMS) vendors and as such, Provider may modify these terms upon thirty (30) days written notice to Customer if reasonably necessitated due to changes by the third party providers. Failure to comply with these terms could result in the termination of certain critical services from Provider’s vendors which would impact all of Provider’s customers.

5.2. Acceptable Use Policy. Customer represents and warrants that it shall only use the Service in accordance with all Applicable Laws and shall comply with the Acceptable Use Policy attached hereto.

5.3. Data Security. Customer acknowledges and agrees that Provider does not require or “pull” any specific data from Customer; that Customer controls which data and Content is input through the Service and which data is sent and to whom such data is sent; and that Provider only specifically tracks the privacy regulations of the United States, Canada, and the European Economic Area, Switzerland and Japan with respect to the Standard Personal Information and shall have no obligations with respect to privacy regulations in other countries or for other types of data. Accordingly: (i) Customer shall not under any circumstances, transmit or store any Sensitive Data to or through the Service; and (ii) Customer shall not transmit or store any EU or Swiss Personal Data to or through the Service unless: (a) Customer is certified under the US-EU Privacy Shield Framework and complies with the Privacy Shield’s principles in connection with the protection and handling of its Standard Personal Information or Customer hereby represents to Provider that its protection and handling of Standard Personal
Information is in compliance with the principles outlined in the US-EU Privacy Shield Framework, consisting of: Notice; Choice, Accountability for Onward Transfer; Security; Data Integrity and Purpose Limitation; Access, Recourse, Enforcement and Liability; or (b) Customer has executed the Data Processing Addendum, and in such case Customer shall fully comply with the Data Processing Addendum. Provider is certified under the US-EU Privacy Shield Framework and complies with the EU-US Privacy Shield principles in its handling and processing of Standard Personal Information.

6. CONFIDENTIALITY AND SECURITY.

6.1 Confidential Information. During the course of this Agreement, each party may have access to confidential, proprietary or trade secret information disclosed by the other party, including, without limitation, ideas, trade secrets, procedures, methods, systems, and concepts, whether disclosed orally or in writing or stored within the Service, or by any other media (“Confidential Information”). Any information related to the Service, including but not limited to Documentation, security information, and API information, shall be deemed to be Confidential Information of Provider, and any Content shall be deemed to be Confidential Information of Customer. Each party (the “Receiving Party”) acknowledges that the Confidential Information of the other party (the “Disclosing Party”) contains valuable trade secrets and other proprietary information of the Disclosing Party and that any such Confidential Information will remain the sole and exclusive property of the Disclosing Party. Each party will use Confidential Information only for the purpose of performing under this Agreement, restrict disclosure of Confidential Information solely to its employees and contractors with a need to know, not disclose such Confidential Information to any other entities unless required to perform the terms of this Agreement, and otherwise protect the Confidential Information with no less restrictive measures than it uses to protect its own confidential and proprietary information. Information will not be deemed “Confidential Information” if such information: (a) is generally available to the public (other than through breach of this Agreement); (b) is received from a third party lawfully empowered to disclose such information without being subject to an obligation of confidentiality; or (c) was rightfully in the Receiving Party’s possession free of any obligation of confidence at the time it was communicated to the Receiving Party. Notwithstanding the above, the Receiving Party will not be in violation of the confidentiality restrictions herein with regard to a disclosure that was in response to a valid order by a court or other governmental body, provided that the Receiving Party provides the Disclosing Party with prompt written notice prior to such disclosure where reasonably possible in order to permit the Disclosing Party to seek confidential treatment of such information. A Receiving Party shall promptly notify the Disclosing Party if the Receiving Party becomes aware of any misuse or unauthorized disclosure of Confidential Information.

6.2 Security. Provider has put in place commercially reasonable information security procedures designed to protect and prevent unauthorized access to Content and Contact data. Provider will only process Content in accordance with the terms and conditions of this Agreement and Customer’s instructions. Provider’s security procedures include but are not limited to physical security, network security, hosted/data security and web security. Provider may modify its security procedures from time to time in accordance with changes to industry standards, but only in a manner that retains or increases the stringency of Provider’s security obligations.

7. REPRESENTATIONS AND DISCLAIMER

7.1 Mutual Representations. Each party represents and warrants that: (i) it has the full corporate right, power and authority to enter into this Agreement; to grant the rights granted hereunder and to fully perform its obligations under this Agreement; (ii) the execution of this Agreement by such party, and the performance by such party of its obligations hereunder, does not and will not violate or conflict with any agreement to which such party is a party or by which it is otherwise bound; and (iii) when executed and delivered by such party, this Agreement will constitute the legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms.

7.2 Additional Provider Representations. Provider represents and warrants that: (i) the Service will conform in all material respects to Provider’s Documentation; and (ii) all customer support, training and other services to be performed hereunder shall be performed in a professional and workmanlike manner consistent with industry standards.

7.3 Disclaimer. Provider makes no representation, warranty or guaranty, that the Service will work with, or be supported by, all protocols, networks, operating systems or environments, will be error-free, or that all Notifications will be delivered. Customer acknowledges and agrees that the Service is provided on a best efforts basis and is not designed, intended, authorized or warranted to be suitable for hosting life support or EMT-based applications or other critical applications where the failure or potential failure of the Service can cause injury, harm, death, or other grave problems, including, without limitation, delays in getting medical care or other emergency services, and that any use of the Service to support such applications is fully at Customer’s risk and Customer acknowledges that Provider will not have any liability for issues related to such use. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, THE SERVICE IS PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS WITHOUT WARRANTY OF ANY KIND. PROVIDER EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY OR OTHERWISE, REGARDING THE SERVICE, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

8. INDEMNIFICATION AND RESPONSIBILITY

8.1 Provider General Indemnification. Provider will defend, indemnify, and hold harmless Customer and its employees (“Customer Indemnities”) from and against any and all third party actions, losses, awards, liabilities, claims, expenses, damages, settlements, fees, penalties and costs of every kind and description, including reasonable legal fees and government regulatory fines (collectively, “Losses”), arising from: (i) any gross negligence or willful misconduct by Provider; or (ii) any breach of Section 6 by Provider.

8.2 Provider IP Indemnification. Provider will defend, indemnify, and hold harmless the Customer Indemnities from and against all Losses arising out of a claim that the Service directly infringes a copyright or patent issued as of the Effective Date, or other intellectual property right of a third party. The foregoing obligation of indemnification does not apply where: (a) Customer’s use of the Service is not in compliance with the terms of this Agreement; (b) Customer has modified the Service or any part thereof without Provider’s express, written authorization; (c) Customer has combined the Service with software, hardware, system, data, or other materials not supplied or authorized by Provider where the infringement or misappropriation relates to such combination, unless Provider expressly authorized such combination or the combination was provided for in the Documentation; (d) the Loss is as a result of Content or Contact data; or (e) Customer continues
use of the Service after being provided modifications that would have avoided the alleged infringement. In the event Provider believes that the Service is, or is likely to be, the subject of an infringement claim, Provider may, at its option, (1) procure for Customer the right to continue using the Service under this Agreement, (2) replace or modify the Service so that it becomes non-infringing but substantially equivalent in functionality and performance, or (3) if neither clause (1) or (2) are feasible in spite of Provider's reasonable efforts, terminate this Agreement and refund a prorated portion of the Subscription Fees based on the days left in the Initial Term or then-current Renewal Term, less any expenses for usage accrued prior to the date of termination. The foregoing obligations are Provider's only obligations and liability in connection with infringement by the Service.

8.3. Customer Indemnification. Customer agrees to indemnify, defend and hold harmless Provider and its Affiliates, licensors and suppliers from and against all Losses arising out of: (i) Customer's breach of Sections 5 and 6; (ii) use of Content by Provider in connection with performance of the Service; (iii) third party claims that Customer's Content infringes on any intellectual property rights; or (iv) Customer's gross negligence or willful misconduct.

8.4. Indemnification Procedures. Each party seeking indemnification hereunder shall provide the other party with: (i) prompt written notice of any claim for which indemnification is sought; (ii) complete control of the defense and settlement of such claim; and (iii) reasonable assistance and cooperation in such defense at the indemnifying party's expense. In any proceeding the indemnified party shall have the right to retain, at its expense, its own counsel. Notwithstanding the foregoing, the indemnifying party may not enter into a settlement of a claim that involves a remedy other than the payment of money by the indemnified party (which amounts must be subject to indemnification by the indemnifying party) without the indemnified party's written consent.

9. LIMITATION OF LIABILITY

9.1. Limitation on Liability. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT WITH RESPECT TO OBLIGATIONS UNDER SECTION 8 (INDEMNIFICATION AND RESPONSIBILITY), OR FOR ANY BREACH OF SECTION 5 (CUSTOMER OBLIGATIONS) OR SECTION 6 (CONFIDENTIALITY AND SECURITY): (a) IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY OTHER PERSON FOR ANY LOSS OF DATA, REVENUES, PROFITS OR OTHER ECONOMIC ADVANTAGE, OR ANY INCIDENTAL, INDIRECT, CONSEQUENTIAL, SPECIAL, PUNITIVE, EXEMPLARY OR OTHER SIMILAR DAMAGES OF ANY KIND OR NATURE, (HOWEVER ARISING, INCLUDING NEGLIGENCE) ARISING OUT OF, OR IN ANY WAY CONNECTED WITH, THE SERVICE, EVEN IF THE PARTY FROM WHICH DAMAGES ARE BEING SOUGHT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; AND (b) IN NO EVENT SHALL THE COLLECTIVE LIABILITY OF EITHER PARTY, ITS AFFILIATES AND ITS AND THEIR DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS EXCEED THE FEES ACTUALLY PAID UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTHS OF SERVICE PRIOR TO THE DATE ON WHICH SUCH CLAIM AROSE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT WITH RESPECT TO GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, IN NO EVENT SHALL PROVIDER'S TOTAL CUMULATIVE LIABILITY FOR ANY BREACH OF SECTION 6 (CONFIDENTIALITY AND SECURITY) EXCEED THREE TIMES (3X) THE FEES ACTUALLY PAID BY CUSTOMER UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE FIRST NOTICE IS PROVIDED BY CUSTOMER REFERENCING THE RELEVANT CLAIM HEREUNDER. Customer understands and agrees that the limitation of liability in this Agreement for Provider is reasonable and that Provider would not enter into this Agreement without such limitations.

10. GENERAL

10.1. Force Majeure. Neither party shall be responsible for delays or failures of performance resulting from acts beyond the reasonable control of such party, including, but not limited to acts of God, acts of war, riots, acts of terror and other acts or omissions of third parties such as interruptions, delays, or malfunctions of service by third-party service providers.

10.2. Dispute Resolution. Each party to this Agreement agrees that any dispute arising under this Agreement shall be submitted to binding arbitration according to the rules and regulations of, and administered by, the American Arbitration Association, and that any award granted pursuant to such arbitration may be rendered to final judgment. Notwithstanding anything herein, either party may seek injunctive relief and the enforcement of judgments in any court of competent jurisdiction, no matter where located. If either party engages attorneys to enforce any rights out of or relating to this Agreement, the prevailing party in any action to enforce or interpret this Agreement shall be entitled to recover any and all costs and expenses of any nature including, without limitation, attorneys' and experts' fees, whether in arbitration, a court of first jurisdiction and any courts of appeal.

10.3. Publicity. For the duration of this Agreement, Provider may use Customer's name and logo on the Provider web site and in Provider's collateral marketing materials identifying Customer as a purchaser of the Service. If Provider's expected use of Customer's name and/or logo includes more than basic identification of Customer, Provider shall provide Customer with a copy of such content for approval, such approval not to be unreasonably withheld.

10.4. Survival of Terms. The rights and obligations of either party that by their nature would continue beyond the termination or expiration of this Agreement shall survive termination or expiration of this Agreement. For example, the provisions of this Agreement regarding indemnification and/or limitation of liability shall survive termination of this Agreement as to any cause of action arising under the Agreement.

10.5. Independent Contractor. Provider's relationship with Customer shall be that of an independent contractor, and nothing in this Agreement shall be construed to create a partnership, joint venture, principal-agent, or employer-employee relationship. Neither party will have or represent that it has the right, power or authority to bind, contract or commit the other party or to create any obligation on behalf of the other party.

10.6. Severability. If any term or provision of this Agreement or the application thereof is to any extent held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each term and provision hereof shall be valid and enforced to the fullest extent of the law.
10.7. Entire Agreement. This Agreement constitutes the entire agreement and understanding between Customer and Provider and supersedes all prior and contemporaneous verbal and written negotiations, agreements and understandings, if any, between the parties. This Agreement cannot be modified except by a writing signed by an authorized representative of each party. The terms of this Agreement shall take precedence over any conflicting terms in purchase or procurement documentation, such as a purchase order, acknowledgement form, or other similar documentation. The failure of either party to enforce any provision of this Agreement, unless waived in writing by such party, will not constitute a waiver of that party’s right to enforce that provision or any other provision of this Agreement.

10.8. Notice. All notices and consents required or permitted under this Agreement must be in writing; must be personally delivered or sent by registered or certified mail (postage prepaid), by overnight courier or other nationally recognized carrier, or by facsimile (receipt confirmed), in each case to Provider’s address on the Service Order, Attn: Legal, and to Customer’s Business Contact on the Service Order, and will be effective upon receipt. Each party may change its address for receipt of notices by giving notice of the new address to the other party.

10.9. Counterparts. This Agreement may be executed in facsimile and in counterparts.

10.10. Export Compliance. The Service and other Provider technology, and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. Customer represents that it is not named on any U.S. government denied-party list. Customer will not permit any User to access or use the Service in a U.S.-embargoed country (currently Cuba, Iran, North Korea, Sudan or Syria) or in violation of any U.S. export law or regulation, and will not permit any U.S.-sanctioned persons or entities to act as Users.

10.11. U.S. Government End Users. As defined in FAR section 2.101, DFAR section 252.227-7014(a)(1) and DFAR section 252.227-7014(a)(5) or otherwise, all software and accompanying documentation provided in connection with this Agreement are “commercial items,” “commercial computer software,” and/or “commercial computer software documentation.” Consistent with DFAR section 227.7202 and FAR section 12.212, any use, modification, reproduction, release, performance, display, disclosure or distribution thereof by or for the U.S. Government shall be governed solely by the terms of this Agreement. Customer will ensure that each copy used or possessed by or for the government is labeled to reflect the foregoing.

10.12. Assignments. Neither party may assign this Agreement without the prior written consent of the other party, except to an Affiliate or an entity that acquires all or substantially all of its business or assets, whether through merger, reorganization or otherwise. Any assignment in violation of the foregoing shall be void and of no effect.

PROVIDER: ONSOLVE, LLC
Signed: [Signature]
Printed Name: Amanda J Bowman
Title: Assistant Secretary
Date: January 30, 2019

CUSTOMER: DEPARTMENT OF WATER AND SEWER
D/B/A TRENTON WATER WORKS
Signed: [Signature]
Printed Name: W. Reed Gusciora
Title: Mayor
Date: 2-14-19

Executed for Exhibits B and C