

Commissioners Court Meeting

Meeting Date: 06/24/2019

Master Subscription Agreement

Submitted for: Ramon Villafranca

Submitted By: Ramon Villafranca

Department: Civil Legal Division

Subject:

Discussion and possible action to enter into a twelve (12) month (July 1, 2019 through June 30, 2020) Master Subscription Agreement between AutoMon, LLC and Webb County for the 406th District Court Adult Drug Court Program for subscription licenses for court participants at a cost of Six Thousand Dollars (\$6,000.00), and authorizing the County Judge to sign and execute all relevant documents. **[Requested by Judge Oscar J. Hale, 406th District Court; Account No. 2872-2040-001-432001]**

Background:

N/A

Previous Court Action:

Fiscal Impact

Budget Account Number: See Below

Funding Source: N/A

Balance: N/A

Financial Impact:

Account No. 2872-2040-001-432001

Attachments

Order Form
Agreement



CE CONNECT ORDER FORM

Order Form No.:	WCTXVTP10242018
Customer Name:	Webb County TX Regional Veterans Treatment Program
Project Name:	AIMS Subscription, Implementation and Training
Customer Contact:	Jerry Alva, galva@webbcountytx.gov , 956.523.4872
AutoMon Contact:	Denton Bosco, dbosco@automon.com , 480.368.8555 x130
Order Form Date:	5/8/2019
Order Form Expiration Date:	7/1/2019

Capitalized terms used herein but not defined in this Order Form have the meanings given to them in the Master Subscription Agreement for Ce Connect Products.

Purchased Services – Annual Subscription Fees

Product(s)	Annual Per/Program Charge	Licensed (Yes/No)	Description	Line Amount
AIMS	\$5,000.00	Yes	Annual Product Subscription License(s). Subscription dates (12-month duration), TBD. Limited for exclusive use by <i>Webb County TX Regional Veterans Treatment Program</i>	\$5,000.00
<i>Purchased Services, Subtotal</i>				<i>\$5,000.00</i>

AUTOMATIC RENEWAL:

- Purchased Services WILL automatically renew for successive one (1) year periods.
- Purchased Services WILL NOT automatically renew and shall expire at the end of the current term.

Additional Costs – Training and Implementation Services

Item	Description	Line Amount
AIMS Configuration and End-User Training	Tenant set-up and system configuration; Up to 3 hours end-user training	\$1,000.00
<i>Additional Costs Subtotal</i>		<i>\$1,000.00</i>
Total Purchased Services & Additional Costs		\$6,000.00



PAYMENT TERMS:

Invoice shall be issued upon Go-live. All invoices are due Net 30 Days.

GENERAL NOTES:

- The pricing, discounts and inclusions shown in this Order Form are subject to revocation if a signed Order Form is not received by AutoMon before the close of business on the Order Expiration Date set forth above.
- Purchased Services shall automatically renew at the end of the current term.
- Annual Subscription shall include software license, Hosting (Microsoft Azure Government), updates, upgrades, Maintenance and Support as defined in the Master Subscription Agreement.
- Additional work or services requested, such as customizations, localization tasks or interoperability with third-party systems, shall be billed as Time & Materials (based on current-year hourly rate) and will require a separate Work Order. The Annual Subscription Fee(s) may be subject to a 20% annual services surcharge and will be reflected in the Work Order provided to the Customer.
- Proposed Ce Connect Product(s) and Service(s) is for the exclusive use by **Webb County TX Regional Veterans Treatment Program.**
- Annual Subscription rates are subject to annual price escalation equal to 5% for any renewal or extended term.
- AutoMon Software Maintenance Services, Customer Handbook, Version 6.0 Effective Date: January 11, 2017 is incorporated by reference to this Order Form.

By signing below, I represent that I am validly authorized to enter into this Order Form and related Master Subscription Agreement and accept their terms and conditions.

406th Judicial District of Texas

1110 Victoria St., Suite 402
Laredo, TX 78040
Phone: (956) 523-4954

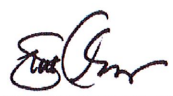
AutoMon, LLC

6621 N. Scottsdale Road
Scottsdale, AZ 85250
Phone: (480) 368-8555

By: 
 Name (Print) Tano E. Tijerina

Title: Webb County Judge

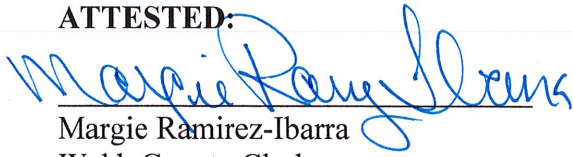
Date: July 8, 2019

By: 
 Name (Print) Scot Asher

Title: Vice President, Sales & Marketing

Date: 5/8/2019


ATTESTED:



Margie Ramirez-Ibarra
Webb County Clerk



APPROVED AS TO FORM:



Ramon A. Villafranca, Jr.
Assistant General Counsel
Webb County Civil Legal Division*

*The General Counsel, Civil Legal Division's office, may only advise or approve contracts or legal documents on behalf of its clients. It may not advise or approve a contract or legal document on behalf of other parties. Our review of this document was conducted solely from the legal perspective of our client. Our approval of this document was offered solely for the benefit of our client. Other parties should not rely on this approval, and should seek review and approval of their own respective attorney(s).

Passed and approved by the Webb County Commissioners Court
On June 24, 2019; item no. 9d.

A twelve (12) month (July 1, 2019 through June 30, 2020) Master Subscription Agreement between AutoMon, LLC and Webb County for the 406th District Court Adult Drug Court Program for subscription licenses for court participants.

AutoMon, LLC
Master Subscription Agreement (Ce Connect Products)

EFFECTIVE DATE: This Agreement was last updated on October 11, 2018. It is effective between You and Us as of the date You accept this Agreement by signing the Order Form.

THIS MASTER SUBSCRIPTION AGREEMENT ("AGREEMENT") GOVERNS YOUR ACQUISITION AND USE OF OUR SERVICES.

BY EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT, YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS "YOU" OR "YOUR" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES.

You may not access the Services if You are Our direct competitor of Ours, except with Our prior written consent. In addition, You may not access the Services for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes.

1. DEFINITIONS

"**Affiliate**" means any entity which directly or indirectly controls, is controlled by, or is under common control with the subject entity. "Control," for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

"**AutoMon Technology**" means all of Our proprietary technology (including software, hardware, products, processes, algorithms, user interfaces, APIs, know-how, techniques, designs and other tangible or intangible technical material or information) made available to You by Us in providing the Services;

"**Content**" means the audio and visual information, documents, software, products and services contained or made available to You in the course of using the Services; "Content" exclude Non-AutoMon Applications and Content.

"**Malicious Code**" means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs.

"**Non-AutoMon Applications and Content**" means online and offline software products, services and content that are provided by entities or individuals other than Us and are clearly identified as such, and that interoperate with the Services with Our written consent.

"**Order Form**" means the documents for placing orders hereunder, which are entered into between You and Us from time to time. Order Form(s) shall be deemed incorporated herein by reference.

"**Purchased Services**" means Services that You purchase under an Order Form, as distinguished from those provided pursuant to a free trial.

"**Services**" means the products and services offered by Us and made available to You via the customer login link at <https://www.ce-connect.com> and/or other web pages designated by Us, as described in the User Guide. "Services" exclude Non-AutoMon Applications and Content.

"**User Guide**" means the online user guide for the Services, accessible via login at www.ce-connect.com, as updated from time to time.

"**Users**" means individuals who are authorized by You to use the Services, for whom subscriptions to a Services have been ordered, and who have been supplied user identifications and passwords by You (or by Us at Your request). Users include Your employees, consultants, contractors and agents, provided however, Our competitors or vendors of complimentary products are not Users and may not access or view the Services without our express written consent.

"**We**," "**Us**" or "**Our**" means AutoMon, LLC and its Affiliates.

"**You**" or "**Your**" means the company or other legal entity for which you are accepting this Agreement, and Affiliates of that company or entity.

"**Your Data**" means all electronic data or information submitted by You to the Purchased Services.

2. SERVICES

2.1. Provision of Services. We shall make the Services available to You pursuant to this Agreement and the relevant Order Forms during a subscription term. You agree that Your purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by Us regarding future functionality or features.

2.2. User Subscriptions. Unless otherwise specified in the applicable Order Form, (i) Services are purchased as User subscriptions and may be accessed by no more than the specified number of Users as described in the Order Form(s), (ii) additional User subscriptions may be added during the applicable subscription term at the same pricing as that for the pre-existing subscriptions thereunder, prorated for the remainder of the subscription term in effect at the time the additional User subscriptions are added, and (iii) the added User subscriptions shall terminate on the same date as the pre-existing subscriptions. User subscriptions are for designated Users only and cannot be shared or used by more than one User but may be reassigned to new Users replacing former Users who no longer require ongoing use of the Services.

3. USE OF THE SERVICES

3.1. License Grant. We hereby grants You a non-exclusive, non-transferable, worldwide right to use the Services as described on the relevant Order Form(s), solely for your own internal business purposes, subject to the terms and conditions of this Agreement. All rights not expressly granted to You are reserved by Us (and Our licensors, where applicable.)

3.2. Restrictions. You shall not and shall not permit third parties, without our express written consent, (i) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party the Services or the Content in any way for any reason; (ii) modify or make derivative works based upon the Services, AutoMon Technology or the Content; (iii) create "links" or integrations to the Services, (iv) "frame" or "mirror" any Services or Content or on any other server or wireless or Internet-based device; or (v) reverse engineer or access the Services in order to (a) build a complimentary or competitive product or service, (b) build a product using similar ideas, features, functions or graphics of the Services, or (c) copy any ideas, features, functions or graphics of the Services. User licenses cannot be shared or used by more than one individual User but may be reassigned from time to time to new Users who are replacing former Users who have terminated employment or otherwise changed job status or function and no longer use the Services.

3.3. Responsibilities of the Parties.

3.3.1. Our Responsibilities. We shall: (i) provide Our basic support for the Services to You, (ii) use commercially reasonable efforts to make the Services available 24 hours a day, 7 days a week, except for (a) planned downtime of which We shall give You notice, or (b) any unavailability of the Services caused by circumstances beyond Our reasonable control, and (iii) provide the Services only in accordance with applicable laws and government regulations. The Services may be subject to limitations, delays, and other problems inherent in the use of the internet and electronic communications. We are not responsible for any delays, delivery failures, or other damages resulting from such problems.

3.3.2. Our Protection of Your Data. We shall maintain, or cause to be maintained, commercially reasonable and appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality, and integrity of Your Data stored with Our hosting vendor. We shall not (a) modify Your Data, (b) disclose, provide, rent, or sell Your Data except as compelled by law in accordance with Section 7.3 (Compelled Disclosure) or as expressly permitted in writing by You, or (c) access Your Data except to provide the Services and prevent or address service or technical problems, or at Your request in connection with customer support matters.

3.3.3. Data Storage. We will determine the locations of the data centers in which Your Data will be stored and accessible by You and Your Users. For federal, state, and local governmental entities, We will ensure that all Your Data is stored within the United States including any backup data, replication sites, and disaster recovery sites. We will not transfer Your Data to any third parties without Your express written directive to transfer such Data, and Your complete waiver and release from all liability which may result from or be connected with the transfer or use of Your Data by such third party.

3.3.4. Your Responsibilities. You shall (i) be responsible for Users' compliance with this Agreement, (ii) be responsible for the accuracy, quality and legality of Your Data and of the means by which You acquired Your Data, (iii) if applicable to You, maintain processes, controls and procedures to ensure You and Your Users compliance with the current version of the CJIS Security Policy, HIPPA regulations and similar statutory and regulatory requirements, (iv) prevent unauthorized access to or use of the Services, and notify Us promptly of any such unauthorized access or use of any password or account or any other breach of security, (v) use the Services only in accordance with the User Guide and applicable laws and government regulations, (vi) provide all hardware, systems software and third party software for Services that run on Your servers, and (vii) provide desktop computers and related software to operate the Services. You shall not (a) use the Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (d) use the Services to store or transmit Malicious Code, (e) interfere with or disrupt the integrity or performance of the Services or third-party data contained therein, or (f) attempt to gain unauthorized access to the Services or their related systems or networks. You are responsible for all activities undertaken by You, or Your Users which result in unauthorized access to Your data. You are solely responsible for any and all costs, expenses, and third party claims or losses related to a data breach, data loss, release of Your Data, damage to Your Data or similar outcome that results from (1) misuse or unauthorized disclosure of Your Data by You or Your Users, (2) any unauthorized access to the Services via Your Users' logons or passwords caused by the negligence of You or Your Users, (3) any loss of or misuse of an electronic device belonging to You or Your Users (e.g. phone, laptop, tablet, computer), (4) an unauthorized disclosure of Your Data resulting from Your or Your Users loss or negligent handling of Your Data in electronic or paper form, or (5) ransomware, phishing scam or similar malicious activity emanating from You or any of Your Users, or (6) Your or Your Users' failure to comply with the

provisions of any privacy statutes or regulations that apply to You or Your Data (e.g. CJIS, HIPPA and similar), For clarity, this provision is not an obligation for You to indemnify Us, but rather, is an allocation of risk and responsibility for any resulting costs and expenses associated with the listed actions.

- 3.4. **Storage Limitations.** If You are storing photographic, video or audio materials in the Services, We reserve the right to limit the type and amount of such digital information to 10 MB per User unless You negotiate an increase to Your Subscription Fee with Us. There is no limit on the amount of data or documents you may store in the Services.

4. NON-AUTOMON APPLICATIONS AND CONTENT

- 4.1. **Acquisition of Non-AutoMon Applications and Content.** We or third parties may from time to time make available to You third-party products or services, including but not limited to Non-AutoMon Applications and Content, training and other consulting services. Any acquisition by You of such Non-AutoMon Applications or Content, and any exchange of data between You and any Non-AutoMon provider, is solely between You and the applicable Non-AutoMon provider of such applications or content. We do not warrant or support Non-AutoMon Applications or Content, whether or not they are designated by Us as "certified" or otherwise, except as explicitly specified in an Order Form. Subject to Section 4.2 (Integration with Non-AutoMon Applications and Content), no purchase of Non-AutoMon Applications or Content is required to use the Services except a supported computing device, operating system, compliant web browser and Internet connection.

- 4.2. **Integration with Non-AutoMon Applications and Content.** The Services may contain features designed to interoperate with Non-AutoMon Applications and Content (e.g., JSORRAT-II, Virginia Pretrial Risk or Static 99 and similar assessment instruments). To use such features, You may be required to obtain access to such Non-AutoMon Applications or Content from their providers. If the provider of any such Non-AutoMon Applications or Content ceases to make the Non-AutoMon Applications or Content available for interoperation with the corresponding Service on reasonable terms, We may cease providing such Service features without entitling You to any refund, credit, or other compensation.

5. FEES AND PAYMENT FOR SERVICES

- 5.1. **Fees.** You shall pay all fees specified in all Order Forms hereunder. Except as otherwise specified herein or in an Order Form, (i) fees are based on services purchased and not actual usage, (ii) payment obligations are non-cancelable and fees paid are non-refundable, and (iii) the number of User subscriptions purchased cannot be decreased during the relevant subscription term stated on the Order Form. User subscription fees are based on annual periods that begin on the subscription start date and end twelve calendar months later. The number of subscriptions purchased may be increased during the relevant annual period and fees payable will be prorated based on the remaining time before the expiration of the then current term.
- 5.2. **Invoicing and Payment.** You will provide Us with a valid purchase order or alternative document You need and which is reasonably acceptable to Us. We will invoice You in advance and otherwise in accordance with the relevant Order Form. Unless otherwise stated in the Order Form, invoiced charges are due net 30 days from the invoice date. You are responsible for providing complete and accurate billing and contact information to Us and notifying Us of any changes to such information.

- 5.3. **Overdue Charges.** If any charges are not received from You by the due date, then at Our discretion, such charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid. Notwithstanding the previous sentence, if You are a government entity and are prohibited or limited by law from paying interest or penalties for late payment, this section shall not apply to You.
- 5.4. **Suspension of Service and Acceleration.** If any amount owing by You under this or any other agreement for Our services is 45 or more days overdue, We may, without limiting Our other rights and remedies, accelerate Your unpaid fee obligations under such agreements so that all such obligations become immediately due and payable, and suspend Our services to You until such amounts are paid in full. We will give You at least seven (7) days' prior notice that Your account is overdue, in accordance with Section 12.2 (Manner of Giving Notice), before suspending services to You.
- 5.5. **Payment Disputes.** We shall not exercise Our rights under Section 5.3 (Overdue Charges) or 5.4 (Suspension of Service and Acceleration) if You are disputing the applicable charges reasonably and in good faith and are cooperating diligently to resolve the dispute.
- 5.6. **Taxes.** Unless otherwise stated on the Order Form, Our fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added, sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, "Taxes"). You are responsible for paying all Taxes associated with Your purchases hereunder. If We have the legal obligation to pay or collect Taxes for which You are responsible under this paragraph, the appropriate amount shall be invoiced to and paid by You, unless You provide Us with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, We are solely responsible for taxes assessable against us based on Our income, property and employees. If in the future, We are required to collect such taxes from You by a governmental entity for any period covered by this Agreement, You agree to promptly provide evidence of having paid the applicable Taxes, or remit such taxes to Us to remit to such government entity. Your failure to comply with this section shall be a material breach of this Agreement, entitle Us to exercise the rights set forth in Sections 5.3 and 5.4, and assess reasonable costs and attorney's fees incurred in connection with our effort to collect such Taxes from You.

6. PROPRIETARY RIGHTS

- 6.1. **Reservation of Rights in Services.** We alone (and Our licensors, where applicable) shall own all right, title and interest, including all related Intellectual Property Rights, to the Services, AutoMon Technology and Content. This Agreement is not a sale and does not convey to You any rights of ownership in or related to the Services, Content, AutoMon Technology or the Intellectual Property Rights owned by Us (or our licensors, where applicable.) Our name, Our logo, and the product names associated with the Services are trademarks of Ours, and no right or license is granted to You to use them, except in training materials prepared by You for Your internal use.
- 6.2. **Your Data.** Subject to the limited rights granted by You hereunder, We acquire no right, title or interest from You under this Agreement in or to Your Data, including any intellectual property rights therein.
- 6.3. **Suggestions.** We shall have a royalty-free, worldwide, irrevocable, perpetual license to use and incorporate into the Services any suggestions, enhancement requests, recommendations or other feedback provided by You, or Your Users, relating to the operation of the Services, AutoMon Technology and the Content.

7. CONFIDENTIALITY

- 7.1. Definition of Confidential Information.** As used herein, "**Confidential Information**" means all confidential information disclosed by a party ("**Disclosing Party**") to the other party ("**Receiving Party**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Your Confidential Information shall include Your Data; Our Confidential Information shall include the Services; and Confidential Information of each party shall include the terms and conditions of this Agreement and all Order Forms, as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information (other than Your Data) shall not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.
- 7.2. Protection of Confidential Information.** The Receiving Party shall use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) (i) not to use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) except as otherwise authorized by the Disclosing Party in writing, to limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates' employees, contractors and agents who need such access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein.
- 7.3. Compelled Disclosure.** The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to such Confidential Information.

8. WARRANTIES AND DISCLAIMERS

- 8.1. Our Warranties.** We warrant that (i) We have validly entered into this Agreement and have the legal power to do so, (ii) the Services shall perform materially in accordance with the current User Guide, (iii) subject to Section 4.2 (Integration with Non-AutoMon Applications and Content), the functionality of the Services will not be materially decreased during a subscription term, and (iv) We will not transmit Malicious Code to You, provided it is not a breach of this subpart (iv) if You or a User uploads a file containing Malicious Code into the Services and later downloads that file containing Malicious Code. For any breach of a warranty above, Your exclusive remedy shall be as provided in Section 11.3 (Termination for Cause).
- 8.2. Your Warranties.** You warrant that You have validly entered into this Agreement and have the legal power to do so.
- 8.3. Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

9. INDEMNIFICATION

- 9.1. Indemnification by Us.** We shall defend You against any claim, demand, suit, or proceeding made or brought against You by a third party alleging that the use of the Services as permitted hereunder infringes or misappropriates the intellectual property rights of a third party (a "**Claim Against You**"), and shall indemnify You for any related damages, attorney fees and costs finally awarded against You as a result of, and for amounts paid by You under a court-approved settlement of, a Claim Against You; provided that You (a) promptly give Us written notice of the Claim Against You; (b) give Us sole control of the defense and settlement of the Claim Against You (provided that We may not settle any Claim Against You unless the settlement unconditionally releases You of all liability); and (c) provide to Us all reasonable assistance, at Our expense. In the event of a Claim Against You, or if We reasonably believe the Services may infringe or misappropriate, We may in Our discretion and at no cost to You (i) modify the Services so that they no longer infringe or misappropriate, without breaching Our warranties under "Our Warranties" above, (ii) obtain a license for Your continued use of the Services in accordance with this Agreement, or (iii) terminate Your User subscriptions for such Services upon 30 days' written notice and refund to You any prepaid fees covering the remainder of the term of such User subscriptions after the effective date of termination.
- 9.2. Exclusions.** We will not be liable under Section 9.1 for any claims based on the following: Your modification of the Services, AutoMon Technology or Content other than as contemplated by this Agreement; Use of the Services in a manner other than as contemplated in this Agreement; Claims arising from the use of old versions of Services after receipt of modified or updated versions; Claims arising from the use of Your third-party applications or data; and Losses attributable to Your acts or omissions and of Your officers, employees or agents.
- 9.3. Exclusive Remedy.** This Section 9 (Indemnification) states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any type of claim described in this Section.

10. LIMITATION OF LIABILITY

- 10.1. Limitation of Liability.** NEITHER PARTY'S LIABILITY WITH RESPECT TO ANY SINGLE INCIDENT ARISING OUT OF OR RELATED TO THIS AGREEMENT (WHETHER IN CONTRACT OR TORT OR UNDER ANY OTHER THEORY OF LIABILITY) SHALL EXCEED THE LESSER OF \$500,000 OR THE AMOUNT PAID BY YOU HEREUNDER IN THE 12 MONTHS PRECEDING THE INCIDENT. THE FOREGOING SHALL NOT LIMIT YOUR PAYMENT OBLIGATIONS UNDER SECTION 6 (FEES AND PAYMENT FOR PURCHASED SERVICES).
- 10.2. Exclusion of Consequential and Related Damages.** IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS OR REVENUES OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES HOWEVER CAUSED, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER SHALL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.
- 10.3. Exceptions.** The limitations and exclusions of this Section 10 shall not be construed to apply to or limit Our data security obligations under Paragraph 3.3, Our confidentiality obligations under Paragraph 7.2, or Our infringement indemnification obligations under Paragraph 9.1

11. TERM AND TERMINATION

- 11.1. Term of Agreement.** This Agreement commences on the date You accept it and continues until all User subscriptions granted in accordance with this Agreement have expired or been terminated. If You elect to use the Services for a free trial period and do not purchase a subscription before the end of that period, this Agreement will terminate at the end of the free trial period.

- 11.2. Term of User Subscriptions, Pricing on Renewal.** User subscriptions purchased by You commence on the start date specified in the applicable Order Form and continue for the subscription term specified therein. Except as otherwise specified in the applicable Order Form, all User subscriptions shall automatically renew for additional periods equal to the expiring subscription term or one year (whichever is shorter), unless either party gives the other notice of non-renewal at least 60 days before the end of the relevant subscription term. Pricing increases shall be as set forth in the Order Form(s). If the Order Form does not reflect a renewal price, then the annual increase in subscription fees for any renewal or extension shall be the greater of 5% per annum or the percentage increase shown in the most recently available CPI-All Urban Counties over the most prior twelve months.
- 11.3. Termination for Convenience.** If You are a government entity, You shall have the right to terminate this Agreement in its entirety for Your convenience at any time by providing us with written notice. Such termination shall not entitle You to a refund of any pre-paid subscription fees or other costs, and You must promptly pay any unpaid obligations owed to Us as of the date of Your written notice of termination (which shall be given in a manner consistent with Section 12.2.)
- 11.4. Termination for Cause.** A party may terminate this Agreement for cause: (i) upon 30 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.
- 11.5. Refund or Payment upon Termination.** Upon any termination for cause by You, We shall refund You any prepaid fees covering the remainder of the term of all subscriptions after the effective date of termination. Upon any termination for cause by Us, You shall pay any unpaid fees covering the remainder of the term of all Order Forms after the effective date of termination. In no event shall any termination relieve You of the obligation to pay any fees payable to Us for the period prior to the effective date of termination.
- 11.6. Return of Your Data.** Upon written request by You on or before the effective date of the expiration of Your subscriptions or any termination of the Services, We will make available to You for download a file containing Your Data in a MS SQL database formatted file. If we do not receive a timely request to provide You with a copy of Your Data, We shall have no obligation to maintain Your Data and shall promptly thereafter, unless legally prohibited, delete all of Your Data in Our systems or otherwise in Our possession or under Our control.
- 11.7. Surviving Provisions.** Section 5 (Fees and Payment for Purchased Services), 6 (Proprietary Rights), 7 (Confidentiality), 8.3 (Disclaimer), 9 (Indemnification), 10 (Limitation of Liability), 11.5 (Refund or Payment upon Termination), 11.6 (Return of Your Data), 12 (Who You Are Contracting With, Notices, Governing Law and Jurisdiction) and 13 (General Provisions) shall survive any termination or expiration of this Agreement.

12. WHO YOU ARE CONTRACTING WITH, NOTICES, GOVERNING LAW AND JURISDICTION

- 12.1. General.** Who You are contracting with under this Agreement, who You should direct notices to under this Agreement, what law will apply in any lawsuit arising out of or in connection with this Agreement, and which courts can adjudicate any such lawsuit, depend on where You are domiciled.
- 12.2. Manner of Giving Notice.** Except as otherwise specified in this Agreement, all notices, permissions and approvals hereunder shall be in writing and shall be deemed to have been given upon: (i) personal delivery, (ii) the second business day after mailing, (iii) the second business day after sending by confirmed facsimile, or (iv) the first business day after sending by email (provided email shall not be sufficient for notices of termination or an indemnifiable claim). Billing-related notices to You shall be addressed to the relevant

billing contact designated by You. All other notices to You shall be addressed to the authorized person designated by You.

12.3. Agreement to Governing Law and Jurisdiction. This Agreement shall be governed by the laws of Your state without regard to or application of choice of law rules or principles. Both parties hereby consent to the exclusive jurisdiction of the state and federal courts located within Your state, agree to venue lying in such courts, and expressly waive any objections or defense based upon lack of personal jurisdiction or venue or forum non conveniens.

~~**12.4. Waiver of Jury Trial.** Each party hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement~~



13. GENERAL PROVISIONS

13.1. Criminal Justice Information Services ("CJIS") Requirements.

In the event You are a Criminal Justice Agency subject to CJIS regulations the following representations and responsibilities shall apply: (i) We acknowledge that each of Our employees who will have access to CJIS information has received a copy of the current Federal Bureau of Investigation CJIS Security Policy ; (ii) We will ensure that each of Our employees who will have access to CJIS information signs a Security Addendum Certification; (iii) We will return an executed copy of such addendums to You; (iv) We have provided proof of CJIS training for such employees to the agency in Your State authorized to accept this information on your behalf and (v) We will maintain compliance with the CJIS requirements applicable to Us for the duration of the period of time We are providing you Services.

13.2. Export Compliance. The Services, other technology We make available, and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. Each party represents that it is not named on any U.S. government denied-party list. You shall not permit Users to access or use Services 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.

13.3. Anti-Corruption. You have not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of Our employees or agents in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. If You learn of any violation of the above restriction, You will use reasonable efforts to promptly notify Our Legal Department.

13.4. Relationship of the Parties. The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.

13.5. No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement.

13.6. Waiver. No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right

13.7. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.

13.8. Assignment. Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld).

Notwithstanding the foregoing, either party may assign this Agreement in its entirety (including all Order Forms), without consent of the other party, to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets not involving a direct competitor of the other party. A party's sole remedy for any purported assignment by the other party in breach of this paragraph shall be, at the non-assigning party's election, termination of this Agreement upon written notice to the assigning party. In the event of such a termination, We shall refund to You any prepaid fees covering the remainder of the term of all subscriptions after the effective date of termination. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

- 13.9. Executory Clause.** If You are a government entity, notwithstanding anything in this Agreement to the contrary, You shall have no liability for the Services to Us beyond the funds appropriated and made available for the Services.
- 13.10. Insurance.** We shall maintain or cause to be maintained, in full force and effect during the term of this Agreement, at Our expense, insurance with stated minimum coverages, and otherwise described on Schedule A, attached to this Agreement.
- 13.11. Entire Agreement.** This Agreement, including all exhibits and addenda hereto and all Order Forms, constitutes the entire agreement between the parties and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and either signed or accepted electronically by the party against whom the modification, amendment or waiver is to be asserted. However, to the extent of any conflict or inconsistency between the provisions in the body of this Agreement and any exhibit or addendum hereto or any Order Form, the terms of such exhibit, addendum or Order Form shall prevail. Notwithstanding any language to the contrary therein, no terms or conditions stated in Your purchase order or other order documentation (excluding Order Forms) shall be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void.

**SCHEDULE A
INSURANCE**

We shall maintain or cause to be maintained, in full force and effect during the term of this Agreement, at its expense, insurance with stated minimum coverages, all as listed below. Such policies are to be in the broadest form available on usual commercial terms and shall be written by insurers of recognized financial standing satisfactory to the You who have been fully informed as to the nature of the Services to be performed. Except for Worker's Compensation and Professional Liability, You shall be an additional insured on all such policies with the understanding that any obligations imposed upon the insured (including, without limitation, the liability to pay premiums) shall be Our sole obligation.

<u>Type of Coverage</u>	<u>Limit of Coverage</u>
1. Worker's Comp	<u>Statutory</u>
2. Automobile (Including. Bodily Injury & Property Damage)	<u>\$1,000,000 Aggregate</u> <u>\$1,000,000 /occurrence</u>
3. Comprehensive General Liability	<u>\$2,000,000 Aggregate Liability</u> <u>\$1,000,000 /occurrence</u>
4. Professional Liability	<u>\$3,000,000 aggregate</u> <u>\$1,000,000 /claim</u>
5. Technical Errors and Omissions	<u>\$2,000,000 aggregate</u> <u>\$2,000,000 occurrence</u>
6. Umbrella Policy (extending Comp Gen Liab, <u>\$2,000,000</u> Professional Liab and Tech Error and Omissions)	

We will provide You with certificates of insurance evidencing Our compliance with these requirements at the time or prior to execution of the Agreement by You.

Each policy of insurance shall contain clauses to the effect that (i) such insurance shall be primary without right of contribution of any other insurance carried by or on Your behalf with respect to its interests, (ii) it shall not be cancelled, including, without limitation, for non-payment of premium, or materially amended, without fifteen (15) days prior written notice to You.

To the extent it is commercially available, each policy of insurance shall be provided on an “occurrence” basis. If any insurance is not so commercially available on an “occurrence” basis, it shall be provided on a “claims made” basis, and all such “claims made” policies shall provide that:

A. Policy retroactive dates coincide with or precede Our start of the performance of this Agreement (including subsequent policies purchased as renewals or replacements);

B. If the insurance is terminated for any reason and/or for at least three (3) years following final acceptance of the Services, We will maintain an extended reporting provision and/or similar insurance for the period of performance plus three (3) years from the date of such termination or final acceptance.

C. Immediate notice shall be given to You of circumstances or incidents that might give rise to future claims with respect to the Services performed under the Agreement.