

**Order Form**

<b>Customer Information:</b>		<b>Principal Contact Person:</b> James Christensen	
Name/Customer:	Mt. Juliet Police Department	Title:	
Address:	1019 Charlie Daniels Pkwy	Phone:	(613) 734-3907
	Mt. Juliet, TN 37122	Fax:	
		Email Address:	<a href="mailto:jchristensen@mjpd.org">jchristensen@mjpd.org</a>
<b>Billing Information:</b>		<b>Shipping Information (if different from billing):</b>	
Name/Customer:	Mt. Juliet Police Department	Name/Customer:	
Address:	1019 Charlie Daniels Pkwy	Address:	
	Mt. Juliet, TN 37122		

ORDER DETAILS

This order form (the “**Order Form**”) is entered by and between Whelen Engineering Company, Inc. (“**Whelen**”) and the customer set forth on this Order Form (“**Customer**”) as of the last date of signature below (the “**Effective Date**”). Each of Whelen and Customer may be referred to herein individually as a “**Party**” and collectively as the “**Parties**.” The terms and conditions set forth in the Master Services Agreement attached hereto, including all exhibits and attachments thereto (the “**Master Services Agreement**”), govern the relationship between the Parties with respect to the Application Services ordered pursuant to this Order Form and are hereby incorporated herein by reference. Any capitalized terms used, but not defined, in this Order Form have the same meaning ascribed to them in the Master Services Agreement. By executing this Order Form Customer accepts and is bound by the terms and conditions set forth in the Master Services Agreement.

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

**Subscription Term:** The subscription term of the Application Services commences on the Subscription Commencement Date (as that term is defined in the Master Services Agreement) and, unless earlier terminated in accordance with the terms and conditions of the Master Services Agreement, expires on the date that is five (5) years from the Subscription Commencement Date (the “**Initial Term**”). Upon expiration of the Initial Term, this agreement shall not automatically renew. Whelen must obtain written consent from the Customer for the renewal of subsequent one-year terms.

**Subscription Fees:** While this Subscription remains in effect, Customer shall pay Whelen Engineering Company, Inc. the Subscription Fees set forth below:

<u>Subscription Type</u>	<u># Vehicles</u>	<u>Fee/Vehicle</u>	<u>Total</u>
1. Whelen Cloud Platform - Standard	119	\$360.00	\$214,200.00

**Minimum Subscription Term/Fees:** If Customer has already separately purchased the required equipment (the Vehicle Safety Gateway (VSG), Antenna, and Installation Kit, collectively referred to as “**WCP Equipment**”) or if Customer is separately purchasing the WCP Equipment in connection with this Order Form, the provisions of this Section (Minimum Subscription Term/Fees) are not applicable. If the WCP Equipment is bundled with the Application Services subscription (as indicated by a zero-charge for any WCP Equipment on the applicable quotation), Customer acknowledges and understands that the minimum Subscription Term allowable is two (2) years. Therefore, in the event Customer terminates this Order Form prior to the date that is two (2) years from the Effective Date, Customer shall pay Whelen an early termination fee equal to \$195.00 per vehicle, which shall be due and payable immediately by Customer on the effective date of termination of the Order Form.

**Whelen Field Solutions Engineer:** William Crouch – [wrouch@whelen.com](mailto:wrouch@whelen.com) – (256) 777-3864

**Other Information:** Whelen continues to improve and enhance the Whelen Cloud Platform and may offer additional services or features during the Subscription Term (the “**Platform Enhancements**”). In Whelen’s sole discretion, Platform Enhancements may be included as standard features of the Application Services or as premium features, whereby Whelen may charge a separate fee and require Customer to execute an additional Order Form and/or terms and conditions to receive access to, or use of, such Platform Enhancements. During the Subscription Term, Whelen reserves the right to determine which features or Platform Enhancements of the Application Services are included in the standard feature set or offered as premium features and may re-classify any such features of the Application Services in its discretion, provided, however if Whelen begins charging additional fees for a feature that was included as a standard feature as of the Effective Date, such change will be deemed a price escalation subject to Customer’s rights under Section 6.2 of the Master Services Agreement.

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

<b>Customer</b>	
<b>Signature</b>	
<b>Name</b>	
<b>Title</b>	
<b>Date</b>	

<b>Whelen Engineering Company, Inc.</b>	
<b>Signature</b>	
<b>Name</b>	
<b>Title</b>	
<b>Date</b>	

## Master Services Agreement

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

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

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

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

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

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

**1.5. “Confidential Information”** means all written or oral information, disclosed by either Party to the other, related to the business or operations of either Party or a third party that has been identified as confidential or proprietary or that by the nature of the circumstances surrounding disclosure ought reasonably to be treated as confidential or proprietary, regardless of whether such information was disclosed intentionally or unintentionally or marked as “confidential” or “proprietary”, including, without limitation: (a) source and object code, prices, trade secrets, mask works, databases, hardware, software, designs and techniques, programs, engine protocols, models, displays and manuals, and the selection, coordination, and arrangement of the contents of such materials, and (b) any unpublished information concerning research activities and plans, customers, marketing or sales plans, sales forecasts or results of marketing efforts, pricing or pricing strategies, costs, operational techniques, strategic plans, and unpublished financial information, including information concerning revenues, profits, and profit margins. However, written information that falls under the Tennessee Open Records Act, set out in T.C.A. §10-7-503 et seq, may be disclosed in accordance with Section 7.3.

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

only uses such aggregated or anonymized data for internal purposes.

**1.7. “Customer Systems”** means Customer’s information technology infrastructure, including the computers, software, databases, electronic systems (including database management systems) and networks, of Customer or any of its designees.

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

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

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

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

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

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

## 2. SUBSCRIPTION; SERVICES

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

### 2.2. Application Services

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

**(b) Usage Restrictions.** Customer and its Authorized Users may only use the Application Services as described in this Agreement and in the then-current Application Documentation. Customer is responsible for ensuring its Authorized Users comply with all relevant terms of this Agreement and any failure to comply

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

failure of Customer or any Authorized User to safely operate or properly maintain a Connected Vehicle. Customer will ensure that its and its Authorized Users' access to and use of the Application Services and the Application Documentation complies with all applicable laws, statutes, regulations, and rules. Under no circumstances will Whelen be liable or responsible for any use, or any results obtained by the use, of the Application Services in conjunction with any products, services, software, or hardware that are not provided by Whelen. All such use will be at Customer's sole risk and Customer shall bear full responsibility for liability with respect thereto. Whelen reserves all rights not expressly granted to Customer in this Agreement.

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

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

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

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

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terms of this Agreement. Customer acknowledges that the Application Services may be updated by Whelen from time to time and that updates may result in changes to the Application Services, including changes in the appearance, functionality, and/or the addition, modification, or removal of functionality or features. Whelen shall provide reasonable prior notice to Customer of any updates that are intended to result in the removal of any material functionality or feature.

### 3. PROPRIETARY RIGHTS

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

### 3.2. Data Rights.

#### (a) Customer Content.

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

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

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

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

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

### 4. ADDITIONAL WHELEN OBLIGATIONS

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

**4.2. Responsibility for Application and Content Hosting.** Whelen shall, at its own expense, provide for the hosting of the Application Services which is accessible as part of the Application Services, provided that nothing herein shall be construed to require

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Whelen to provide for, or bear any responsibility with respect to, any telecommunications or computer network hardware required by Customer to provide access from the Internet to the Application Services. Customer and Authorized Users are solely responsible for all telecommunication or Internet connections required to access the Services, as well as all Customer Systems and other hardware and software at Customer's site. Except for the costs to Whelen for the hosting of the Application Services as set forth above, in addition to other third party costs that may apply, Customer agrees to pay for all telecommunications, Internet, and other connectivity costs, fees, and services required for and dedicated to Customer's access to the Services.

**4.3. Third Party Hosting Provider Requirements.**

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

**5. ADDITIONAL CUSTOMER OBLIGATIONS.**

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

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

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

**6. FEES AND EXPENSES; PAYMENTS.**

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

cancelable and non-refundable. Whelen shall provide Customer a period of up to ninety (90) days from the Effective Date, or such other period as agreed by the parties in writing, to install and connect the WCP Equipment in the number of vehicles indicated on the Order Form (the "**Implementation Period**"). Whelen shall begin charging customer the fees indicated on the Order Form upon the expiration of the Implementation Period (the "**Subscription Commencement Date**").

**6.2. Price Escalations.** Whelen shall have the right to increase the fees for the Services at any time after the Effective Date to reflect any increase in Whelen's costs to provide the Services. Whelen shall provide Customer with written notice of such price adjustments at least thirty (30) days prior to the date any such price adjustment is to become effective. If Customer does not agree to such increase in fees, Customer may terminate the applicable Order form and this Agreement, provided there are no active Order Forms subject to this Agreement, with written notice to Whelen effective upon the day prior to the date that such price adjustment would have taken effect.

**6.3. Taxes.** As a tax-exempt entity, the City shall not be responsible for sales or use taxes incurred for products or services. The City shall supply Vendor with its Sales and Use Tax Exemption Certificate upon Vendor's request. Vendor shall bear the burden of providing its suppliers with a copy of the City's tax exemption certificate and Vendor shall assume all liability for such taxes, if any, that should be incurred.

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

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

**7. TREATMENT OF CONFIDENTIAL INFORMATION.**

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

**7.2. Mutual Confidentiality Obligations.** Each Party agrees as follows: (a) to use Confidential Information disclosed by the other Party only for the purposes of meeting its obligations or exercising its rights under this Agreement; (b) that such Party will

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not reproduce Confidential Information disclosed by the other Party, and will hold in confidence and protect such Confidential Information from dissemination to, and use by, any third party except as necessary for the purposes of meeting its obligations or exercising its rights under this Agreement; (c) to restrict access to the Confidential Information disclosed by the other Party to such of its personnel, agents, and/or consultants, if any, who have a need to have access for the purposes of meeting its obligations or exercising its rights under this Agreement and who have been advised of and have agreed in writing to treat such information in accordance with terms substantially similar to the terms of this Agreement; and (d) subject to Section 12, to the extent practicable and except to the extent the receiving Party has continuing rights with respect to such Confidential Information, return or destroy, all Confidential Information disclosed by the other Party that is in its possession upon termination or expiration of this Agreement for any reason, provided that to the extent a Party retains Confidential Information of the other Party as permitted under this part (d) such Party shall maintain the confidentiality of such retained Confidential Information for so long as it is retained.

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

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

## **8. REPRESENTATIONS AND WARRANTIES.**

**8.1. Mutual Representations and Warranties.** Each Party hereby represents and warrants (a) that it is duly organized, validly existing, and in good standing under the laws of its jurisdiction of incorporation or organization; (b) that the execution and performance of this Agreement will not conflict with or violate

any provision of any law having applicability to such Party; and (c) that this Agreement, when executed and delivered, will constitute a valid and binding obligation of such Party and will be enforceable against such Party in accordance with its terms.

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

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

## **9. DISCLAIMERS, EXCLUSIONS, AND LIMITATIONS OF LIABILITY.**

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

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CUSTOMER SYSTEMS. WHELEN WILL NOT BE RESPONSIBLE FOR SUCH ACTIVITIES. CUSTOMER IS RESPONSIBLE FOR PRESERVING AND MAKING ADEQUATE BACKUPS OF ITS DATA AND CUSTOMER CONTENT.

**9.2. Exclusions of Remedies; Limitation of Liability.** NOTWITHSTANDING A NEGLIGENT ACT AND EXCEPT WITH RESPECT TO CUSTOMER'S BREACH OF SECTION 2.2 AND WHELEN'S INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 10, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, REGARDLESS OF THE NATURE OF THE CLAIM, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, COSTS OF DELAY, ANY FAILURE OF DELIVERY, BUSINESS INTERRUPTION, COSTS OF LOST OR DAMAGED DATA OR DOCUMENTATION, OR LIABILITIES TO THIRD PARTIES ARISING FROM ANY SOURCE, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THESE LIMITATIONS OF LIABILITY ARE INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE OR THERE IS AN ADEQUATE REMEDY AVAILABLE.

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

## **10. INDEMNIFICATION.**

**10.1. Whelen's Indemnity Obligations.** Whelen agrees to indemnify, defend, and hold harmless Customer from and against any and all losses, liabilities, costs (including reasonable attorneys' fees) or damages finally awarded by a court or agreed upon in settlement ("**Damages**") resulting from any claim by any third party (a) that Customer's licensed use of the Application Services and/or the Application Documentation in accordance with the terms and conditions of this Agreement infringes such third party's U.S. patents issued as of the Effective Date, or infringes or misappropriates, as applicable, such third party's copyrights or trade secret rights under applicable laws of any jurisdiction within the United States of America, or (b) arising out of Whelen's negligent, tortious conduct, or otherwise unlawful acts. Customer shall promptly notify Whelen in writing of the claim, cooperate with Whelen, and allow Whelen sole authority to control the defense and settlement of such claim; provided that Whelen will not settle any third-party claim against Customer unless such settlement completely and forever releases Customer from all liability with respect to such claim or unless Customer consents to such settlement, and further provided that Customer will have the right, at its option, to defend itself against any such claim or to participate in the defense thereof by counsel of its own choice at its own cost. If a claim for infringement is made or appears possible, Whelen may, at Whelen's sole discretion, obtain adequate rights to enable Customer to continue to use the Application Services, or modify or replace any such infringing material to make it non-infringing. If Whelen determines that none of these alternatives is reasonably available, Customer shall, upon written request from Whelen, cease use of, and, if applicable, return, such materials as are the subject of the infringement claim. The indemnification for infringement provided under this Section

10.1 shall not apply if the alleged infringement arises, in whole or in part, from (i) modification of the Application Services or the Application Documentation by Customer, (ii) combination, operation, or use of the Application Services with other software, hardware, or technology not provided by Whelen or explicitly contemplated by this Agreement, (iii) use of the Application Services not in accordance with the Application Documentation or this Agreement, or (iv) the Customer Content (any of the foregoing circumstances under clauses (i), (ii), (iii) and (iv) a "**Customer Indemnity Responsibility**"). THIS SECTION STATES WHELEN'S AND ITS LICENSORS AND SUPPLIERS SOLE AND EXCLUSIVE OBLIGATIONS AND LIABILITY WITH RESPECT TO ANY CLAIM OF INFRINGEMENT ARISING OUT OF OR RELATING TO THE SERVICES OR THIS AGREEMENT AND ARE IN LIEU OF ANY IMPLIED WARRANTIES OF NON-INFRINGEMENT, ALL OF WHICH ARE EXPRESSLY DISCLAIMED.

**10.2. Intentionally Deleted.**

## **11. TERM AND TERMINATION.**

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

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

**11.3. Termination for Non-Performance.** The parties agree, in the event Whelen fails to perform any obligation, other than with regards to the date of delivery, set out in this Agreement, Customer may terminate this Agreement; provided, however, that if the failure, by its nature, is one that can be cured, Whelen shall have fifteen (15) business days after receipt of written notice from Customer to cure said failure to perform. The parties hereby agree, unless a specific date of delivery is provided in this Agreement or related Purchase Orders, all deliveries shall be made to Customer no later than ninety (90) days from the Subscription Commencement Date. The parties further agree that if Whelen, in good faith, is not able to meet this ninety (90) day deadline of delivery due to forces beyond his, her or its control, that were unforeseeable at the time of signing this Agreement, then the entire Agreement shall be voidable at the sole discretion of Customer. Should Customer elect to void this Agreement due to Whelen's good faith inability, due to forces beyond his, her or its control, and which were unforeseeable at the time of signing this Agreement to meet the delivery deadline, then neither party shall be deemed to have breached this Agreement, and Whelen shall return all monies, within ninety (90) business days, paid by Customer for the Application Services that could not be delivered in the allotted time.

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

**11.5. Additional Whelen Termination and Suspension Rights.** Upon written notice to Customer, Whelen may suspend or



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

**11.6. Termination for Non-Appropriation of Funds.** Whelen acknowledges that Customer is a governmental entity, and the validity of the Agreement is based upon the availability of public funding under its authority. In the event Customer fails to appropriate funds or make monies available for any fiscal year covered by the term of the Agreement for services to be provided, the Agreement shall be terminated on the last day of the fiscal year for which funds were appropriated or monies made available for such purposes without liability to Customer, and such termination shall not be a breach of the Agreement, and any unused payment made to Whelen shall be returned to Customer. Customer shall provide written notice to Whelen, in accordance with Section 13.3 of this Agreement, ninety (90) days prior to termination due to non-appropriation of funds. Upon termination under this provision, Customer shall remain liable for payment for goods and services received and accepted before the termination date.

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

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

the Third Party Terms that by their nature survive termination of this Agreement shall so survive.

**12. DATA DELETION.**

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

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

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

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

**13. MISCELLANEOUS.**

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

**13.2. Independent Contractors.** In making and performing this Agreement, Customer and Whelen act and will act at all times as independent contractors, and, except as expressly set forth

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herein, nothing contained in this Agreement will be construed or implied to create an agency, partnership or employer and employee relationship between them. Except as expressly set forth herein, at no time will either Party make commitments or incur any charges or expenses for, or in the name of the other Party.

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

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

**13.4. Amendments; Modifications.** This Agreement may not be amended or modified except in a writing duly executed by authorized representatives of both Parties. Whelen may make unilateral changes to its Privacy Policy, provided any such changes are subject to the provisions of this Agreement, shall not alter this Agreement, and shall not materially alter the use of the service or reduce the level of protection provided to Customer at the time of the execution of this Agreement. Except as provided in the preceding sentence, notwithstanding anything in this Agreement to the contrary, any change to this Agreement made by Whelen that is not in writing and that is not properly executed by the signatures of authorized representatives of the parties hereto, including attestation by Customer's City Clerk and approved as to form by the Customer's Attorney are subject to the terms and conditions of this Agreement, and shall not alter this Agreement and shall not materially alter the use of the Application Services or reduce the level of protection provided to the Customer at the time of the execution of this Agreement. Except as provided in the preceding, pertaining to Whelen's Privacy Policy, Whelen shall provide Customer written notice, sent in care of City Attorney's Office, Mt. Juliet, Tennessee, 2425 N. Mt. Juliet Road, Tennessee 37122, of any proposed change(s) to this Agreement at least ninety (90) days prior to being effective to Customer. Customer shall have thirty (30) days after receiving the written notice to terminate this Agreement, and such termination shall not be a breach of this Agreement. Whelen will refund to Customer any payment made by Customer to Whelen equal to the difference between the number of months the payment was intended for and the number of months remaining on this Agreement that the fee was intended to cover.

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

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

**13.7. Severability.** If any provision of this Agreement is invalid or unenforceable for any reason in any jurisdiction, such

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

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

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

**13.10. Governing Law.** This Agreement will be governed by and interpreted in accordance with the laws of the state of Tennessee, without regard to conflicts of law principles thereof or to the United Nations Convention on the International Sale of Goods. Customer may, at its option, require the attempted resolution of any dispute arising under the original contract or this addendum to agreement by mediation prior to the filing of any lawsuit or other claim. Should any dispute arise, Whelen shall provide Customer notice of any intent to file suit by certified mail. Customer shall notify Whelen of its intent to exercise its right to mediation within thirty (30) days of receiving such notice. If Customer does not exercise its right to mediation, Whelen may file suit. Any mediator selected under this clause shall be agreed upon by the parties and the costs of such mediation shall be divided and paid equally between the parties. The parties hereby further agree that, except as provided for in this Agreement or by applicable law, the parties shall not be required to participate in any alternative dispute resolution process or procedure, including but not limited to arbitration and med-arb, relating to disputes that arise between the parties to the Agreement. The Parties agree that all actions or proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the state or federal courts (if permitted by law and a Party elects to file an action in federal court) located in Wilson County, Tennessee. This choice of venue is intended by the Parties to be mandatory and not permissive in nature, and to preclude the possibility of litigation between the Parties with respect to, or arising out of, this Agreement in any jurisdiction other than that specified in this Section. Each Party waives any right it may have to assert the doctrine of forum non conveniens or similar doctrine or theory or to object to venue with respect to any proceeding brought in accordance with this Section. No action, regardless of form, arising out of this Agreement, may be brought by either Party more than one (1) year after the cause of action has arisen. To the extent permitted by law, the prevailing Party in any action or proceeding will be entitled to recover its reasonable attorneys' fees and costs.

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**13.11. Publicity.** Whelen shall not use Customer's name or any logo in marketing or publicity materials or for marketing or publicity purposes without the prior written authorization from Customer. Whelen shall not issue, publish, or divulge any materials developed or used in the performance of this Agreement or make any statement to the media relating to this Agreement without the prior written consent of Customer..

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

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

**13.14. Affiliates, Subcontractors, and Vendors.** Some or all of the Services, including support, may be provided by Whelen's

affiliates, agents, subcontractors, and information system vendors. The rights and obligations of Whelen may be, in whole or in part, exercised or fulfilled by the foregoing entities.

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

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

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

[End of Terms]