

APS Support and Maintenance Services Agreement

This Support and Maintenance Agreement (“Agreement”), and the contractual provisions attachment (Exhibit A attached hereto) shall become effective as of January 18, 2013 is entered into by and between the City of Overland Park, Kansas, (“Customer”), a Kansas municipality, with its principal office at 8500 Santa Fe Drive, Overland Park, Kansas, and Advanced Public Safety, Inc. (“APS”) a for-profit Florida corporation, with its address at 500 Fairway Drive, Suite 204 Deerfield Beach, FL 33441 and is related to and is incorporated with that certain End User License Agreement entered into between the parties or the embedded End User License Agreement accepted by the Customer (the “EULA”). Capitalized terms not defined in this Agreement shall have the same meanings as in the EULA, and any terms or conditions not included shall be incorporated by reference from the EULA.

1. **General.** APS shall make Software Support and Maintenance services as described below (“Software Support and Maintenance”) available for purchase by Customer on an annual basis at prices to be agreed upon between Customer and APS. The first year of purchased Software Support and Maintenance will begin following written or deemed acceptance of the Software by Customer (as “acceptance” is determined under the Project Summary associated with Customer’s purchase). Each 12-month period during which Customer purchases Software Support and Maintenance is a “Support Service Term.”
2. **Purchase and Renewal.** This agreement becomes effective on January 18, 2013, and Software Support and Maintenance will commence on that date and cover Customer’s Software for each Support Service Term, subject to APS’s end of life policy as set out below and subject to Customer having Software Support and Maintenance in force continuously from the date Software is first accepted by Customer. Upon the expiration of the warranty for the ten additional QuickTicket licenses purchased by Customer April 2012, those licenses shall also be covered by this Software Support and Maintenance Agreement. Except for software covered by an applicable warranty, Software Support and Maintenance will continue under this agreement for a period of one year. At the end of that year, subject to payment of the renewal price by the Customer and APS’s end of life policy, the agreement will automatically renew on the same terms and conditions for one additional year, unless either party notifies the other at least 30 days in advance of the renewal of its intent to terminate the agreement. If APS upgrades software covered by a warranty during the term of this contract, the contract shall become month-to-month and Customer's obligation to pay shall be suspended until the month following expiration of any applicable warranty period. APS will send Customer an invoice for the renewal price for Software Support and Maintenance approximately 30 - 60 days prior to each anniversary date of the acceptance of the Software. Customer must pay the invoice amount to APS within 30 days of the invoice date in order not to lose continuity in Software Support and Maintenance.

- a. Customer has no obligation to purchase Software Support and Maintenance after the first year and will retain all license rights granted under the EULA if Software Support and Maintenance is not purchased. If Customer decides not to purchase Software Support and Maintenance for any year or fails to remit the Software Support and Maintenance fees required in response to an APS invoice, APS will have no duty to provide Software Support and Maintenance to Customer.
 - b. Notwithstanding the above, Customer must have Software Support and Maintenance in place to use or have access to ReportBeam, SkyView and/or any other hosted or web-based software and / or services. If Customer does not purchase Software Support and Maintenance, Customer will no longer have access to such software and / or services. Any work required for reconfiguration of other Software required because of Customer's loss of access to APS-hosted or web-based software will be performed by APS only under a new written agreement signed by Customer and APS.
3. **Eligibility for Support.** To be eligible to receive Software Support and Maintenance, Customer must have a valid license to the Software currently in effect, and Customer must have paid all charges and fees due and payable under this Agreement and associated purchase order(s), including, without limitation, the Software Support and Maintenance fee (at the rates then currently in effect) for the applicable Support Service Term.
4. **Support and Maintenance Services.** Software Support and Maintenance includes:
 - a. Hosting of and providing access to any APS-hosted or web-based software purchased by Customer.
 - b. Telephone support for general support issues is provided between the hours of 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, holidays excepted. Support will be provided 24 hours per day, seven (7) days per week for emergencies. The telephone number to reach APS support is 1-954-354-3000.
 - c. Web-enabled troubleshooting and FAQ customer service are provided online at <http://www.aps.us/support> using the support key PIN provided to Customer upon Software acceptance. APS also provides e-mail support at support@aps.us.
 - d. APS will support Customer moves from one mobile data client to any other mobile data client that is compatible with the Software at any time with no additional costs.

- e. APS will update the Software to include mandated law changes, such as changes in fines and penalties or the addition of new violations, and may make other reasonable changes (e.g. modification of drop down menus) that specifically impact the Customer's licensed use of the Software and its existing forms. Additional charges may apply if Customer requests substantial modifications or new forms, and such work will be performed under a separate written agreement. Customer must notify APS of all law or other changes requested, and must provide all data necessary to make such changes.
 - f. APS will use reasonable efforts to correct verifiable and reproducible software errors in the covered Software when reported to APS. If an error exists, Customer (or end-user) must provide APS with information sufficient for APS to duplicate the circumstances under which the error in the Software became apparent. If Customer identifies a Software error that APS cannot duplicate, APS will make a reasonable effort to determine the cause.
 - g. APS may from time to time issue fixes or revisions of the Software for release to its customers generally ("New Releases"). Most releases of Software modules are based on customer requests or new state specifications. If there are more general Software updates, these are released periodically. As part of purchased Software Support and Maintenance, APS will provide Customer with one (1) copy of each applicable New Release at no additional charge. APS shall provide reasonable assistance to help Customer install and operate each New Release; provided however, that if such assistance is to be furnished at a Customer facility, Customer shall pay supplemental charges of \$2,000 per day, or such other price as APS may charge for such services from time to time, for each dedicated APS personnel on site at the applicable premises. Every New Release is subject to the same license terms as are set forth in the EULA for the original version of that Software.
 - h. APS will also provide upgrade release notes documentation in an electronic format for the Software as such documentation becomes available and release notes as the releases occur.
 - i. APS may, at its sole discretion, certify Software compatibility with additional operating systems as APS determines these operating systems are acceptable platforms for the use of the Software.
5. **Third Party Software.** Software Support and Maintenance does not include the cost of any upgrades or changes to third party software. Customer is not required to upgrade third party software such as operating systems or database software unless failing to perform such an upgrade results in application errors in the Software. APS agrees to notify customer of any needed upgrades or changes to

third party software as soon as it reasonably knows that failing to perform such an upgrade may result in application errors.

6. **Reservation of Rights.** APS reserves the right from time to time to change the Software Support and Maintenance offerings that APS generally makes available and the specific services provided in those offerings.
7. **End of Life.** APS may treat any Software licensed under this Agreement as having an end of life any time upon three-months' notice. Customer acknowledges that no Software Support and Maintenance will be available for any Software that is treated as being at its end of life.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of Effective Date:

Entity

Advanced Public Safety, Inc.

Sign: _____

Sign: _____

By: _____

By: _____

Its: _____

Its: _____

Date: _____

Date: _____

Exhibit A

CONTRACTUAL PROVISIONS ATTACHMENT

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this Attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the Agreement in which this Attachment is incorporated.
2. **Agreement with Kansas Law:** This Agreement shall be subject to, governed by, and construed according to the laws of the State of Kansas.
3. **Termination Due to Lack of Funding Appropriation (Cash Basis/Budget):** The Customer is obligated only to make payments under this Agreement as may be lawfully made from funds budgeted and appropriated for the purposes as set forth in this Agreement during the Customer's current budget year. In the event the Customer does not so budget and appropriate the funds, the parties shall be relieved from all obligations, without penalty, under this Agreement.
4. **Anti-Discrimination and Other Laws:**
 - A. APS agrees that:
 - 1) APS shall observe the provisions of the Kansas Act Against Discrimination (K.S.A. 44-1001 *et seq.*) and shall not discriminate against any person in the performance of work under the Agreement because of race, religion, color, sex, national origin, ancestry or age;
 - 2) In all solicitations or advertisements for employees, APS shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by the Kansas Human Rights Commission ("Commission");
 - 3) If APS fails to comply with the manner in which APS reports to the Commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, APS vendor shall be deemed to

have breached the present contract and it may be canceled, terminated or suspended, in whole or in part, by the Customer;

- 4) If APS is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, APS shall be deemed to have breached the present Agreement and it may be canceled, terminated or suspended, in whole or in part, by the Customer, without penalty; and
- 5) APS shall include the provisions of paragraphs (1) through (4) above in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

B. APS further agrees that APS shall abide by the Kansas Age Discrimination In Employment Act (K.S.A. 44-1111 *et seq.*) and the applicable provision of the Americans With Disabilities Act (42 U.S.C. 12101 *et seq.*) as well as all other federal, state and local laws, ordinances and regulations applicable to this Agreement and to furnish any certification required by any federal, state or local laws, ordinances and regulations applicable to this project and to furnish any certification required by any federal, state or local governmental agency in connection therewith.

5. **Hold Harmless:** APS agrees to defend, indemnify and hold harmless the Customer, the Customer's agents, employees and assigns from any and all lawsuits, claims, settlements, and judgments for personal injury, bodily injury, property damage and/or death or any other basis arising out of APS's or any of its agents, servants and/or employees, subcontractors or anyone working on APS's

behalf relative to this Agreement, negligent or purposeful acts, and or failure to act in the performance of this Agreement.

APS shall not be responsible to defend, indemnify and hold harmless the Customer for the negligent or wrongful acts of the Customer, its agents, or employees' negligent or wrongful acts and/or failure to act in the performance of this Agreement.

6. **Arbitration, Damages, Warranties:** No interpretation of the Agreement shall be allowed to find that the Customer has agreed to binding arbitration, or the payment of damages or penalties upon the occurrence of a contingency. Further, the Customer shall not be liable to pay attorney fees and late payment charges beyond those available by law and no provisions will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.
7. **Representative's Authority to Contract:** By signing this Agreement, the representative of APS thereby represents that such person is duly authorized by APS to execute this Agreement on behalf of APS and that APS agrees to be bound by the provisions thereof.
8. **Responsibility for Taxes:** The Customer shall not be responsible for, nor indemnify APS for, any federal state or local taxes which may be imposed or levied upon the subject matter of this Agreement.

9. **Insurance:**

A. **General**

APS shall secure and maintain, throughout the duration of this Agreement, insurance (on an occurrence basis unless otherwise agreed to) of such types and in at least such amounts as required herein. APS shall provide certificates of insurance and renewals thereof on forms provided or approved by the Customer. The Customer shall be notified by receipt of written notice from the insurer at least thirty (30) days prior to material modification or cancellation of any policy listed on the Certificate.

B. **Notice of Claim Reduction of Policy Limits**

APS, upon receipt of notice of any claim in connection with the

Agreement, shall promptly notify the Customer, providing full details thereof, including an estimate of the amount of loss or liability.

APS shall promptly notify the Customer of any reduction in limits of protection afforded under any policy listed in the Certificate (or otherwise required by the Agreement) in excess of \$10,000.00, whether or not such impairment came about as a result of this Agreement.

In the event the Customer shall determine that APS's aggregate limits of protection shall have been impaired or reduced to such extent that the Customer shall determine such limits inadequate for the balance of the project, APS shall, upon notice from the Customer, promptly reinstate the original limits of liability required hereunder and shall furnish evidence thereof to the Customer.

C. General Liability

The Commercial General Liability insurance coverage that is to be provided by APS shall comply with the Hold Harmless section of this Agreement. Such insurance shall specifically insure the contractual liability assumed by APS under the Hold Harmless and Indemnification provisions of this Agreement.

MINIMUM INSURANCE REQUIREMENTS

COMMERCIAL GENERAL LIABILITY POLICY

(Complete Certificate "Form B")

General Aggregate:	\$ 500,000
Products/Completed Operations Aggregate:	\$ 500,000

Personal & Advertising Injury: \$ 500,000
Each Occurrence: \$ 500,000

Policy must include the following conditions:

- 1) Broad Form Contractual/Contractually Assumed Liability
- 2) Independent Contractors
- 3) Broad Form Property Damage
- 4) Customer named as an Additional Insured

D. Automobile Liability

Policy shall protect APS against claims for bodily injury and/or property damage arising from the ownership or use of all owned, if any, and hired and/or non-owned vehicles and must include protection for either:

- 1) Any Auto
- OR
- 2) All Owned Autos;
Hired Autos; and
Non-Owned Autos.

Limits of liability protection required are the SAME as the limits for the Commercial General Liability section. Policy shall insure the contractual liability assumed by APS.

Policy **MUST** include the following condition:

- Customer named as an Additional Insured.
- E. Workers' Compensation and Employer's Liability**

This insurance shall protect APS against all claims under applicable state Workers' Compensation laws. APS shall also be protected against claims for injury, disease or death of employees which, for any reason, may not fall within the provisions of a Workers' Compensation law. The policy shall include liability limits not less than the following:

<u>Workers' Compensation:</u>	Statutory
<u>Employer's Liability:</u>	
Bodily Injury by Accident	\$100,000 each accident
Bodily Injury by Disease	\$500,000 policy limit
Bodily Injury by Disease	\$100,000 each employee

F. Owner's Protective Liability

This insurance will not be required for this Agreement.

G. Industry Ratings

The Customer will only accept coverage from an insurance carrier who offers proof that it:

- 1) Is licensed to do business in the State of Kansas;
- 2) Carries a Best's policy holder rating of B+ or better; and
- 3) Carries at least a Class X financial rating.

OR

Is a company mutually agreed upon by the Customer and APS.

H. Professional Liability Insurance

This insurance shall not be required for this Agreement.

I. **Subcontractors' Insurance**

If a part of the Agreement is to be sublet, APS shall either:

- 1) Cover all subcontractors in its insurance policies if allowed by APS's insurance carrier, or
- 2) Require each subcontractor not so covered to secure insurance which will protect subcontractor against all applicable hazards or risks of loss as and in the minimum amounts designated.

Whichever option is chosen, APS shall indemnify and hold harmless the Customer as to any and all damages, claims or losses, including attorney's fees arising out of the acts or omissions of its subcontractors.

10. **Prohibition Against Contingent Fees:** APS warrants that it has not employed or retained any person, firm, or corporation, other than a bona fide employee working solely for the APS, to solicit or secure the awarding of this Agreement based upon an arrangement that the person, firm, or corporation would receive any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award of this Agreement. For the breach or violation of the foregoing provision, the Customer shall have the right to terminate the Agreement without liability, at its discretion to deduct from the Agreement price, or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.