



SOW

DRAFT SCHEDULE I

Subscribed Services & Corresponding Fees


This Schedule I is an "SOW" under, and is appended to, that certain Wireless Data Systems, Inc., Software as a Service Subscription Agreement dated June 29, 2021, between Wireless Data Systems, Inc., (WDS) and Fulton County, Georgia, on behalf of Fulton County Department of Registration and Elections, ("Customer") (the "SaaS Subscription Agreement") and the SaaS Terms and Conditions of Service exhibit thereto ("TOS"). This Schedule I is a part of the Agreement between WDS and Customer (as "Agreement" is defined in said SaaS Subscription Agreement and TOS). Terms appearing in this Schedule I with their initial letters capitalized, unless otherwise defined in this Schedule I, have the meanings provided in the SaaS Subscription Agreement or TOS, as the case may be. All fees and charges described below in this SOW are subject to increase in accordance with Section 4.1 of the SaaS Subscription Agreement.

WDS TSXSM Elections database application SaaS Modules, access to WDS cloud based *current features and functionality of which comprise Subscribed Services, and corresponding subscription fees:**

CORE MODULES	
Table Management	Elections Core
Election Assignment	
Precinct Assignment	
Polling Site Assignment	
Facility Management & Security	
Users Maintenance & Security	
Roles Based Assignments & Security	
Vendors Maintenance	

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Item Master Maintenance	
Email Group Maintenance & Security	
Storage Location Maintenance	
Network Printer Maintenance	
Truck Delivery Route Maintenance	
Carry-over, Historical & Legacy Data File Import	
Scanfile Transaction Data/Logs	
Assignment & Delivery	Elections Core
Precinct Route Assignment	
Security Seals Assignment	
Equipment Assignment	
Parent-Child Assignments	
Election Route Picking	
Loading Trucks	
Loading Tech Rover Trucks	
Barcode Label Printing	
Field Ops	Elections Core
Proof of Delivery (Android Smart Phone App - GPS Enabled)	
Re-Delivery	
Regional Center Receiving	
Proof of Pickup (Smart Phone Based)	
Warehouse Management	Elections Core
Equipment Receipts (all inbound)	
Palletize Items	
Putaway & Storage Maintenance	
Supplies Maintenance	
Post-Election Reconciliation and Close	Elections Core
Complete Event Reconciliation	
Security Seals Open	
Pallet/Precinct/Location Assignment	
Transfer Ballots for Audits	
Calculated at \$0.20 per Registered Voter	Elections Core Subscription Fee:
809,000 Fulton County Registered Voters	\$ 161,800.00

OPTIONAL MODULES	
Ballot Management	

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
Ballot Usage Historical Data Analysis
Ballot Style Sheet Designation Storage
Ballot Style Sheet Ordering
Ballot Receipts – AB/EV/IP
Create Ballot Auto-Orders
Create Ballot Manual-Orders
Ballot Putaway/Storage by Warehouse Location/Precinct
Ballot Management Module
\$22,931.00


Quality Assurance Management
QA Admin - Election Lookup
Damaged Assets from QA
Asset Check List Preparation
Stage 1 QA - 1st Team
Stage 2 QA - Audit Team
Quality Assurance Management Module
\$33,978.00

Field Operations Management
Query Delivery Truck Check List
Create/Manage Trouble Ticket
Truck Assignment Management
Damage List/Audit Management
Rental Vendor Management
Check List Verification & Signoff
Field Operations Module
\$33,978.00

Poll Worker Checklist Module
Opening Checklist - Serial & Seal Validation, Ballot Validation, Poll Worker Oath & Sign-Off, Customizable Checklist
Ballot Reconciliation - Used ballot count, tabulator count, and check-in count cross validation
Closing - serial and seal validation, asset re-sealing, and a customizable checklist section
Poll Worker Checklist Admin - Review submitted checklists
\$33,978.00

Retention Management

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Unused and Spoiled Ballot Receipts	
Retention Manager (Supervisor Only Rights)	
Retire Assets	
Retire Ballots (Ballot Archives)	
Retention Management Module	
	\$28,315.00

Allocation Management	
Create Allocation Formulas & Quantity Assignments	
Allocation Equipment Lookup	
Assumptions Query/Management	
Label Printing - Allocated Assets	
Finalize Allocations	
Release Work Orders to Warehouse	
Allocation Management Module Retention Management Module	
	\$33,978.00

DASHBOARD MODULES	
Equipment Dashboard & Reconciliation Viewer	\$20,000.00


Election Night Critical Assets Dashboard	\$15,000.00
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TSXSM Elections System – Base System Plus Optional Modules	
BASED ON SELECTED MODULES:	

SaaS SUPPORT	
Annual SaaS Support Fee	
50% of the total Annual SaaS Subscription Fee (Core System and any Optional Modules)	

* Refers to current features and functionalities as of Effective Date of SaaS Subscription Agreement.

**Except for the TSX SaaS Monthly Support Fees and the Monthly Subscription Fee, the above fees are one-time fees which are due and payable within 15 days of the Effective Date of the SaaS Subscription Agreement. WDS has calculated these fees based on total Registered Voters for the Customer's County. The initial implementation comprises WDS' install of its current base version of the TSX Elections suite on a non-production, cloud server on the System, effecting Customer specific additions of Optional Modules shown above, and/or any requested modifications /enhancements to features/functionality accessed via the Subscribed Services, and initial "go-live". After initial "go-live", any new features or functionality of Subscribed Services which the Parties may mutually agree upon, shall be memorialized in one

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or more written SOWs executed by the Parties following the Effective Date, and which shall specify such additional features/functionality and include corresponding estimates of time and charges, which shall be calculated at WDS then applicable standard rates. WDS standard rates are currently \$165.00 per hour.

1. Monthly Service Fees: Server Environment

PRODUCTION SERVER ENVIRONMENT	
Application Environment	
Windows OS	
No less than 8GB RAM	
No less than 512 GB SSD	
Static IP address	
Closest available region	
30-Day Backup	
SQL Environment	
No less than 250 GB storage	
CPU capabilities tiered based on system usage.	
7-Day Backup Included	
Site-to-Site VPN Tunnel	
Secure and Encrypted	
Always on connection between app server and local network	
Necessary for printing and AD	
MONTHLY PRODUCTION SERVER ENVIRONMENT TOTAL:	\$831.35
One-Time Setup Fee:	\$1,200.00


UAT SERVER ENVIRONMENT	
Application Environment	
Windows OS	
No less than 4 GB RAM	
No less than 64 GB HDD	
Static IP address	
Closest available region	
7 day backup	
SQL Environment	
No less than 250 GB storage	
CPU capabilities tiered based on system usage. Low and Medium tiers only.	
7-Day Backup Included	
UAT SERVER ENVIRONMENT TOTAL:	\$431.38

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2. Documentation--TSXSM Elections database feature User Guides for selected modules (Customer version); Training (Customer designated personnel):

Specification Guide:


1. The TSXSM Elections System is customized for each client. The changes to features and functionality will be documented in the Specification Guide provided by WDS. The Specification Guide is proprietary to WDS and constitutes Documentation.


Training Services:

2. Access to the subscribed features and functionality of the TSXSM Elections System modules will be available to Customer's Designated Users as an UAT instance on the System. The instance will be created shortly after GAP analysis has been completed and the project is approved. As Customer-specific modules and enhancements are created and approved from WDS QA, they will be migrated to the UAT server on the System. Customer staff will be asked to test the modules and approve. The online testing of the UAT instance comprises all the training offered. Customer may, subject to the terms and conditions of the Agreement, grant access to the features and functionality of such UAT instances to any number of Designated Users for whom Customer wishes to facilitate the user training and experience with respect to the Subscribed Service's features and functionality.
3. It is critical that UAT testing is completed by Customer in a timely manner. Any project delays caused by Customer delays will be billed at WDS standard hours T&M Rate, currently @\$165.00/hr Mondays – Fridays (other than Holidays)/ Week-ends @\$247.50/ hr / Holidays @\$330.00/hr – All rates are per hour, per resource and are subject to annual increase.

3. SaaS Support:

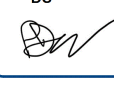
1. "SaaS Support" means technical assistance and correction of reproducible Bugs (if any) in the features and functionality of WDS's TSXSM System Application and Database Application hosted on Microsoft's Azure cloud pursuant to the Agreement, access to the current features and functionality of the Modules of which listed in Section 1 of this Schedule I comprise Subscribed Services. As used in this Schedule I, "Bugs" means a reproducible error, flaw, failure or fault in a computer program that causes it to produce a materially incorrect result or to behave in unintended ways.
2. Provided that Customer shall not be in default or breach of any material provision of the Agreement, WDS will provide SaaS Support to Customer, the pricing,

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exclusions from, and fees for which are hereinafter set forth in this Schedule I.

3. **NON-WDS ERRORS.** Customer's internal support team and trouble ticket system will be the point of contact for all support calls or communications from Customer or its Designated Users to WDS. That team shall be responsible for determining the nature of the reported Bug and shall perform the appropriate investigative steps to determine whether or not and the extent to which any particular issue or problem which they encounter with respect to a Subscribed Service is or is not the direct or indirect result of any error, fault, default, technical problem in or otherwise caused directly or indirectly by any Customer Facilities or by any other software, hardware, firmware, computers, equipment, network, devices, materials or data (or any conditions or configurations of any of the foregoing) that is not owned and directly provided by WDS (hereinafter collectively "Non-WDS Errors"). In no event shall SaaS Support under this Schedule I require that WDS undertake or perform any investigation, diagnosis, forensic work, or corrective measures of or with respect to any Non-WDS Errors. WDS is not obligated to perform any support services with respect to nor to conduct any investigation or correction of any Non-WDS Errors. However, should Customer request that WDS provide SaaS Support or any other investigation, diagnosis or troubleshooting of any issue and if WDS undertakes to do so and in conducting such investigation, diagnosis or troubleshooting determines that the issue is the direct or indirect result of Non-WDS Errors, then WDS shall be entitled to, and may, bill Customer for and with respect to any and/or all investigations, services, consultations and materials provided or expended by WDS in connection with such matters and Customer shall be obligated to pay all such WDS's invoices at WDS's then current hourly time and materials rates per resource (currently Weekdays @ \$165.00/hr/Weekends @ \$247.50/hr/Holidays @ \$330.00/hr – all rates are per hour, per resource and are subject to annual increase) WDS will provide resource time reports in commercially reasonable detail to support its invoices to Customer for WDS's work in connection with such investigations.
4. **EXCLUSIONS.** SaaS Support shall not include any design, development, or provision of any additions to or enhancements of functionality or the provision of any modules or Derivatives of any software or Service (including any Subscribed Service), unless and then only to the extent that such services, if any, are following the Effective Date of the SaaS Subscription Agreement, mutually agreed upon by WDS and Customer and set forth in a separate SOW.
5. **SUPPORT PERIOD.** The period for SaaS Support ("Support Period") will run concurrently with the Term of the Agreement. The Support Period will automatically end immediately upon expiration or any earlier termination of the Term, and is in any event subject to termination by WDS for Customer's failure to timely pay any applicable fees, charges or other sums which are or become due and payable by

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Customer under the Agreement or in the event Customer defaults or breaches any of its other obligations under the Agreement.

Work Assumptions:

The SaaS Support services will be performed during WDS normal business hours of 8:30 AM – 5:00 PM EST.

4. Project Time Estimates & Costs, SaaS Support Fees:


SaaS Monthly Support Fees are billed to Customer monthly and are due and payable to WDS within 15 days of the applicable invoice.


The design, development, or provision of any additions to or enhancements of functionality of any modules or Derivatives of any Software or any Subscribed Service is not included in SaaS Support.

Any design, development or provision by WDS of access to any additions to or enhancements of any feature or functionality of any module, or Derivatives of any WDS Software or of any Subscribed Service which Customer may at any time, or from time to time, request (beyond WDS' modifications to the features and functionality of those WDS Software modules in connection with the Subscribed Services as expressly provided for above in this Schedule I), shall be subject to, and conditioned upon, the Parties execution and delivery of such one or more separate SOWs (if any) as may be mutually agreed to by Customer and WDS and executed following the Effective Date of the SaaS Subscription Agreement, and which, inter alia, may establish additional fees payable by Customer, including, but not limited to, increased subscription and support fees.

5. All fees and other charges payable to WDS under the Agreement are nonrefundable.

All fees and other sums paid or payable by Customer to WDS under the Agreement are non-refundable. In the event that WDS terminates the Agreement or the Term thereof for cause as provided under Section 5.2(a) or (b) of the SaaS Subscription Agreement by reason of a default or breach by Customer or in the event that Customer terminates the Agreement or the Initial Term for convenience and without cause as provided under Section 5.2(d) of the SaaS Subscription Agreement, WDS shall, in addition to any and all other rights and remedies available to it under the Agreement, at Law, or in equity, be entitled to receive and Customer shall be obligated to pay to WDS: all fees, charges and other amounts that have accrued under the Agreement prior to the effective date of such termination, for or with respect to not only the Subscribed Services but also for and with

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respect to all other goods or services described in or provided under the Agreement, including under this or any other SOW (if any) which then remain unpaid.

6. Additional Terms & Conditions:


See the aforesaid Agreement between WDS and Customer.


1. Gap Analysis of Modules and Integration Layer- Required Before Commencement of Subscribed Services

- (1) Customer will clearly define and document current Customer procedures and billing system logic.
- (2) Customer will confirm to WDS in writing that the desired Customer deliverables are included in Section 1 of this SOW.
- (3) Customer and WDS will clearly define all necessary the integration between TSXSM and Customer systems.
- (4) Customer and WDS will clearly define and document any new, additional, or changed FCE procedures required for the implementation of the Subscribed Services.
- (5) Customer will clearly define any additional functionality or logic needed that may extend beyond the original proposed design, to facilitate ensuing GAP discussions between the Parties regarding possible acceptance of any proposed changes (if any), and corresponding additional fees or fee increases.

2. Additional Requirements

- A. Customer will provide the following resources: Project Manager, Business Analyst, Technical Lead, Subject Matter/Business Experts for the customer service operations.
- B. Customer's skilled functional resources (customer service personnel/techs) will be available as reasonably requested by WDS from time to time, to conduct periodic testing of order processing.
- C. WDS may design and develop, and as part of Subscribed Services under, and subject to the terms and conditions of, the Agreement provide Customer's Designated Users with access to features and functionalities of, Customer-specific modules of Hosted Applications. All such modules, and all Intellectual Property Rights in and to any such modules, are proprietary to WDS and WDS shall have no delivery obligations with respect to any modules, software or software code of any kind or in any form, format or media.
- D. If applicable, Customer's technical lead will have responsibility for the following areas of the project: Customer's VPN System-Account to provide a secure tunnel for report printing and billing system integration from the cloud server to the Customer's local environment.
- E. Work to be performed both onsite and remotely.

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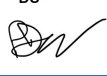
- F. WDS project timeline is subject to prompt scheduled responsiveness from Customer.

GLOSSARY OF ACRONYMS AND TERMS

GAP	GAP Analysis - comparison of actual performance with potential or desired performance
FCE	Fulton County Elections
SQL	Structured Query Language
UAT	User Acceptance Testing
WDS	Wireless Data Systems, Inc.
SAM	System Administration Module

PROJECT MEMBERS

Team Member	Role	Contact Information	Responsibilities
David Whitt	Design Architect - FL	pdwhitt@wdsinc.com	WDS TSX SM Team
Jennyferd Barco	Dir of Development - FL	jbarco@wdsinc.com	WDS TSX SM Team
Daniel Krentz	Project Manager - OH	dkrentz@wdsinc.com	WDS TSX SM Team
Narendra Singh	Tech Lead - FL	nsingh@wdsinc.com	WDS TSX SM Team
Jose Garcia	Project Manager – FL	jgarcia@wdsinc.com	WDS TSX SM Team
Chris Muscarella	Account Manager – FL	cmuscarella@wdsinc.com	WDS TSX SM Team

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WIRELESS DATA SYSTEMS, INC.

SOFTWARE AS A SERVICE SUBSCRIPTION AGREEMENT

THIS SOFTWARE AS A SERVICE SUBSCRIPTION AGREEMENT (this “SaaS Subscription Agreement” and together with the TOS and any applicable SOW, as hereinafter defined, collectively this “Agreement”) is made and effective as of June 16, 2021 (the “**Effective Date**”) by and between WIRELESS DATA SYSTEMS, INC., a Florida corporation, having principal business offices at 20423 State Road 7, F-6 #6182, Boca Raton, Florida 33498 (hereinafter “**WDS**”) and Fulton County, Georgia on behalf of the Fulton County Department of Registration and Elections, a political subdivision of the State of Georgia, (hereinafter “**County**” or “**Customer**”). WDS and Customer are also hereinafter each referred to as a “**Party**” and collectively as the “**Parties**”. In consideration of the mutual agreements, covenants and promises set forth in this Agreement, the Parties hereby agree as follows:

1. INCORPORATION OF SAAS TERMS AND CONDITIONS OF SERVICE.

1.1 As referred to herein, “Agreement” and “this Agreement” each means this SaaS Subscription Agreement together with the following, all of which are incorporated herein by this reference:

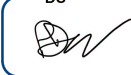
(a) WDS’s SaaS Terms and Conditions of Service, as may be amended from time to time in accordance with the terms of the Agreement (the “TOS”), a copy of the current version of which is attached hereto as Exhibit A; and


(b) The Subscribed Services and Fee Schedule attached hereto as Schedule “I”, and any other written exhibit, schedule, addendum, subscription order form or statement of work (if any), which may from time to time be executed by and between the Parties in connection with, and appended to, this Agreement (Schedule I and such other exhibits, schedules, addenda, subscription order forms or statements of work, each an “SOW”).

1.2 If and to the extent there ever exists a conflict between any provision of an SOW on the one hand, and any other provision of the Agreement on the other hand, the provision of the SOW will to that extent prevail if, and only if, it expressly references such other provision or provisions of the Agreement and states that the provision of the SOW is intended to supersede such other provision or provisions of the Agreement. If however such provision of the SOW does not expressly state that it is intended to supersede such other provision or provisions of the Agreement, then such other provision or provisions of the Agreement shall prevail.

2. DEFINITIONS; GENERAL RULES OF CONSTRUCTION

2.1 Definitions. Words or phrases used in the Agreement with their initial letters capitalized and defined in the preamble or in other provisions of this SaaS Subscription Agreement,

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or in the TOS or an SOW, have the meanings provided and are used throughout this Agreement as so defined. Defined terms may be used in the singular, plural or possessive forms as the context requires.

2.2 General Rules of Construction.

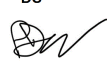
(a) In this Agreement, unless otherwise specified or unless the context clearly requires otherwise: (i) words used or defined in the singular include the plural and vice versa; (ii) the gender (or lack of gender) of any word or words used in this Agreement includes the masculine, feminine, and neuter; (iii) the words “include”, “includes” and “including”, and variations thereof, shall not be deemed to be terms of limitation, but rather shall be deemed to be followed by the words “without limitation”; (iv) the words “hereof”, “hereunder”, “herein” and words of similar import refer to this Agreement as a whole and not to any particular provision of this Agreement; (v) all references to “Sections”, “Subsections”, or “Paragraphs” refer to sections, subsections, and paragraphs of this Agreement; (vi) the word “or” is not exclusive and has the meaning accorded the phrase “and/or”; (vii) references to Schedules and Exhibits refer to the Schedules and Exhibit attached to this Agreement, each of which is made a part hereof for all purposes; (viii) references to Laws refer to such Laws as they may be amended from time to time, and references to particular provisions of a Law include any corresponding provisions of any succeeding Law; (ix) references to any agreement, contract or document are to such agreement, contract or document as the same may be amended, supplemented, replaced or otherwise modified from time to time in accordance with the terms hereof and thereof; (x) the word “will” shall be construed to have the same meaning and effect as the word “shall”; (xi) references to any Person include the successors and permitted assigns of such Person and any reference to any governmental authority include any successor thereto; (xii) the use of the word “or”, “either” and “any” shall not be exclusive; (xiii) the words “written” or “in writing” means handwritten, typewritten, printed or electronically made and resulting in a permanent record; (xiv) whenever the consent of any Person is required or permitted herein such consent may be withheld in such Person’s sole and absolute discretion; and (xv) any reference to “day” means a calendar day.

(b) Any rule of construction to the effect that ambiguities are to be resolved against the drafting party or the party most responsible for drafting, shall not be applied in the construction or interpretation of the Agreement.

3. SERVICES.

3.1 (a) WDS grants Customer the right during the Term to access and use Subscribed Services in accordance with, and subject to, the terms and conditions of this Agreement. WDS reserves all other rights.

(b) Upon the terms and subject to the conditions of the Agreement, WDS will (i) following the Effective Date, create an Account for Customer on the System and through which Customer may during the Term authorize its Designated Users to access and use Subscribed Services in accordance with this Agreement; and (ii) during the Term (or as applicable, during such shorter period during the Term as may be specified in Schedule I, or in another applicable SOW, if any, with respect to the particular Subscribed Service in question) permit Customer’s Designated

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Users to have non-exclusive, non-assignable, access under Customer's Account to those Services provided by WDS from time to time, online, on or through the Site located at <https://FCE.tsx.studio>, or at such other Site as WDS may from time to time designate for such purposes, provided that such Services are specifically selected by Customer and expressly identified as Subscribed Services in the attached Schedule I or in such other SOW, if any, as may be appended to this Agreement from time to time by mutual written agreement of the Parties (each such Service a "Subscribed Service" and collectively the "Subscribed Services").

(c) Subscribed Services are provided to the Customer solely for (and Customer may only use the Subscribed Services for) the limited purpose of enabling Customer's Designated Users to (i) via online FTPS file transfer, load Customer Content regarding Customer's inventories of certain furniture, equipment and related parts and supplies deployed by Customer in its furniture manufacturing and distribution business (collectively "**Inventory**"), into an executable object code copy of WDS's proprietary database application hosted on Servers of WDS's third-party contractors; and (ii) upload, download, send, or receive over the Internet, online Inventory requisition requests and related Customer Content concerning Inventory to or from such database, solely for Customer's internal administrative purposes of facilitating Customer's tracking of Inventory and as more particularly described in the attached Schedule I and the TOS.

(d) WDS has no delivery obligation, and is not obligated, to provide any copies of any WDS Software or any third-party software to Customer as part of or otherwise in connection with any Subscribed Service. Customer does not acquire under the Agreement (or otherwise) any license with respect to any WDS Software, rather Customer will, subject to the terms and conditions of the Agreement, have limited permission to access and utilize the specified functionality described in Schedule I, via online access to the Host Server through the Site. In the event that WDS shall require Customer's use of any WDS proprietary mobile application on any of Customer's hand held or other scanning devices for, in connection with or as part of a Subscribed Service, then an executable object code version of such WDS proprietary mobile application will be provided by WDS to Customer under a nonexclusive, limited, revocable, non-transferable and non-sublicensable license to use such WDS Software during the Term (or such shorter period as WDS may from time to time specify) solely on permitted scanning devices, as more particularly provided in the TOS. Upon expiration or any earlier termination of the Term, or any of the Subscribed Services, Customer's and its Designated Users' permission to access or utilize any Subscribed Service (including any feature or functionality of WDS Software comprising a Subscribed Service or any of the afore described WDS mobile applications) shall terminate.

3.2 (a) The Parties acknowledge that (i) software as a service comprises system administration, system management and system monitoring activities, as well as provision of access to or use of selected features or functionality of software applications, which are supported by network and storage infrastructure on which such software applications may be hosted; and (ii) WDS, in its provision of Subscribed Services under the Agreement may utilize Third-party Suppliers to provide some or all of such network and storage infrastructure, administration, management, and monitoring services to WDS and to host WDS's propriety database application.

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(b) Upon the terms and subject to the conditions of the Agreement, WDS will during the Term use Commercially Reasonable Efforts to make the Subscribed Services available 24 hours a day, seven days a week, except for: (i) scheduled planned downtime and scheduled maintenance (of which WDS will give advance electronic notice); and (ii) unavailability caused by circumstances beyond WDS's reasonable control, including, but not limited to, acts of God, acts of government, flood, fire, earthquake, civil unrest, acts of terror, strike or other labor problems, Internet service provider failure or delay, failure, defect or unavailability of any product or service of any Third-party Supplier; (iii) unavailability resulting from any Customer Facilities or any third-party equipment, software or other technology; (iv) unavailability arising from WDS's suspension or termination of Customer's or any Designated Users' right to use any of the Subscribed Services in accordance with the Agreement; (v) unavailability resulting from any act or omission of, or otherwise directly or indirectly caused by, Customer or any of Customer's Designated Users, employees, agents or contractors or any third-party; or (vi) unavailability arising from or incident to any overutilization of the System or Subscribed Service, or any problems relating to attacks, such as hacking, DDoS attacks, bandwidth attacks of any nature, Subscribed Service exploits or operating system exploits.

3.3 Customer and each of its Designated Users must at all times comply with: (i) all Laws which are, or may from time to time become, applicable to Customer's or such Designated Users' use of the Subscribed Services; and (ii) the TOS (as the TOS may be amended, modified, supplemented or restated in accordance with the terms of this Agreement).

3.4 Nothing in this Agreement is intended to nor may operate or be construed to in any respect limit or prevent WDS or any of its Affiliates from directly or indirectly: (i) offering or providing any goods or services to or for any Person or Persons, or from entering into or performing under any agreement with any Person or Persons for the provision of any goods or services, regardless of whether or not such goods or services may be the same as or similar to any Subscribed Service or any part thereof; or (ii) from offering or providing any access to or use of the Site, any Service or any other part of the System to any other Person or Persons.

3.5 (a) WDS reserves the right to, and may from time to time, in each case effective upon notice to Customer, amend, modify, supplement or restate the TOS or any part thereof or otherwise adopt and effect Revised Terms in accordance with Section 2.7 of the TOS as WDS reasonably deems necessary or appropriate to comply with or address: (i) any current or future requirement of applicable Law; or (ii) requirements of any Third-party Supplier promulgated With respect to any Revised Terms promulgated by WDS in order to comply with or address anticipated changes in applicable Law or changes required by its Third-party Suppliers, but which changes to applicable Law or requirement of a Third-party Supplier, has not as yet then gone into effect, WDS will provide Customer with not less than 5 business days' prior notice of the Revised Terms and the effective date thereof. In the event that Customer reasonably determines that any Revised Terms would materially impair any of Customer's rights or remedies under the Agreement (including its rights hereunder to use the Subscribed Services in accordance with the Agreement and are not acceptable to Customer, Customer, as its sole and exclusive remedy, may terminate the Term with respect to any affected Subscribed Service, for convenience in accordance with Section 5.2(d) of this SaaS Subscription Agreement.

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(b) Notwithstanding any provision of the TOS to the contrary, and except for Revised Terms described in the preceding Section 3.5(a) of this SaaS Subscription Agreement, WDS will not during the Term amend the TOS unless such amendment shall have been consented to by Customer and set forth in a separate written amendment executed by duly authorized representatives of each of the respective Parties.

4. FEES


4.1 SERVICE FEES.


(a) Unless, and then only to the extent, otherwise expressly provided in an applicable SOW, WDS will invoice Customer on a monthly basis and Customer must pay WDS for all use of the Subscribed Services under Customer's Account or any sub-Account thereunder, as well as for all of WDS's costs and out of pocket expenses (if any) which WDS incurs during the immediately preceding month in connection with Customer's Account or any sub-Account thereunder, according to the schedule of fees set forth in the attached Schedule I. Unless otherwise expressly provided in Schedule I, WDS may with respect to any Subscribed Service or any feature thereof, from time to time increase any fees or add new fees, or implement a fee for any previously free Service or Service feature. With respect to any Subscribed Service or feature thereof, WDS will give Customer at least 30 days' notice before the effective date of such change(s). If any such change(s) are unacceptable to Customer, Customer's sole and exclusive remedy is to terminate the Term of this Agreement for Customer's convenience in accordance with Section 5.2(d) of this SaaS Subscription Agreement. Any access to or use of any Subscribed Service by a Designated User under Customer's Account or any sub-Account thereunder following the effective date of any increase to or addition of any fees or charges will constitute Customer's acceptance thereof.

(b) Customer's Account comes with (and WDS's **monthly** charges are in part based upon) a set file storage capacity allotment of that number of gigabytes per **calendar month** specified in Schedule I or as may hereinafter be specified in a subsequent SOW (if any) (each a "Service Allocation"). If that Service Allocation is exceeded, Customer will be charged, and must pay WDS, for any overage as provided in Schedule I or other applicable SOW (if any). Service Allocations are billed in advance, with any overages billed in arrears. Customer will receive a bill for any overage the **month** following the **month** that the overage occurs. Overage charges shall not be prorated, but rather will be assessed and payable for the entire **month** in which such overage occurred regardless of when during the **month** such overage occurs.

(c) Customer acknowledges that exceeding its then current Service Allocation may result in service degradation for Customer and other WDS customers and agrees that: (i) WDS has no obligation to permit Customer to exceed its then current Service Allocation; and (ii) Customer is not entitled to any Service Level Credit for periods during which Customer exceeds its then current Service Allocation, regardless of whether any of the Subscribed Services failed to meet any applicable Availability Requirement during such period.

(d) WDS will invoice Customer as of the first day of each **month** for: (i) all fees and charges applicable to the activity under Customer's Account (including any sub-

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Accounts thereunder) for the immediately preceding **month**; (ii) the coming **month's** Account fee; (iii) Customer's use and storage allotment or allocation fee for the coming **month**; and (iv) any other fees or charges called for or permitted under Schedule I or under any other applicable SOW (if any). If at any time Customer desires to authorize any number of Designated Users in excess of the number of permitted Designated Users set forth in the applicable SOW, Customer must so notify WDS in writing and pay the full **month's** fee for such additional Designated Users, regardless of when during the **month** Customer makes such election.

(e) Customer must pay all charges for any set up fees in advance of the first day that the first of Customer's Designated Users is provided access to any Subscribed Service under this Agreement. Except as provided in: (i) the immediately preceding sentence; and (ii) in Section 4.2 ("Disputed Charges") of this SaaS Subscription Agreement, Customer must pay all of WDS's invoices within fifteen (15) days following the date of such invoice (the date of invoice hereinafter the "Due Date") in each case without any setoff or deduction (unless and then only to the extent permitted under Section 4.2 of this SaaS Subscription Agreement) and any amount remaining unpaid after sixty (60) days shall accrue interest at a rate equal to the lesser of 1½ % per month or the highest rate allowed by applicable Law from the Due Date until paid in full. All amounts payable by Customer under this Agreement must be paid in immediately available funds, in United States dollars. Customer agrees to receive WDS's invoices electronically via the e-mail address associated with Customer's Account, if at any time, or from time to time, WDS chooses to provide invoices in that manner.

(f) If Customer pays for Subscribed Services by credit card, debit card or PayPal, Customer authorizes WDS to charge Customer's credit card, debit card, or PayPal account to pay for any charges that may at any time or from time to time apply to, or be assessed by WDS against, Customer's Account. Customer must immediately notify WDS of any changes to its credit card account, debit card account or PayPal information (including any changes to its account number, billing address, cancellation of account, expiration of account), or any other matter which may prevent or hinder WDS from properly charging Customer's account. Customer's failure to pay all fees and charges for Subscribed Services, or which may be or become due and payable under this Agreement, and applicable taxes, when due shall be a material breach by Customer of this Agreement entitling WDS, in its sole and absolute discretion (and without prejudice to any other rights or remedies WDS may have hereunder, or otherwise at law or in equity) to temporarily suspend or to otherwise deny Customer's and its Designated Users' access to any Subscribed Service or to any feature or functionality thereof, and without thereby incurring any obligation or liability to Customer or any other Person by reason of such suspension or denial, or to terminate this Agreement or the Term hereof.

(g) At WDS's election and upon at least thirty (30) days' notice to Customer, WDS may require that all payments under the Agreement, including all monthly service fees, support fees and other amounts or which may become due hereunder, be made in immediately available funds or by wire transfer or electronic fund transfer through the Automated Clearing House network or any similar system designated by WDS ("ACH"). Such payments shall be initiated by WDS or Customer, at WDS's election, to an account designated from time to time by WDS, at an ACH member bank for settlement not later than 12:00 Noon, Eastern Standard Time, on such dates

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such sums or payments are respectively due. Any payment received after such time shall be deemed to have been made after the due date.


4.2 DISPUTED CHARGES. All amounts not timely, appropriately and in good faith disputed by Customer within thirty (30) days after the Due Date for same will be deemed final and not subject to dispute. In the event Customer timely and in good faith disputes any fees or charges invoiced by WDS, Customer must promptly pay the undisputed portion of the fees or charges and notify WDS in writing of the disputed amount. In that written notice, Customer must identify in reasonable detail the reasons for and nature of the dispute and the amount of the disputed fees or charges. If Customer was billed in error, WDS will issue a credit for the amount billed incorrectly within sixty (60) days after WDS determines that an error was made. Credits issued have no cash value and in WDS's sole discretion will be applied against current invoices for future Subscribed Services. In the event WDS determines that the amount was billed correctly, Customer must pay the applicable disputed amount together with interest accrued thereon since the initial Due Date within seven (7) business days after WDS confirms to Customer that the amounts were properly charged.


4.3 TAXES.

(a) All fees and other amounts payable by Customer under this Agreement are exclusive of taxes, duties and similar assessments, including any applicable local, state, federal or foreign taxes or duties of any nature. Customer is responsible for all sales, goods and services, gross receipts, use and excise taxes, transaction and any other similar taxes, duties and charges imposed by any federal, state or local governmental or regulatory authority on any amounts payable by Customer hereunder, other than tax imposed on WDS's net income.

(b) Customer must promptly provide WDS with all information WDS reasonably requests from time to time to determine whether WDS is obligated to collect any tax or duty from Customer, including Customer's VAT identification number. If Customer is legally entitled to an exemption from any tax or duty on any Subscribed Service, Customer is responsible for providing WDS with legally sufficient tax exemption certificates for each taxing jurisdiction. WDS will apply the tax exemption certificates to charges under Customer's Account occurring after the date WDS receives the requisite tax exemption certificates.

(c) If any deduction or withholding is required by applicable Law, Customer must promptly notify WDS thereof and pay WDS any additional amounts necessary to ensure that the net amount that WDS receives after any such deduction and withholding, equals the amount WDS would have received if no deduction or withholding had been required. Furthermore, Customer must promptly provide WDS with appropriate documentation showing that the withheld and deducted amounts have been paid to the applicable taxing authority. If WDS has the legal obligation to pay or to collect any taxes, levies, duties, or similar assessments for which Customer is responsible under applicable Law or this Section, the appropriate amount shall be invoiced to and paid by Customer to WDS, unless Customer shall have provided WDS with a then valid tax exemption certificate authorized by the appropriate taxing authority.

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5. TERM/TERMINATION.

5.1 TERM. The initial term of the Agreement (the “**Initial Term**”) commences on the Effective Date and will continue until the third anniversary of the Effective Date, unless sooner terminated in accordance with Section 5.2 of this SaaS Subscription Agreement (the “**Initial Term**”). The term of the Agreement will be renewed automatically for additional successive terms of three years each (each a “**Renewal Term**”) effective immediately upon expiration of the Initial Term, or if applicable, expiration of the immediately preceding Renewal Term, unless either Party provides the other Party with written notice of nonrenewal at least ninety (90) days prior to the expiration of the Initial Term or the then applicable Renewal Term (if and as the case may be) or unless otherwise terminated in accordance with the provisions of Section 5.2 of this SaaS Subscription Agreement or as provided under the TOS (and as used herein “**Term**” means the Initial Term together with all Renewal Terms, if any).

5.2 TERMINATION. This Agreement may be terminated prior to expiration of the Initial Term or any Renewal Term (if any) as hereinafter provided in this Section 5.2, or as provided under the TOS:


(a) If Customer fails to make any payment when due hereunder, such non-payment shall constitute a material default by Customer. In addition (and without prejudice) to any other rights or remedies to which WDS is entitled hereunder or otherwise at Law or in equity, WDS may, if such default remains uncured for 10 days following written notice thereof to Customer, terminate the Term of the Agreement effective either immediately upon expiration of such 10 day cure period or at such later date as WDS may specify in such notice.

(b) Either Party (a “**Terminating Party**”) may terminate the Term of this Agreement if:

(i) the other Party becomes in default under, or breaches, any material term or condition of this Agreement (other than any obligation of Customer to timely pay WDS any fees or charges for Subscribed Services or which otherwise become due and payable under this Agreement) and fails to cure such default or breach within thirty (30) days of receipt of notice thereof from the Terminating Party (provided however that the non-breaching Party may agree in writing, and in its sole and absolute discretion, to extend the thirty (30) day cure period if and for so long as the defaulting or breaching Party continues reasonable efforts to cure promptly such default or breach);

(ii) the other Party becomes the subject of a voluntary petition in bankruptcy or any voluntary proceeding relating to insolvency, receivership, liquidation, assignment or composition for the benefit of creditors; or

(iii) the other Party becomes the subject of an involuntary petition in bankruptcy or any involuntary proceeding relating to insolvency, receivership, liquidation, assignment or composition for the benefit of creditors, if such petition or proceeding is not dismissed within sixty days of its filing.

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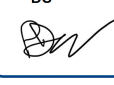
(c) In addition to its right to terminate the Term in accordance with the preceding Sections 5.2(a) or (b) of this SaaS Subscription Agreement, WDS may terminate the Term of this Agreement for convenience and without cause, by providing written notice of termination to Customer, not less than 30 days prior to the effective date of such termination.


(d) In addition to its right to terminate the Term in accordance with the preceding Section 5.2(b) of this SaaS Subscription Agreement, Customer may, subject to Section 5.4 of this SaaS Subscription Agreement, terminate the Term of this Agreement for convenience and without cause, by providing written notice of termination to Customer, not less than 30 days prior to the effective date of such termination.

5.3 SUSPENSION OR TERMINATION OF SERVICES.

WDS (or its Third-party Suppliers, as applicable) may, directly or indirectly, and by use of a Disabling Device or any other lawful means at any time, or from time to time, suspend, terminate or otherwise deny Customer, any Designated User's or any other Person's access to or use of all or any part of any Subscribed Service, without incurring any resulting obligation or liability, if: (a) WDS (or its Third-party Suppliers) receives a judicial or other governmental demand or order, subpoena, or law enforcement request which expressly or by reasonable implication requires WDS (or such third-party licensor or contractor) to do so; or (b) WDS (or its third-party licensor or contractor) believes, in its good faith discretion, that: (i) Customer or any Designated User has failed to comply with any term or condition of this Agreement, or has accessed or used or attempted to access or use any Subscribed Service beyond the scope of the rights granted, or for a purpose not authorized, under this Agreement or in any manner that does not comply with any instruction or requirement promulgated by WDS from time to time; (ii) Customer or any Designated User is, has been, or is likely to be involved in any fraudulent, misleading or unlawful activities relating to or in connection with any Subscribed Service; or (iii) this Agreement or the Term hereof expires or is terminated; or (c) Customer shall be in default of its obligations under the Agreement to timely pay any fees, charges or other amounts which are or become due and payable to WDS. This Section 5.3 does not limit any of WDS's other rights or remedies, whether at Law, in equity or under this Agreement. WDS will provide not less than one business day's notice to Customer of any such suspension except where WDS believes it needs to suspend immediately.

5.4 EFFECT OF EXPIRATION OR TERMINATION OF TERM. Upon expiration or any earlier termination of the Term or this Agreement: (i) all rights, licenses (if any), consents and authorizations granted by WDS to Customer or its Designated Users hereunder (including without limitation the Designated User Authorization) shall immediately terminate; (ii) WDS (or its third-party licensors or contractors) may disable all Customer and Designated User access to the Subscribed Services; (iii) Customer shall remain liable for all fees, charges and other sums which shall have accrued under this Agreement through the effective date of such expiration or earlier termination, and which then remain unpaid (subject in each such case to the provisions of Section 4.2 ("Disputed Charges") of this SaaS Subscription Agreement) and all other obligations which have accrued under this Agreement through the Effective Date of such expiration or termination, or which by the terms of this Agreement contemplate or require performance by Customer subsequent to such expiration or termination, and all of WDS's rights under this Agreement shall continue in full force

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and effect; (iv) in the event that WDS terminates this Agreement or the Term hereof for cause, or in the event that Customer, pursuant to Section 5.2(d) of this SaaS Subscription Agreement, terminates this Agreement or the Term hereof at any time prior to expiration of the Initial Term, then in addition and without prejudice to any and all other rights and remedies available to WDS under this Agreement, or at Law or in equity, Customer must within 30 days of such termination pay to WDS all fees, charges, and other amounts that have accrued under this Agreement prior to such termination as well as all fees, charges and other amounts remaining unpaid for the Subscribed Services under this Agreement for the period which, but for such earlier termination, would have constituted the then unexpired Term, plus all related taxes and expenses – it being the Parties’ intention that all such sums shall be accelerated and due and payable by Customer within 30 days of such termination; and (v) Customer must immediately return (or if so instructed by WDS destroy) all WDS Confidential Information, and must return to WDS all of WDS’s property (if any), then in Customer’s possession or subject to Customer’s control.


5.5 EFFECT OF SUSPENSION OR TERMINATION OF DESIGNATED USER AUTHORIZATIONS.


(a) SUSPENSION. Upon and throughout any suspension of the Designated User Authorization of any one or more of Customer’s Designated Users (or in the event of termination of any such Designated User Authorization) in whole or in part for any reason: (i) all fees and charges payable to WDS under the Agreement shall continue to accrue, notwithstanding such suspensions or terminations; (ii) Customer shall remain liable for all fees, charges and any other obligations under the Agreement; (iii) the Designated User Authorization as to all Designated Users with respect to whom WDS suspends the Designated User Authorization (for and with respect to all suspended Subscribed Services) shall be revoked and terminated for and with respect to the period of the suspension.

5.6 DATA PRESERVATION DURING TERM; DATA PRESERVATION IN THE EVENT OF SUSPENSION OR TERMINATION

(a) Designated Users may during the Term extract Customer Content as Excel spreadsheets, Adobe pdf files or CSV text files via Subscribed Services management screens from time to time provided on or through the Site.

(b) Following expiration, or any earlier termination of the Term and provided that the Term shall not have been terminated by WDS for cause: (i) WDS will not for the first **60 days** following such expiration or earlier termination, take any action to intentionally erase or delete any Customer Content then stored on the System under or with respect to Customer’s Account or any sub-Account or related User ID thereunder; and (ii) provided Customer shall have paid to WDS all fees, charges and other amounts due and payable under the Agreement, WDS will following its receipt during such 60 day period of Customer’s written request, either (A) during said 60-day period forward to Customer a thumb drive containing a copy of all Customer Content then stored on the System under Customer’s Account, in CSV text format or in such other format as the Parties may mutually agree upon in writing; or (B) make CSV text files of Customer Content then stored on the System, under Customer’s Account available to Customer during the aforesaid 60-day

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period for export or download from such File Transfer Protocol (“FTP”) site as may be provided by or through WDS for such purpose. Following termination of the Term by WDS for cause, or delivery of the copy of Customer Content to Customer as contemplated under the preceding provisions of this Section 5.6(b), neither WDS nor any of its third-party contractors or licensors will have any obligation to continue to store, maintain or otherwise Process any Customer Content then remaining on the System in connection with Customer’s Account or any sub-Account or related User ID thereunder, and may erase, delete or destroy any and all such Customer Content whether by removing pointers to such files or data on any Host Server, overwriting or otherwise.


(c) **COPIES AND ARCHIVES.** Customer and each Designated User acknowledges that WDS and its third-party licensors or contractors shall be entitled (but except to the extent otherwise required under applicable Law, not obligated) to retain archives and a copy of any and all Customer Content which, Customer or any of Customer’s Designated Users may Process on or through any Subscribed Service (or any other part of the System) and which WDS (or its third-party licensor or contractor) in its sole and absolute discretion determines to be needed to respond to any inquiries following expiration or termination of the Term or the Agreement or to evaluate any claims (if any), or queries and requests of law enforcement or other governmental agencies, or which may be required in order to comply any with applicable Law.

5.7 **HANDLING OF CUSTOMER CONTENT UPON TERMINATION.** Upon or at any time after the expiration or any earlier termination of the Term WDS may deactivate Customer’s Account and, as provided in Section 5.6 of this SaaS Subscription Agreement, shall be entitled to delete Customer’s Account and any Customer Content from the System, provided that WDS shall have first provided Customer with opportunity within the first 60 days following such expiration or earlier termination, to export Customer Content then stored on the Subscribed Service in accordance with Section 5.6 of this SaaS Subscription Agreement. WDS shall not be liable to Customer nor to any other Person for any termination of Customer’s Account or access to any Subscribed Service or deletion of any Customer Content, provided that such termination of Customer’s Account or access to Subscribed Services, or deletion of Customer Content by WDS is in compliance with the terms of this Agreement. Customer shall, in addition to all other obligations for payment of fees and other charges under the Agreement, be responsible for payment of all fees and charges imposed upon WDS by any Third-party Supplier for and with respect to the hosting or storage of Customer Content on any Host Server or other part of the System following expiration or earlier termination of the Term, if and as applicable.

6. **REPRESENTATIONS AND WARRANTIES.**

6.1 Customer hereby covenants, represents and warrants to WDS as follows:

(a) Customer is, and at all times throughout the Term shall remain, duly organized and validly existing and has, and shall at all times throughout the Term shall have, all necessary corporate, company, governmental, and administrative power and authority to execute and deliver this Agreement and to perform its obligations hereunder. This Agreement has been duly approved by all requisite corporate, company, governmental and administrative and regulatory action on the part of Customer, has been duly executed and delivered by Customer and constitutes the valid

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and binding obligation of Customer, enforceable against Customer in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws of general application relating to or affecting the enforcement of creditors rights generally and to general principals of equity.

(b) Customer's execution, delivery and performance of this Agreement and the completion of the transactions contemplated hereby does not and will not at any time (i) conflict with, violate or result in a breach of, or constitute a default under (A) any applicable Law relating to Customer or any of its Designated Users; or (B) any contract to which Customer is a party or by which it may be bound.

(c) Customer and each of its Designated Users shall at all times comply with this Agreement, and with all applicable Laws relating to their respective access to or use of, and their respective communications or interactions on or through the Site or any Services under Customer's Account or any sub-Account thereunder.


(d) No Customer Content at any time or from time to time, Processed by Customer, any Designated User or by WDS or its third-party contractors on or through the Site or any Subscribed Service violates nor will violate any applicable Law or infringes nor will infringe any Intellectual Property Rights or other proprietary rights of any Person, and Customer has obtained and shall at all times throughout the Term of the Agreement, at Customer's sole cost and expense, maintain in full force and effect all third-party permissions, consents and licenses necessary for Customer, its Designated Users, WDS and its third-party contractors to lawfully, and without thereby infringing any Person's Intellectual Property Rights, Process Customer Content through or utilizing any Subscribed Service.

(e) Customer has read and understands, and agrees to be bound by and to comply with all of the terms and conditions of this Agreement, including the TOS.

6.2 WDS hereby covenants, represents, and warrants to Customer as follows:

(a) Except to the extent that any equipment, software, communications, cloud computing, storage and other services comprising Subscribed Services are or may from time to time be provided by or through WDS's third-party contractors, suppliers or licensors, WDS is the owner of all right, title, and interest in and to the Subscribed Services offered under this Agreement, and WDS has the right to grant to Customer the subscription rights granted herein, and has not knowingly granted subscription rights to any other Person that would restrict WDS's rights to provide Subscribed Services to Customer hereunder;

(b) As of the Effective Date, to the best of WDS's knowledge, the Subscribed Services are materially free from currently-known viruses or malicious code, or malicious software, and that WDS will continue, for the Term of this Agreement, to use commercially reasonable security measures to ensure the integrity of those parts of the Subscribed Services under WDS's direct control, from data leaks, hackers, denial of service attacks, and other unauthorized intrusions, provided however that nothing herein is intended nor may be construed or operate, as a covenant, representation, warranty or other undertaking by WDS of, or otherwise with respect to, the

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integrity or security of any part of Subscribed Services provided by or through any Third-party Supplier;

(c) As of the Effective Date, no claims have been asserted against WDS (whether or not any action or proceeding has been brought) that allege that any part of the Subscribed Services infringes or misappropriates any patent, copyright, mask copyright, or any trade secret or other intellectual or proprietary right of a third-party, and WDS is unaware of any such potential claim.

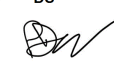
(d) WDS's proprietary database application installed on a Host Server, the online access to and use of features or functionality of which may from time to time comprise a Subscribed Service, will not infringe the U.S. copyright of any third-party, nor to WDS's knowledge, any other Intellectual Property Rights of any third-party; provided, however, that nothing herein is intended to, nor may be construed or operate as a covenant, representation or warranty regarding any Intellectual Property Rights of any Third-party Supplier or otherwise with respect to any services provided by or through any Third-party Supplier.


6.3 **INFRINGEMENT REMEDY** If, other than as a result of using specifications provided by Customer regarding modifications to a Subscribed Service or to any WDS Software, the Subscribed Services or any part thereof is finally adjudged to infringe, or in WDS's opinion is likely to become the subject of such a claim, WDS in its sole and absolute discretion may either: (i) procure for Customer the right to continue using the Subscribed Service in question; or (ii) modify or replace that Subscribed Service to make it non-infringing; or (iii) terminate the Subscribed Services in question, or the Term for convenience if in WDS's sole judgement the other options under this Section 6.3 are not economically feasible or acceptable to WDS. Nothing in this Section 6.3 is intended to, nor may be construed or operate to limit or otherwise amend the provisions of Section 5.2 of this SaaS Subscription Agreement.

7. **SCHEDULED DOWNTIME; DATA BACKUP.**

7.1 **SCHEDULED DOWNTIME.** WDS will use Commercially Reasonable Efforts to: (a) schedule down time for routine maintenance of the System between the hours of 6:00 a.m. and 7:00 p.m. Eastern Time on Saturdays or Sundays or at such times as WDS may reasonably determine corresponds to scheduled downtime or outages of any Third-party Suppliers' related services, or on such other days and at such other times as the Parties may otherwise mutually agree upon in writing following the Effective Date of this SaaS Subscription Agreement, and (b) give Customer at least 48 hours prior notice of all scheduled downtime or outages of any Subscribed Service (scheduled downtime and outages under the preceding 7.2(a) and (b), collectively "Scheduled Downtime").

7.2 **DATA BACKUP.** The Subscribed Services do not replace the need for Customer to maintain, and Customer acknowledges and agrees that it shall throughout the Term maintain, regular backups or redundant archives of Customer Content.

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8. MISCELLANEOUS.

8.1 FORCE MAJEURE. Notwithstanding any provision of this Agreement to the contrary, neither WDS nor any of its Affiliates or third-party contractors or licensors will be liable in any respect under any theory of liability for any delay, default or failure to perform any obligation arising under or in connection with this Agreement or any SOW, due to any cause beyond WDS's or their reasonable control including: acts of God, pandemic, epidemic or other public health emergencies, war, terrorism (including cyber terrorism) or the threat thereof, riot; embargos; strikes walkouts or other industrial or labor disputes; acts of civil or military authorities; acts or omissions of Internet traffic carriers; government interference or actions or omissions of regulatory or governmental bodies (including the passage of Laws or issuance of orders that impact the delivery of Subscribed Services; denial or delays in processing of export license application; fire, floods, earthquakes, storms, lightning, hurricanes or tornados; accidents; fuel crises, failure or interruption of telecommunication, electric power, fiber optic cable service or the internet (each a "**Force Majeure**").

8.2 [Intentionally Omitted]

8.3 GOVERNING LAW; VENUE.


This Agreement will be executed and implemented in Fulton County. Further, this Agreement shall be administered and interpreted under the laws of the State of Georgia. Jurisdiction of litigation arising from this Agreement shall be in the Fulton County Superior Courts. If any part of this Agreement is found to be in conflict with applicable laws, such part shall be inoperative, null and void insofar as it is in conflict with said laws, but the remainder of this Agreement shall be in full force and effect.


Whenever reference is made in the Agreement to standards or codes in accordance with which work is to be performed, the edition or revision of the standards or codes current on the effective date of this Agreement shall apply, unless otherwise expressly stated.

8.4 REMEDIES CUMULATIVE. Except as otherwise expressly provided in this Agreement, each Party's remedies under this Agreement shall be cumulative (and not alternative) and are in addition to any other rights or remedies available to such Party at Law or in equity.

8.5 HEADINGS. Section, subsection or paragraph headings or captions contained in this Agreement are for convenience of reference only, shall not be deemed to be a part of this Agreement and shall not be referred to in connection with the construction or interpretation of this Agreement.

8.6 NOTICES. All notices, requests, consents, claims, demands, waivers and other communications under this Agreement shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by Federal Express or other nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or email of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient or (d) on the fifth day after the date mailed by U.S. certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective Parties at the following addresses or such other address for a Party as shall be specified in the Notice given in accordance with this Section 8.6:

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If to Customer: Director
Department of Registrations & Elections
141 Pryor Street, Suite
Atlanta, Georgia 30303
Attn: Richard L. Barron
Email: richard.barron@fultoncountyga.gov

With a copy to: Chief Purchasing Agent
Department of Purchasing & Contract Compliance
130 Peachtree Street, S.W., Suite 1168
Atlanta, Georgia 30303
Attn: Felicia Strong-Whitaker
Email: felicia.strong-whitaker@fultoncountyga.gov


If to WDS: Wireless Data Systems, Inc.
Attention: David Whitt, President
20423 State Road 7, F-6 #6182
Boca Raton, Florida 33498
pdwhitt@wdsinc.com

With copy to: Wireless Data Systems, Inc.
Attention: David Whitt, President
5474 Arapaho Way
Medina, Ohio 44256

8.7 SEVERABILITY. If any portion of this Agreement is held by a court or arbitrator having jurisdiction, to be invalid, illegal or unenforceable, the remaining portions of this Agreement shall remain in full force and effect, and any invalid or unenforceable portions shall be construed in a manner that most closely reflects the effect and intent of the original language and is valid, legal and enforceable. If such construction is not possible, the invalid, illegal or unenforceable provision shall be severed from this Agreement, and the rest of this Agreement shall remain in full force and effect.

8.8 WAIVERS. Any delay or failure by either Party to enforce any provision of this Agreement shall in no way constitute or be construed to be a present or future waiver of such provision nor in any way affect either Party's right to enforce such provision thereafter. Any waivers, to be effective, must be in writing and signed by a duly authorized officer or representative of the Party against which such waiver is sought to be enforced.

8.9 SURVIVAL. Expiration or any termination of the Term or this Agreement does not relieve a Party of any obligation of that Party which accrues prior to expiration or termination of this Agreement or the Term, or which by the express terms of this Agreement contemplate performance subsequent to expiration or termination, and those obligations remain in effect until fully discharged by performance. Any provisions of this Agreement which by its terms are to survive

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expiration or termination, will survive any expiration or termination of this Agreement or the Term hereof.

8.10 RELATIONSHIP. Each Party is an independent contractor with respect to all activities under this Agreement and nothing in this Agreement is intended or may be construed or operate to create any employment, franchise, joint venture, agency, partnership, escrow, franchise, fiduciary or other relationship other than that of independent contractors. Neither Party is granted any right or authority to assume or to create any obligation or responsibility, express or implied, on behalf of or in the name of the other Party or to bind the other Party in any manner whatsoever.

8.11 ASSIGNMENT.

(a) WDS shall at all times have the right to assign any or all of its rights or delegate any or all of its obligations under this Agreement to any third-party without any notice to or consent of Customer or any Other Person, and for any purpose, including, but not limited to: collection of unpaid amounts; or in connection with an acquisition, corporate reorganization or merger; or sale of substantially all of WDS's business or assets to another Person.


(b) Customer may not assign any of its rights or delegate any of its obligations under this Agreement (whether by operation of Law or otherwise) without in each case first obtaining WDS's prior written consent, which consent may be withheld in WDS's sole and absolute discretion. In those cases, if any, where WDS consents to an assignment or delegation by Customer, as a condition thereof, the proposed assignee or transferee must agree in writing to be bound by all of the terms and conditions of this Agreement. Any attempted assignment or delegation by Customer of any right or obligations under this Agreement, whether by operation of Law or otherwise, not specifically consented to by WDS is void and of no force and effect. This Agreement is binding upon and inures to the benefit of not only the Parties hereto but, subject to the provisions of this Section, also their respective transferees, successors or permitted assigns.


8.12 ENTIRE AGREEMENT. This Agreement constitutes the entire agreement between Customer and WDS regarding the subject matter hereof and supersedes any and all prior and contemporaneous representations, understandings, agreements or communications between Customer and WDS whether written or oral regarding the subject matter hereof.

8.13 AMENDMENT. Except for WDS's right to modify or amend the TOS as herein provided, this Agreement may not be amended, modified or altered except by written instrument duly executed by both WDS and Customer.

8.14 COUNTERPARTS. This Agreement may be executed in two or more counterparts, all of which taken together will constitute one and the same instrument. The Parties expressly agree that with respect to this Agreement, a facsimile signature (or executed document which has been formatted as a Portable Document Format (pdf) and electronically exchanged) shall be binding upon the Parties.

8.15 NO THIRD PARTIES BENEFICIARIES. There are no third-party beneficiaries under this Agreement.

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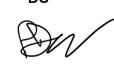
8.16 EXPORT COMPLIANCE. The Subscribed Services, and any other technology which WDS may make available, and Derivatives thereof, may be subject to export Laws and regulations of the United States and other jurisdictions. Each Party represents that it is not named in any US government denied person list. Customer shall not permit any Designated User to access or use any Subscribed Service in any US embargoed country (currently Cuba, Iran, North Korea, Sudan, Syria or Crimea) or in violation of any US export Law or regulation.


[Signatures appear on the following page]

4824-8855-9322.1

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4823-5057-4064.2

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IN WITNESS WHEREOF the Parties have executed this Agreement effective as of the EFFECTIVE DATE first written above.

CUSTOMER:

FULTON COUNTY, GEORGIA, on
behalf of the Fulton County Department of
Registration and Elections

WIRELESS DATA SYSTEM, INC.,
a Florida corporation

DocuSigned by:
By: Robert L. Pitts
14E1B4AA6F6A44A...
Robert L. Pitts, Chairman
Fulton County Board of Commissioners

DocuSigned by:
By: David Whitt
0E6786A3F7D0476...
David Whitt
President

ATTEST:

DocuSigned by:
By: Tonya R. Grier
EEC476C4837648D...
Tonya R. Grier
Clerk to the Commission

DocuSigned by:



(Affix County Seal)

APPROVED AS TO FORM:

DocuSigned by:
By: Cheryl Ringer
E6C34E63F54F407...
Office of the County Attorney

APPROVED AS TO CONTENT:

DocuSigned by:
By: Richard L. Barron
762F86CC6F4C404...
Richard L. Barron, Director
Department of Registration and
Elections

Exhibit A**TOS****WIRELESS DATA SYSTEMS, INC.****SaaS TERMS AND CONDITIONS OF SERVICE**

THE FOLLOWING TERMS AND CONDITIONS OF SERVICE (HEREINAFTER, COLLECTIVELY REFERRED TO AS THIS “TOS”) ARE INCORPORATED BY REFERENCE INTO THAT CERTAIN SOFTWARE AS A SERVICE SUBSCRIPTION AGREEMENT DATED June 29, 2021 BETWEEN WIRELESS DATA SYSTEMS, INC., (“WDS”) AND Fulton County, Georgia, on behalf of the Fulton County Department of Registration and Elections (“CUSTOMER”) (the “SaaS Subscription Agreement”).

1. DEFINITIONS


1.1 As used in this TOS, and in the Agreement (hereinafter defined), the following capitalized words or phrases, and those terms defined parenthetically in other provisions of this TOS, have the respective meanings ascribed to them in this Section or in such other provision of this TOS. Defined terms may be used in the singular, plural or possessive forms, as the context requires:

a. “Access Credentials” means any username, identification number, password, license or security key, security token, PIN, authentication credential, or other security code, method, technology or device used, alone or in combination, to verify an individual's identity and authorization to access and use a Subscribed Service).

b. “Account” means the “sub administrator” or “account group” created by WDS on its System for Customer’s use and configuration, to enable Customer’s Designated Users to log in to a Subscribed Service using User ID, if and as permitted under the Agreement.

c. “Agreement” means the above-described SaaS Subscription Agreement, executed by and between WDS and Customer, together with this TOS (as this TOS may be amended from time to time in accordance with the terms of the Agreement) and any other written exhibit, schedule, addendum subscription order form or statement of work (if any) which may from time to time be executed by and between WDS and Customer in connection with, and appended to, said SaaS Subscription Agreement (each an “SOW”).

d. An “Affiliate” of a specified Person means another Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the Person specified. As used in the immediately preceding sentence, the term “control” (including the correlative terms “controlling”, “controlled by”, or “under common control”) means

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the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

e. “Commercially Reasonable Efforts” means the efforts that a prudent Person desirous of achieving a result would use in similar circumstances to ensure that such result is achieved as expeditiously as reasonably possible; provided, however, that an obligation to use Commercially Reasonable Efforts under this Agreement does not require the Person subject to that obligation to take actions that would result in a material adverse change in the benefits to such Person of this Agreement or any of the transactions contemplated hereby, or to dispose of, or make any changes to, its business, commence or prosecute any litigation, expend any material funds or incur any other material burden.

f. “Customer” means the entity identified as “Customer” in the preamble to the SaaS Subscription Agreement.


g. “Customer Content” means any data, files and other content in any form or medium, that is collected, uploaded, downloaded or otherwise received from Customer or any Designated User, under Customer’s Account, by or through a Subscribed Service or is derived from the Processing of such data files or other content by, through or as part of a Subscribed Service. Customer Content does not however include any Resultant Data or any proprietary data, information, materials or content of any of WDS’s third-party contractors, licensors or suppliers.

h. “Customer Content License” has the meaning provided in Section 2.5 of this TOS.

i. “Customer Facilities” means any computers, software, hardware, databases, database management systems, electronic systems, networks, Firewalls, websites, domains, sub-domains, user interfaces, Servers, routers, cables, or other equipment or devices (including optical reader or other reading or scanner devices), or other information technology infrastructure, owned or provided by or through Customer or any of its third-party contractors, vendors, licensors or suppliers, and any User Installed Programs. “Customer Facilities” does not include the System or any other WDS Technology or any part thereof.

j. “Derivative” means with respect to copyrightable or copyrighted works of authorship, a derivative thereof as defined under United States copyright laws; (ii) for patentable or patented subject matter, any improvement thereof or thereon; and (iii) for material which is protected as a trade secret, any new material derived from such existing trade secret material, including new material which may be protected by copyright, patent or as a trade secret.

k. “Designated User” means an employee of Customer: (i) who is a natural person over the age of 18, and is (and only so long during the Term as he or she remains) a member of Customer’s workforce and specifically designated and authorized by Customer under Customer’s Account, as an individual who may access and use a Subscribed Service on Customer’s behalf under Customer’s Agreement with WDS; and (ii) who before accessing or in any respect utilizing a Subscribed Service, first agrees to comply with, and be bound by this TOS and any other term, condition or restriction relating to access to or use of the applicable Subscribed Service as may be required by WDS from time to time, and who is not in default thereof; and (iii) provided that in no

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event may the aggregate number of Designated Users and as such, the number of individuals authorized by Customer from time to time to access or use any Subscribed Service under Customer's Account at any single time, exceed the maximum number of Designated Users agreed to in writing by Customer and WDS in the Agreement.

l. "Designated User Authorization" has the meaning provided in Section 2.3(a) of this TOS.

m. "Disabling Device" means any software, computer code, program, sub-program, web script, hardware or other technology, device or means (including any backdoor, timebomb, timeout, drop-dead device, software routine or other disabling device) used by WDS, its designees or third-party contractors or licensors to disable Customer's or any Designated User's access to or use of a Service (including any Subscribed Service) automatically with the passage of time or under the positive control of WDS, its designee, or third-party contractors or licensors.


n. "Documentation" means any manual, instructions, documents or other materials that WDS provides or makes available to Customer in any form or medium and which describes the functionality, components, features, requirements, operations or support of the Subscribed Services, or any part thereof.


o. "Firewall" means computer hardware and software that block unauthorized communications between a Person's computer network and external networks.

p. "Host Server" means any Server on which WDS has installed any Hosted Application, or on which any of WDS's third-party licensors or contractors (including any cloud service provider) have installed any Hosted Application, in either case for on line access over the Internet by Designated Users for and in connection with a Subscribed Service.

q. "Hosted Application" means any of WDS's, or WDS's respective third-party licensors' proprietary software application(s) installed on a Host Server, the on line access to and use of features or functionality of which may from time to time comprise, or be offered by WDS as part of, a Service; Hosted Application may for example include, without limitation, WDS's proprietary database management application configured by WDS to fit Customer specific operations and requirements.

r. "Intellectual Property Rights" means any intellectual property rights which may exist or be created under the Laws of any country or other jurisdiction anywhere in the world, whether arising under statutory or common law or otherwise, and whether or not perfected, including, without limitation, all (i) patents and patent applications; (ii) industrial property rights; (iii) rights associated with works of authorship, including copyrights, copyright applications, copyright registrations, mask work rights, mask work applications, mask work registrations; (iv) database or sui generis database rights; (v) moral rights; (vi) rights relating to the protection of trade secrets and confidential information; (vii) rights of privacy or publicity; (viii) rights associated with trademark, service mark, trade dress, trade names or other similar indicia of source or origin, together with the goodwill connected with the use or symbolized by any of the foregoing, any common law rights therein or thereto and any state or federal trademark or service mark applications or registrations; (ix) rights to Internet domain names and social media account or user names (including "handles")

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whether or not trademarks, and to all associated web addresses, URLs, websites and webpages, social media sites and pages and all content and data thereon or relating thereto, whether or not copyrights or copyrightable; (x) rights to computer programs, operating systems, applications, firmware and other code, including all source code, object code, application programming interfaces, data files, databases, protocols, specifications, and other documentation thereof (xi) divisionals, continuations, renewals, reissues and extensions of any of the foregoing whether in whole or in part (as and to the extent applicable) now existing, hereafter filed, issued or acquired; and (xii) any right analogous to those set forth in this definition; and (xiii) any other proprietary rights relating to intangible property.

s. “Law” means any law, statute, ordinance, rule or regulation of any country, state, commonwealth, county, city or other governmental authority or any department, agency, board or subdivision thereof, including all orders, judgments, injunctions, awards, decisions or decrees of any court or other governmental authority having effect of law.


t. “Malicious Code” means any software, computer code, program, sub-program or web script, including any virus, worm, malware or other malicious computer code, the intended purpose of which is to (a) permit unauthorized access to, or to destroy, disrupt, disable, distort, or otherwise harm or impede in any manner (i) any computer, software, firmware, hardware, system or network or (ii) any application or function of any of the foregoing or the security, integrity, confidentiality or use of any data or other materials or content Processed thereby, or (b) prevent Customer or any Designated User from accessing or using a Subscribed Service as intended by the Agreement. Malicious Code does not include any Disabling Device.


u. “Order Form” means an ordering document, order form, or software as a service subscription agreement, executed by Customer and WDS, identifying the Subscribed Service or Services to be provided under the Agreement between Customer and WDS.

v. “Person” means a natural person, a corporation (for profit or not for profit), an association, a partnership (general or limited), limited liability company, limited liability partnership, joint venture, trust, government or political department, subdivision or agency, or any other entity.

w. “Processing” of, or to “Process”, or “Processes” or to have “Processed” whether with respect to Customer Content, or otherwise, means any operation or set of operations that is performed upon Customer Content (or upon any other data, files or content) and includes without limitation the following: access, collection, use, retention, copying, recording, organization, viewing, reviewing, performance, display, caching, storage, adaptation, modification, editing, printing, creating Derivatives of, alteration, retrieval, inputting, posting, uploading, downloading, transmission, dissemination or otherwise making available, utilizing and/or disposal or destruction thereof.

x. “Resultant Data” means any information, data, files or other content derived by or through any Service (including any Subscribed Service) from the Processing of Customer Content and which is sufficiently different from such Customer Content that such Customer Content cannot be identified from the inspection, analysis or further Processing of such information, data, file, or other content.

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y. “Server” means a computer, device or software on a network that manages system resources (e.g. file servers manage file storage; a printer server manages the processing of print jobs; a database server manages the processing of database queries; a network server manages network traffic, and a video server manages the processing of video files).

z. “Service” means: a web based software as a service offering provided or offered by WDS on or through the Site and which may consist of hosted services that, if and as a, Subscribed Service (and subject always to the terms and conditions of the Agreement) may provide Customer’s Designated User(s) with access to features or functionality of Hosted Applications for purposes of enabling Customer’s Designated Users to: (i) upload, download, send, or receive Customer Content to or from a Host Server; or (ii) store, view, reproduce, display, edit, or otherwise Process Customer Content; and if offered by WDS as part of or in connection with a Service, the limited, revocable, non-exclusive license to use during the Term the object code version of such mobile application or applications (if any) as may be provided by WDS to enable GPS tracking of authorized mobile devices which may be used by Designated Users to communicate with or utilize functionality of such Hosted Applications.

aa. “Service Environment” means the combination of hardware and software components owned, licensed or otherwise obtained from third parties, or managed by WDS, or by WDS’s third-party licensors, contractors and suppliers, and to which WDS may from time to time grant Customer’s Designated Users limited access as part of a Subscribed Service. As applicable and subject to the terms and conditions of the Agreement, WDS Software and Customer Content may be hosted in the Service Environment.

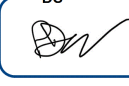
bb. “Service Fee” has the meaning provided in Section 2.2(b) of this TOS.

“Site” means the domain operated by WDS or its third-party contractors on the worldwide web portion of the Internet at <https://FCE.tsx.studio> or any website, domain or sub-domain designated from time to time by WDS for access to a Subscribed Service by Customer or its Designated Users under the Agreement between WDS and Customer, whether identified in the SaaS Subscription Agreement, an SOW, this TOS or via written notice to Customer by WDS.

dd. “SOW” has the meaning provided in Section 1.1(b) of the SaaS Subscription Agreement, and in the definition of “Agreement” provided in Section 1.1(c) of this TOS.

ee. “Subscribed Service” means a Service expressly identified as a Subscribed Service in Schedule “I” of the SaaS Subscription Agreement between Customer and WDS (or in such other SOW, if any, as may be appended to the Agreement from time to time by mutual written agreement of Customer and WDS) and as further defined under Section 3.1(a) of the SaaS Subscription Agreement.

ff. “System” means: the Services (including any Subscribed Services); Service Environment; WDS Software; Site; any other website, domain or sub-domain owned or operated by WDS or any of WDS’s third-party licensors or contractors and through which the features or functionality of Hosted Applications are or may be accessed in connection with a Subscribed Service; any feature, functionality, sub-domain or subdirectory of or accessed via the Site (including

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any which WDS may from time to time specifically designate for use by Designated Users in connection with Subscribed Services); Server(s) (including Host Servers and other computers); modems, routers, cables and any other equipment, devices, connections or Documentation provided by WDS, its Affiliates or third-party contractors to facilitate Services, including any provided to facilitate a Designated User's on line access to a Subscribed Service over the Internet. "System" does not include any Customer Facilities.

gg. "Term" has the meaning provided in Section 5.1 of the SaaS Subscription Agreement.

hh. "User ID" has the meaning provided in Section 2.1(b) of the TOS.

ii. "User Installed Programs" means any software that Customer has, or may from time to time have or be required to have, installed on its own Servers, computers, devices or other Customer Facilities, to communicate or otherwise interact or interoperate with the System in order to utilize a Subscribed Service; "User Installed Programs" does not include any WDS Software.


jj. "WDS Confidential Information" means any information regarding, or Documentation with respect to, WDS Technology or any other property or asset of WDS, or otherwise regarding any business, operations, finances, assets, affairs or prospects of WDS or any of its Affiliates, including but not limited to any WDS Trade Secrets, which in any manner is disclosed by WDS or its representatives to Customer or to any Designated User or other Customer personnel or representatives, whether in tangible form or media, in electronic form, verbally, visually or otherwise.

kk. "WDS Software" means the Hosted Applications, and any other WDS proprietary computer software comprising, or utilized by WDS in the provision of, any part of a Service (including any part of a Subscribed Service), and which is hosted on the System (including but not limited to WDS's TSX database and database management applications and any Derivatives of any of the foregoing), any WDS proprietary mobile application provided in connection with or as part of a Service (including as part of a Subscribed Service) and any Derivatives thereof, and any software of WDS's third-party licensors described in Subsection 2.6(a) of this TOS.

ll. "WDS Materials" has the meaning provided in Section 4.1(a) of this TOS.

mm. "WDS Technology" means any of WDS's proprietary technology, including, without limitation, WDS Software in any form (whether in object code, source code or otherwise), software tools, web scripts, user interfaces, interface designs, API's, algorithms, flow charts, architecture, libraries, objects, user manuals or instructions, programmer manuals, developer notes and other related documentation (both printed and electronic), network designs or configurations, hardware designs or configurations, know-how, trade secrets, the System and any Derivatives, improvements, enhancements or expansions of any of the foregoing conceived, reduced to practice or developed at any time or from time to time, and any Intellectual Property Rights therein or thereto (whether owned by WDS or licensed or otherwise provided to WDS by a third-party).

nn. "WDS Trade Secrets" includes all WDS Technology as well as any and all of WDS's other proprietary formulae, patterns, devices, combinations of devices, compilations of

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information or other materials (or any portion or phase thereof), including any scientific, technical or commercial information, or any process, procedure, list, code or improvements of any of the foregoing which qualify as trade secrets under Florida Statute Section 812.081(i)(c) or under the Florida Uniform Trade Secrets Act.


2. ACCESSING AND USE OF SERVICES


2.1 DESIGNATED USER ACCOUNT REGISTRATION AND LOGIN CREDENTIALS.

a. WDS will following the Effective Date of the SaaS Subscription Agreement create an Account for Customer on the System, through which Customer may authorize its Designated Users to access and use Subscribed Services for such period during the Term as provided in, and otherwise in accordance with, the Agreement. Customer is responsible for all activities (including, without limitation, any access to or use of any Subscribed Service) conducted under its Account or under Customer's or any of its Designated Users' usernames, passwords or subaccounts, including under any Designated User ID, and for ensuring that all of its Designated Users comply with the provisions of Customer's Agreement with WDS, including this TOS. Customer shall be responsible for the accuracy, quality and legality of all Customer Content Processed by Customer or any of its Designated Users on or through any Subscribed Service and the means by which Customer or its Designated Users obtain Customer Content; Customer shall use commercially reasonable efforts to prevent unauthorized access to or use of any Service (including any Subscribed Service), and must notify WDS promptly of any such unauthorized access or use and any loss or theft or unauthorized use of any Designated User's password, user name or Service account or subaccount number or other login information or User ID.

b. Before any Designated User may login to, or otherwise access any Subscribed Service for the first time, they must register under Customer's Account and establish their respective account or subaccounts thereunder. Such Designated Users shall be identified to WDS, and shall be addressable at a single non-identifying e-mail address used by all Designated Users and provided by Customer. Customer agrees to fully, accurately and truthfully create, maintain and keep current Customer's Account and all accounts or subaccounts (as the case may be), thereunder and if and as requested from time to time by WDS, provide WDS with the names, designations, mailing addresses, telephone numbers, email addresses, passwords, user names or other identifying information and Access Credentials as WDS or its third-party contractors may require with respect to Designated Users (collectively "User ID"). Customer must as promptly as reasonably practicable update all User ID in the event any of the foregoing information changes. Customer may only authorize Designated Users to access and use Subscribed Services and then only for Processing of Customer Content for Customer's internal business purposes of facilitating the tracking of Customer's inventory of CPE equipment and related supplies, and then only in compliance with and subject to the requirements, restrictions or prohibitions of any applicable Laws, and not to operate any file storage service nor to resell or distribute any part of any Subscribed Service nor for any outsourcing, service bureau or similar purpose and subject always to the terms and conditions of Customer's Agreement with WDS, including this TOS.

c. Each Designated User's User ID is personal to that individual and Customer and each of its Designated Users must at all times maintain the confidentiality of their

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respective User ID and (subject to the immediately preceding Section 2.1(b)) not share User IDs with anyone. Customer shall be deemed to have performed or committed, and is responsible for, any act, communication, posting, Processing or other act or omission by anyone under or utilizing any User ID issued under or in connection with Customer's Account. Customer must prohibit any third-party from using any User ID and must immediately notify WDS in writing of any actual or suspected unauthorized use of any User ID or of any other security concerns of which Customer becomes aware. In order to enable WDS to from time to time determine Customer's or its Designated Users' compliance with this TOS, WDS reserves and shall at all times have, the right (but shall have no obligation) to monitor any access to and use of the Site or any Services (including any Subscribed Service or any other part of the System) and to disable any User ID. WDS may in its sole and absolute discretion refuse to provide Customer or any Designated User with access to, or may discontinue any access to or use of the Site or any Service (including any Subscribed Service or any other part of the System) in the event of any actual or potential misuse thereof by Customer or any of its Designated Users or otherwise under or in connection with any User ID or Customer's Account, or for any other non-compliance with the Agreement or this TOS.

2.2 SERVICES/GENERAL.

a. Customer is only authorized to access and use Subscribed Services and then only through its Designated Users. Each such Designated User is in turn, only authorized to access and use Subscribed Services under Customer's Account and that Designated User's User ID thereunder, and then only to lawfully Process Customer Content for and on behalf of Customer, and only for so long during the Term as (i) Customer is by the terms of its Agreement with WDS, authorized to do so and is not in default or breach of this TOS or any other provision of the Agreement; and (ii) such Designated User is not in default or breach of this TOS.

b. The Subscribed Services consist of the provision of access to such computational features or functionality of certain Hosted Applications, through the Site, and such technical support services, System monitoring, backup and recovery, application performance tuning, file retrieval, patches and updates, storage, application and System level security, training and other services as may be offered by or through WDS from time to time and specifically selected by Customer under the Agreement or under a SOW and for which Customer pays the corresponding fees specified in the Agreement, or the applicable SOW (the "Service Fee"), subject always to the terms and conditions of the Agreement, including this TOS.

c. Customer is at all times responsible for obtaining and maintaining at its sole cost and expense, all Customer Facilities and any telephone, electric and other utilities, high speed Internet access services and connections, any other equipment or services, as well as up to date browser or other third-party software needed by Customer or any Designated User to access and utilize any Subscribed Service, and for all costs and fees associated with any of the foregoing. Customer and each Designated User expressly consents to WDS and its third-party contractors' interception and storage of Customer Content or any other electronic communications received or transmitted through any of the Subscribed Services, and Customer and each Designated User acknowledges and understands that its communications (including all Designated Users' communications) with Subscribed Services will involve transmission over the Internet and over various networks owned or operated by third parties. Customer and each Designated User further acknowledges and understands that its various communications with a Subscribed Service may be

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accessed by unauthorized parties when communicated across the Internet, network communications facilities, telephone or other electronic means. WDS is not responsible for any of Customer's or Customer's Designated User's communications with any Subscribed Service, or any Customer Content, which are delayed, lost, altered, intercepted or stored during transmission across networks, including the Internet and Customer's local network.


d. During the Term, the Subscribed Services will meet the Service Level (if any) specified in the SaaS Subscription Agreement. If a Subscribed Service fails to achieve the applicable Service Level specified in the SaaS Subscription Agreement, then Customer will be entitled, as its sole and exclusive remedy to a credit for the Subscribed Service in accordance with the terms set forth in the SaaS Subscription Agreement. The Subscribed Services System logs and other related records shall be used for calculating any Service Level events.


e. Except, and then only to the extent, otherwise expressly set forth in an SOW executed between Customer and WDS, the Subscribed Services do not include any consulting, implementation or training services or any technical support services.

2.3 **RIGHTS GRANTED TO CUSTOMER'S DESIGNATED USERS.**

a. As between Customer and its Designated Users on the one hand, and WDS and its third-party contractors, licensors or suppliers on the other, WDS and its third-party contractors, licensors or suppliers own and reserve all right, title and interest, including all Intellectual Property Rights, in and to the Subscribed Services, the System, WDS Software, WDS Technology, Resultant Data, WDS Materials, and any Derivatives of any of the foregoing. Subject always to the terms, conditions and restrictions of WDS's Agreement with Customer (including this TOS), Designated Users will have a limited, non-exclusive, non-transferrable, non-sublicensable, revocable right to remotely, over the Internet, access and use only Subscribed Services and only during the Term of, or any shorter period specified in, the Agreement or this TOS with respect to such Subscribed Services, and then only while logged in as a Designated User under Customer's Account and a valid User ID issued to such Designated User thereunder: (i) via such domain, sub-domain or subdirectory or other Site as WDS from time to time designates, for such purpose; (ii) at such times as those Subscribed Services are generally available to WDS customers for access and use over the Internet; (iii) for the purpose of accessing and utilizing those computational features or functionality of an executable object code version of Hosted Applications then hosted on Host Servers and designated by WDS in the Agreement, in order to Process Customer Content; in each case solely for Customer's internal business purposes of facilitating the tracking of Customer's inventory of election equipment and related supplies, and then only in compliance with and subject to the requirements, restrictions or prohibitions of any applicable Laws, but not to operate any file storage service, nor to resell any part of any Subscribed Service, nor for any outsourcing, service bureau or similar purposes (herein collectively the "Designated User Authorization"). Customer shall at all times be and remain responsible for its respective Designated Users' compliance with the Agreement, including the provisions of this TOS.

b. WDS has no delivery obligations and will not ship, transmit or otherwise provide any copies of any WDS Software to Customer or any Designated User as part of any Subscribed Service, except for copies of the object code version of such mobile application (if any) as may be provided by WDS in connection with or as part of a Subscribed Service. Any such

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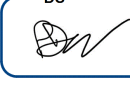
mobile application is licensed, not sold, and any access to and use thereof by Customer or any Designated User are subject to the terms, conditions and restrictions of the Agreement. Neither Customer nor any Designated User acquires under the Agreement or otherwise, any ownership interest in any WDS Software, nor any right to access or use any feature or functionality of any WDS Software in excess of the scope and/or duration of the applicable Subscribed Services. Upon expiration or any earlier termination of the Term of the Agreement or any Subscribed Service, the Designated User Authorization and Customer's right to access or use the Subscribed Services or any features or functionality of any Subscribed Service, Hosted Application, or any of the aforesaid mobile applications (if any) shall terminate.


c. The Designated User Authorization is subject to all limitations and restrictions set forth in the Agreement, including this TOS, and all rights not expressly granted under Section 2.3(a) of this TOS are reserved by WDS. WDS may in its sole and absolute discretion limit, suspend, terminate or revoke the Designated User Authorization in whole or in part with respect to any or all Designated Users, and with or without notice, if Customer fails to comply with any term, condition, restriction or other provision of the Agreement or if any Designated User fails to comply with any term, condition, restriction or other provision of this TOS. No other rights, whether to access or utilize the Site, any Service (or any other part of the System) or otherwise, are granted to Customer or any Designated User under the Agreement, this TOS or otherwise, nor may any be implied or inferred.

d. During the Term Customer and its Designated Users shall have a limited, revocable, non-exclusive, non-transferrable, non-sublicensable right to use Documentation (if any) solely as a reference in connection with and in support of Customer and its Designated Users use of the Subscribed Services in accordance with the Agreement. Customer acknowledges and agrees that the Documentation is WDS Confidential Information and may contain WDS Trade Secrets, if marked as such, and shall be treated as such by Customer and all Designated Users, and upon the earlier of the termination or expiration of the Term, Customer shall (and shall cause its personnel, including all Designated Users to) either promptly return to WDS, or destroy, all copies of Documentation then in their possession or subject to their control, and Customer shall upon WDS's request certify to WDS in writing that Customer and its personnel have fully complied with the requirements of this Section 2.3(d).

2.4 **CONSENT TO RECEIVE EMAILS.** By accessing or using the Site or any Subscribed Service, Customer and each Designated User consents to receive Service (including Subscribed Service) or Account related communications from WDS or its third-party contractors electronically, including emails Although WDS may choose to communicate with Customer or any Designated User by mail or courier service, WDS may also from time to time choose to communicate with Customer or Designated Users by email or by posting notices on the Site. Customer agrees that any notices or other communications that WDS or its third-party contractors may from time to time provide to Customer electronically satisfy any legal requirement that such communications be in writing.

2.5 **GRANT OF LICENSE TO WDS.** Customer and each Designated User hereby grants to WDS, its Affiliates, agents, third-party contractors, licensors, successors and assigns a non-exclusive, royalty-free, worldwide, transferable, fully paid up, sublicensable, perpetual and irrevocable right and license under Customer's and each Designated User's respective Intellectual

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Property Rights to: (i) host, store, cache, use, reproduce, view, modify, make Derivatives of, transmit, distribute, perform, display and otherwise Process Customer Content (or any other data, files, information, materials or content, including any communication or interaction conducted on or through the Site or any Subscribed Service or any part thereof), as WDS, or its third-party contractors, deem necessary to render, perform or provide any Subscribed Service and otherwise in connection with or in furtherance of (A) the exercise of WDS's rights or performance of WDS's obligations under its Agreement with Customer; (B) the exercise of such third-party contractor's rights or performance of such third-party contractor's obligations under its contract with WDS regarding or in connection with any Subscribed Service or part thereof; or (C) as may be required under, or to comply with, applicable Law; and (ii) use, reproduce, transmit, distribute and display Customer's respective trade names, trade dress, trademarks or service marks as WDS, or any of its third-party contractors or licensors, deems necessary to render, perform or provide any Subscribed Service or otherwise in connection with and in furtherance of the exercise of WDS's rights or performance of WDS's obligations under the Agreement, including this TOS (collectively the "Customer Content License").

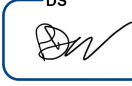
2.6 **THIRD-PARTY SOFTWARE AND WEBSITES.**

a. The Site, Services, Hosted Applications (or other parts of the System) may from time to time contain or comprise, or otherwise require access to, interaction or interoperation with, or WDS's use of, third-party software licensed to WDS pursuant to one or more third-party license agreements. Neither Customer nor any Designated User: (i) acquires any rights in or to any such third-party software by virtue of the Agreement, this TOS or otherwise; nor (ii) may under any circumstance directly or indirectly copy, modify, alter, tamper with, create any Derivative of, reverse engineer, decompile, disassemble or otherwise attempt to discern or derive the source code or any underlying algorithm of any such third-party software, or attempt to do any of the foregoing.

b. There may from time to time be provided on the Site, links to other websites operated by or belonging to third parties. Such links do not constitute any endorsement by WDS of those websites, nor of any product or service listed or offered on any of those websites. Customer's or its Designated Users' use of any third-party websites or services will be subject to such third-party's terms and conditions, including such third parties' respective privacy policies. WDS is not responsible for any activities or policies of those websites, and does not endorse or recommend any product or service of any third-party. WDS is not responsible or liable for any action or inaction of any party to a transaction, for any failure to perform, for any failure to deliver any merchandise, goods or services promised by, or for any losses or damages Customer, and Designated Users or anyone else may suffer or incur as the result of Customer or any Designated User's communication or dealings on or with, any such websites or third parties.

2.7 **CHANGES TO THIS TOS; SERVICE MODIFICATIONS AND MAINTENANCE.**

a. WDS reserves the right to, and may at any time or from time to time: (i) enhance, modify, disable, or remove, in whole or in part, any features or functionality of the Site or of any Subscribed Service or of any other part of the System; (ii) add additional Service offerings; (iii) remove Service offerings; or (iv) modify this TOS, or any guideline, policy or other terms referenced in this TOS or posted on the Site from time to time, including by modification, deletion, or addition of any parts thereof (the immediately preceding (i) – (iv), collectively, "Revised Terms").

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WDS will provide Customer with notice of Revised Terms. Except as WDS may otherwise specify in such notice, Revised Terms will become effective upon notice to Customer and will apply to all access to and use of the Site or any Subscribed Service by Customer or any Designated Users thereafter. Customer's or any Designated User's continued use of the Site or any Subscribed Service after any Revised Terms become effective constitutes Customer's and such Designated User's acceptance of the Revised Terms.


b. In addition to WDS's right to suspend or terminate the Designated User Authorization or Customer's or any Designated User's access to any Subscribed Service (or any other part of the System) in accordance with any other provision of this TOS (or in accordance with any other applicable provision of this Agreement), WDS may from time to time suspend all or part of any Subscribed Service (or any other Service) without liability and without prior notice to Customer, or any other Person: (i) in order to enable WDS or its third-party contractors to maintain (e.g. update, modify, upgrade, patch or repair) the System or any other part or aspect of WDS's technology infrastructure; or (ii) as WDS in its sole and absolute discretion determines may be required by any applicable Law or necessary to protect the System (or any part thereof) or any other part of WDS's (or such third-party contractor's if and as the case may be) technology infrastructure from unauthorized access or any attack. WDS will endeavor in good faith to provide Customer with advance notice of scheduled suspension of applicable Subscribed Services, whether by e-mail or otherwise in accordance with this Agreement.

2.8 **NONEXCLUSIVE RIGHTS/SIMILAR AGREEMENTS.** The rights granted by WDS in this TOS are nonexclusive. Nothing in the Agreement, this TOS or otherwise prevents, or may in any respect or under any circumstance be construed or operate to prevent, WDS or any of its Affiliates from offering or providing any access to or use of the Site, any Service, or any other part of the System to any other Person or Persons or from offering, entering into or performing under similar agreements with any other Person or Persons, including any Person engaged in any business or functions which may be the same as Customers, or which may in any respect compete with Customer anywhere in the world.

3. **RESPONSIBILITIES OF CUSTOMERS AND THEIR DESIGNATED USERS; PROHIBITED ACTS**

3.1 Neither Customer nor any Designated User may use any Subscribed Service (including but not limited to, any functionality of any Hosted Application) in any manner which contravenes, or which WDS reasonably believes or suspects may contravene any applicable Law.

3.2 Access to or use of the Site, any Subscribed Service (or any other part of the System) for illegal activities is prohibited and WDS may cooperate with law enforcement authorities in the investigation and prosecution of criminal activity. WDS may disclose any or all of Customer's information, including assigned IP Addresses, Account history, Account use, User ID or sub-Account use, Customer Content, or any other information, data or materials to any law enforcement agency as WDS in its sole discretion deems necessary and appropriate or as may be required under applicable Law, in each case without Customer's or any other Person's consent, without any notification to Customer or anyone else, and without thereby incurring any obligation or liability to Customer or any other Person by reason or on account thereof.

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3.3 Neither Customer nor and Designated User may access or use or attempt to access or use, the Site, any Subscribed Service (or any other part of the System) in any manner or for any purpose other than as expressly permitted under the Designated User Authorization and then only in compliance with all other terms, conditions and restrictions of the Agreement, (including this TOS) and all applicable Laws. Customer must never permit anyone other than a Designated User to access or use any Service under Customer's Account, and then only to access and use Subscribed Services under Customer's Account and such Designated User's valid User ID.

3.4 Neither Customer nor any Designated User may at any time, directly or indirectly do, or authorize any third-party to do, or attempt to do or assist any third-party in doing or attempting to do any of the following:

- a. modify, alter, tamper with, disrupt or interfere with any feature, functionality or proper working of the Site, any Subscribed Service, device or any other part of the System;
- b. reverse engineer, decompile, disassemble, or work around technical limitations in any Subscribed Service or any other part of the System;
- c. reverse engineer, decompile, disassemble or otherwise attempt to discern or derive the source code or any underlying algorithm, or create any Derivative, of any WDS Software (or any third-party software described in Subsection 2.6 of this TOS), the System or any part thereof, or to violate, misappropriate or infringe any Intellectual Property Rights;
- d. disable, tamper with or otherwise attempt to circumvent any billing mechanism that meters use of any Subscribed Service;
- e. fraudulently access or use the Site, any Subscribed Service or any other part of the System;
- f. access or use the Site, any Subscribed Service or any other part of the System to avoid incurring applicable fees or exceeding applicable usage limits;
- g. access or use the Site, any Subscribed Service or any other part of the System other than through such user interface as may be provided, designated and authorized by WDS from time to time for that purpose;
- h. download, upload, reproduce, copy, post, distribute, display or in any other way transmit or otherwise Process any Customer Content or any other data, file or content from or to or otherwise utilize the Site, any Subscribed Service (or any other part of the System) unless such activities are permitted by and comply with the Designated User Authorization, all other terms, conditions and restrictions of the Agreement, including this TOS, and all applicable Laws;
- i. use any robot, spider, scraper, deep link or other similar automated data gathering or extraction tool, program, algorithm or methodology to access, acquire, copy or monitor the Site, any Service (or any other part of the System), any Customer Content (or any other data or content) for any purpose.

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j. rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available any Subscribed Service (or any other Service) to any third-party, including on or in connection with the Internet or any timesharing, service bureau, software as a service, cloud computing or other technology or service;

k. access or use the Site, any Subscribed Service (or any other part of the System) or attempt to access or use the Site, any Subscribed Service (or any other part of the System):

(i) to circumvent or violate any applicable Law;

(ii) to violate, misappropriate or infringe any of WDS's Intellectual Property Rights or Intellectual Property Rights of any other Person;

(iii) to post, upload, download, reproduce, display, view, create any Derivative of, transmit or otherwise Process, anything other than Customer Content with respect to which Customer has the right under applicable Law to so Process and to grant WDS, its Affiliates, agents, third-party contractors, successors and assigns, the Customer Content License;

(iv) to input, post, upload, download, transmit, reproduce, distribute, or otherwise Process, or to facilitate the inputting, posting, uploading, downloading, transmission, reproduction, distribution or other Processing of, any Customer Content (or any other data code or internets) which contains, comprises, constitutes or activates any Malicious Code;

(v) to delete any author attributions, legal, Intellectual Property Rights or other proprietary rights notices or designations from any Customer Content that Customer or any Designated User uploads to or downloads from or Processes on or through the Site or any Subscribed Service (or any other part of the System);

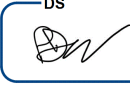
(vi) to upload, download, reproduce, transmit or otherwise distribute any unsolicited advertising, promotional materials, junk mail, chain letters, pyramid schemes, spam or any other form of solicitation or advertising for the purpose of direct marketing, spamming, unsolicited contacting of any Person, including any activities that violate anti-spamming Laws;


(vii) to upload, download, reproduce, transmit or otherwise distribute any message, information, data, text, file, or other communication, content or materials that is or may in any respect be unlawful, harmful, threatening, abusive, harassing, defamatory or otherwise tortious, pornographic, obscene, objectionable, or invasive of any Person's right of privacy or publicity, or which might in any respect give rise to civil or criminal liability;

(viii) in a manner that adversely affects the availability of any of the System's resources to WDS or any of WDS's other customers;

(ix) to impersonate, or falsely state or otherwise misrepresent any affiliation with any Person;

(x) to delete or revise any Customer Content posted to the Site, or stored by any Subscribed Service, except as (A) may reasonably be necessary to correct information

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posted by Customer or its Designated Users to a Subscribed Service, but then only if and as permitted under applicable Law and in accordance with such policies and procedures as WDS may from time to time post on the Site regarding such activities; or (B) may be necessary and appropriate to assure that correct and accurate information is uploaded to or downloaded from the TSXSM Election Management System database application feature of the Subscribed Service.

(xi) to manipulate or display the Site, or any Service (including any Subscribed Service), or any part thereof by using framing or similar navigational technologies;

(xii) to constitute, promote, facilitate or permit gambling;

(xiii) to take any action that in WDS's view imposes, or may impose, an unreasonable or disproportionately large load on the Site, any Subscribed Service or any other part of the System or WDS's technology infrastructure or the technology infrastructure of any of WDS's third-party contractors;

(xiv) to bypass measures WDS or its third-party licensors or contractors may use to prevent or restrict access to the Site, any Service or any other part of the System;

(xv) for purposes of competitive analysis of any Service (including any Subscribed Service) or other WDS Technology in order to build any product or service which is competitive with any Service (including any Subscribed Service) or other WDS Technology; or

(xvi) to violate the rights of others;

(xvii) to try to gain unauthorized access to or disrupt any service, device, data, account or network;


(xviii) in any way that could harm any of the Subscribed Services or any part thereof (including any part of any Subscribed Services provided by or through any of WDS's third-party licensors or contractors);

(xix) in any situation where failure of any of the Subscribed Services could lead to death or serious bodily injury of any person, or to severe physical or environmental damage; or

(xx) to assist or encourage anyone to do any of the foregoing.

3.5 WDS may, but shall have no obligation to: (i) review Customer Content Processed on or through the Site or any Service to determine, in WDS's sole discretion, Customer's and the Designated Users' compliance with this TOS; and (ii) to edit, refuse to post, and to delete or remove any transmissions, submissions or postings which do not comply with the provisions of this TOS.

3.6 As between WDS, its Affiliates, third-party licensors, suppliers or contractors on the one hand, and Customer on the other hand, Customer alone (and at Customer's sole cost and expense) is, and shall be, at all times responsible for:

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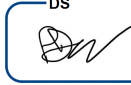
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- a. the acquisition, and proper installation, configuration, operation, maintenance, updating, use and security of all Customer Facilities, including all technical operations of Customer Facilities;
- b. obtaining and maintaining all requisite telecommunications services (including all telephone and Internet service and connections);
- c. ensuring that calls, or requests which Customer or its Designated Users make to the System or any Subscribed Service through or utilizing Customer Facilities, are compatible with the System, the applicable Subscribed Service or WDS Software;
- d. any claims relating to any Customer Facilities;
- e. compliance of Customer Content with any restrictions set forth in this TOS or imposed under any applicable Law;
- f. proper handling and Processing of any notices sent to Customer, regarding any claim that any Customer Content violates any Person's Intellectual Property Rights or other rights, including notices pursuant to the Digital Millennium Copyright Act;
- g. obtaining and maintaining in full force and effect all requisite rights and licenses for lawful and proper operation of Customer Facilities and for maintaining the Customer Content License in full force and effect; and
- h. taking Customer's own steps to maintain appropriate security, protection, backup and recovery of all Customer Content which Customer or its Designated Users Process on or through the Site or any Subscribed Service (or any other part of the System), including use of Firewalls and encryption technology to protect such Customer Content from unauthorized access or other unauthorized Processing.

3.7 VIOLATIONS BY DESIGNATED USERS; THIRD-PARTY ACTS. If Customer ever becomes aware of any violation of this TOS (whether by a Designated User or any other Person), Customer must immediately notify WDS thereof in writing. If any Designated User is ever in default of or breach of any of its obligation under this TOS, Customer is required to terminate such individual's status as a Designated User and their access to or use of Customer's Account and any User ID and as such, their access to and use of any Subscribed Service. In any event, WDS may (but shall not be obligated to) do so. WDS at all times reserves the right to limit, suspend or terminate the Designated User Authorization, or any Person's access to or use of the Site, any Subscribed Service or any other part of the System immediately and without prior notice in the event WDS has reason to believe that there has been a technical failure or any improper access to or use of, or attempt to improperly access or use, the Site, any Subscribed Service or any other part of the System or is otherwise in default or breach of the Agreement (including any provisions of this TOS), but in no event shall WDS have any liability for any failure to do so or for any delay in doing so.

3.8 SECURITY.

- a. Customer acknowledges that WDS does not control the transfer of data (whether Customer Content, or otherwise) over telecommunications facilities, including the Internet.

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WDS does not warrant secure operation of the Site, any Subscribed Service or any other part of the System, or that WDS or its third-party contractors, licensors or suppliers will be able to either prevent or (other than with respect to scheduled maintenance or downtime) predict disruptions to the Site, any Subscribed Service or any other part of the System. Customer agrees that neither WDS nor any of its third-party contractors, licensors or suppliers shall have any liability for or with respect to any provision of security related services, or for any advice that any of them may provide. WDS does not warrant uninterrupted or error free operation of the Site, any Subscribed Service or any other part of the System, or that WDS will correct any defects, nor does WDS make any representation or warranty as to the capacity, performance or scalability of the Site or any Subscribed Service or any other part of the System.

b. Customer alone bears sole responsibility for adequate security, protection and backup of any Customer Content Processed on or through any of Customer's Facilities or during transmission to or from any Customer Facilities.


c. Customer (and not WDS, its Affiliates or any of their respective third-party contractors, licensors or suppliers) is responsible for (i) routinely archiving all Customer Content as well which it may be provided access to, or may Process on or through the Site, any Subscribed Service or any other part of the System – unless and then only to the extent expressly provided otherwise in an SOW, and (ii) keeping all User Installed Programs current with the latest security patches and updates. WDS shall have no liability to Customer or to anyone else, for or in connection with any unauthorized access, use or other Processing, or any corruption, deletion, destruction or loss of any Customer Content which Customer or any Designated User Processes on or through the Site or any Subscribed Service or any other part of the System.

3.9 **COOPERATION.** Customer must provide WDS with any information, documents, cooperation and assistance WDS may from time to time reasonably request to enable WDS, the Site or any Subscribed Service to comply with all applicable Laws. WDS may report or provide such information or documents to regulatory or law enforcement authorities if and to the extent WDS in its sole and absolute discretion deems necessary and appropriate in order to comply with any applicable Laws.

4. **PROPRIETARY RIGHTS**

4.1 **WDS's PROPRIETARY RIGHTS.**

a. Notwithstanding any provision of the Agreement, (including any provision of this TOS), to the contrary, the System, WDS Software, WDS Technology, and all inventions, works of authorship or other materials which from time to time comprise any of the foregoing, including any database, text, images, graphics, logos, illustrations, photographs, video, audio or other content or files (other than Customer Content), Resultant Data and any other non-personally identifiable aggregated data collected by or through the Site, any Subscribed Service or any other part of the System, any design, icon, button, layout, "look and feel" or any other graphical elements, and any of WDS's or its third-party licensors' trademarks, service marks, trade dress or other source indicators, as well as anything that WDS may develop or deliver under the Agreement or this TOS (other than Customer Content) and all Derivatives of any of the foregoing (collectively "WDS Materials") and all Intellectual Property Rights in and to WDS Materials, are and remain the

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sole and exclusive property of WDS or (if and as applicable) its third-party licensors or contractors. Neither Customer nor any Designated User may remove or obscure, or attempt to remove or obscure any of WDS's (or any of WDS's third-party contractors', licensors' or suppliers') copyright, trademark, service mark, or other Intellectual Property Rights notices at any time appearing in, on or comprising any WDS Materials;


b. The names or marks "WDS", "SIK", "TSX" "TSX database application", "TSX database management application", "www.TSX.STUDIO", "www.txs.studio", and all graphics, logos, page headers, button icons, scripts and service names and other source identifying symbols or devices used by WDS on or in connection with the Site or any Service, are WDS's or its Affiliates' trademarks, service marks or trade dress, in the United States and/or other countries (each a "Proprietary Mark" and collectively "Proprietary Marks"). Customer may not use any Proprietary Mark or any mark confusingly similar to any Proprietary Mark, without WDS's express prior written permission, which permission may be conditioned or withheld in WDS's sole and absolute discretion. WDS makes no proprietary claim to any third-party names, trademarks, or service marks appearing on the Site or any Service and such third-party names, trademarks or service marks are the property of their respective owners.


c. Nothing in this TOS or elsewhere in the Agreement grants, transfers or conveys, nor may be construed or operate as a grant, transfer or conveyance to Customer or to any other Person (other than to WDS) of, any right, title or interest in or to, or any right to utilize, any WDS Materials, any Proprietary Marks or any Intellectual Property Rights in or to WDS Materials or Proprietary Marks. All goodwill arising from or incident to any use of WDS Materials or Proprietary Marks shall inure exclusively to WDS (or WDS's third-party licensors, if and as applicable).

d. Customer and each of its Designated Users consents to WDS's (and WDS's third-party contractors, licensors or suppliers) Processing and use of Customer Content and any other data, information or content from time to time submitted by Customer or any Designated User to any Subscribed Service, in connection with the provision of any services to or for Customer or in WDS's or its third-party contractors', licensors' or suppliers' respective exercise of the Customer Content License.

e. Customer and each Designated User agrees that at no time during or after the Term of the Agreement, will Customer or any Designated User (or any third-party claiming by, through or under any of them) ever assert, nor will Customer or any Designated User ever authorize, assist, or encourage any third-party to assert, against WDS or any of its Affiliates, business partners, contractors, licensors, licensees, suppliers, transferees, successors or assigns, any patent infringement or other Intellectual Property Rights infringement claim with respect to any WDS Materials including with respect to the System, any part thereof, or any other WDS Technology.

4.2 **CUSTOMER'S PROPRIETARY RIGHTS.** WDS Materials do not include Customer Content. As between Customer on the one hand, and WDS on the other hand, Customer owns the Customer Content. Except for the Customer Content License, or as otherwise provided in this TOS or an SOW, WDS obtains no rights to Customer Content under this TOS or otherwise under the Agreement.

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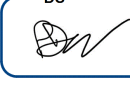
4.3 **LINKING POLICY**. Customer may not include any links to the Site or to any Service (including any Subscribed Service) on any of Customer's websites unless, and then only to the extent WDS shall have expressly approved such links in a separate written agreement executed by WDS and Customer and appended as an exhibit to the Agreement.

4.4 **SUGGESTIONS**. If Customer, any Designated User or other Customer personnel provides WDS with any recommendations, advice, ideas or suggestions regarding improvement(s) to, or Derivatives of any WDS Materials including the Site, any Subscribed Service or any other part of the System or any feature or functionality thereof (each a "Suggestion" and collectively "Suggestions"), WDS will own all right, title and interest (including any Intellectual Property Rights) in and to that Suggestion (or those Suggestions) even if Customer or such other Persons designate the Suggestion as "confidential", "proprietary" or with words of similar import. WDS, its designees, Affiliates and its or their respective third-party licensees, sub licensees, successors or assigns shall be entitled to use and exploit any Suggestion without restriction, without attribution to, and without any obligation to pay or to otherwise compensate Customer, any Designated User or anyone else. Customer and each Designated User shall, and hereby does, irrevocably assign to WDS all right, title and interest (including all Intellectual Property Rights) in and to all Suggestions (if any) and agrees to provide WDS or its designees with any assistance WDS or its designees may reasonably request or require from time to time to further document, perfect and maintain WDS's or its designee's rights in and to any Suggestion.

5. **CONFIDENTIALITY.**

a. Neither Customer nor any Designated User or other Customer personnel or representative may without WDS's express prior written authorization, disclose to any third-party or use for their own benefit, or for the benefit of any third-party, any WDS Confidential Information .. Customer must, and must ensure that its personnel and representatives, at all times protect the confidentiality of WDS Confidential Information using at least the same degree of care that Customer takes to protect Customer's own confidential or proprietary information of like kind and importance (but in no event less than a reasonable degree of care). Customer must restrict access to WDS Confidential Information in Customer's possession or control, to those Designated Users or other Customer personnel that reasonably need to know such information in order to exercise Customer's rights or to perform Customer's obligations under the Agreement, including under this TOS, and who have been advised of the confidential nature of the WDS Confidential Information and the restrictions upon disclosure and use thereof imposed by this Section 5. The foregoing obligations of confidentiality shall survive the expiration of any earlier termination of the Term or the Agreement for a period of five years, or the longest period permitted under applicable Law, whichever period is shorter, provided however that with respect to any WDS Confidential Information comprising WDS Trade Secrets, the foregoing obligations of confidentiality and restrictions on use shall survive indefinitely, for so long as WDS maintains such information as its trade secret.

b. The restrictions imposed upon use and disclosure of WDS Confidential Information under this Section 5 will not apply to WDS Confidential Information which, and then only to the extent such information: (i) was or subsequently becomes generally available to the public other than as a result of an act or omission by Customer, or a Designated User or any other Customer personnel or representative in breach of any confidentiality obligation hereunder (but only with respect to the period of time after which such information was so generally available); or (ii) was

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lawfully known to Customer prior to the disclosure of such information to Customer by WDS, as shown by Customer's files and records existing prior to the time of such disclosure; or (iii) was obtained by Customer from a third-party where such disclosure was made without any restriction as to confidentiality or use and neither Customer nor any Designated User or any other Customer personnel or representative knew or had any reason to believe that the third-party's disclosure of such information violated an obligation or duty of confidentiality to WDS; or (iv) is disclosed by WDS to any third-party without restriction on use or disclosure; or (v) was or is independently developed by Customer without any use of or reference to any WDS Confidential Information.

6. REPRESENTATIONS AND WARRANTIES


6.1 Customer hereby represents and warrants to WDS as follows:


a. Except as otherwise expressly provided in this TOS, Customer owns all right, title and interest (including all Intellectual Property Rights) in and to all Customer Content uploaded or transmitted by Customer or its Designated Users to, and Processed by or on behalf of Customer on, through or utilizing the Site or any Subscribed Service (or any other part of the System), under Customer's Account or any User ID, or has obtained and possesses all requisite third-party licenses and authorizations required under any applicable Law for: (i) the lawful Processing of such Customer Content on, through or utilizing the Site, any Subscribed Service or any other part of the System, as contemplated by the Agreement, including under this TOS; and (ii) for Customer to lawfully grant WDS (and its third-party licensors and contractors) the Customer Content License and any other rights necessary under any applicable Law to Process, view and otherwise utilize or exploit Customer Content as contemplated by the Agreement, including this TOS, in each case without any obligation to pay Customer or any other Person any royalty or other compensation;

b. Customer has, and shall at all times maintain, in full force and effect and at Customer's sole cost and expense all rights, licenses, consents, permissions, waivers and releases from third parties and necessary for Customer and its Designated Users to lawfully upload, download, copy, distribute, view, display, print, use or otherwise Process any Customer Content uploaded, posted or transmitted by Customer or any Designated User at any time or from time to time to the Site or any Subscribed Service (or any other part of the System) and as may be necessary for WDS (and its third-party contractors) to lawfully (and without payment of any license, fee, royalties or other sums) to exercise the Customer Content License and Process or facilitate the Processing of any Customer Content which may at any time or from time to time be uploaded, posted or transmitted to or otherwise Processed on or through the Site, or through any Subscribed Service or any other part of the System, by Customer or any other Person under or in connection with Customer's Account;

c. No Customer Content presently or at any time in the future will: (i) violate, misappropriate or infringe any of WDS's rights or the rights of any third-party; (ii) constitute or comprise in whole or in part defamatory material; (iii) is or will be designed or intended for use in any illegal activity or to promote any illegal activities; or (iv) contains or will contain or comprise any Malicious Code;

d. Neither Customer nor any Designated User will ever use or attempt to use the Site, any Subscribed Service (or any other part of the System), any Customer Content or any other materials or content: (i) in any manner that infringes, violates or misappropriates any of WDS's

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rights (including any Intellectual Property Rights) or the rights of any other Person; (ii) to engage in any impermissible or unlawful advertising, marketing or other activities; (iii) in any manner that constitutes or facilitates the illegal import or export of any controlled or otherwise restricted items including without limitation software, algorithms or other data or technology subject to export limitations, including any US Export Administration Regulations, the US International Traffic and Arms Regulations or any other applicable rules, regulations or Laws of any governmental authority having jurisdiction; or (iv) in any way that otherwise violates any provisions of the Agreement, including this TOS, or any applicable Law.

7. INDEMNIFICATION

7.1

a. Customer shall at all times during and after the Term indemnify, defend and hold WDS, its Affiliates and third party suppliers, licensors or contractors, and each of their respective employees, officers, directors, managers, shareholders, members or representatives (each an “Indemnitee” and collectively the “Indemnitees”), harmless from and against any and all losses, damages, liabilities, judgments, penalties, fines, costs and expenses (collectively “Losses”) suffered or incurred by any of the Indemnitees as a result of any third party claim, demand, action, suit, or proceeding (each a “Claim” and collectively “Claims”) arising out of or in connection with the following under this Agreement:

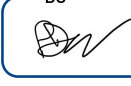
(i) Any alleged or actual infringement of any Person’s Intellectual Property Rights arising from or in connection with Customer Content at any time or from time to time submitted to any Subscribed Service or otherwise Processed by Customer, any Designated User or any other Person under or in connection with Customer’s Account, or otherwise arising from or in connection with Customer’s use of any Subscribed Service in violation of this Agreement or any applicable Law.

(ii) Any failure of or defect in any Customer Facilities, or any failure of Customer, any Designated User or other Customer personnel, or any other Persons designated by Customer or Customer personnel, to properly use or maintain any Customer Facilities.

(iii) any communication or other interaction between or among Customer, any Designated User or any other Person accessing or attempting to access any Subscribed Service under or in connection with Customer’s Account on the one hand, and any other Person, whether on or via the Site, any Subscribed Service or otherwise which communication or other interaction violates any provision of this Agreement or any Azure or Google Maps acceptable use policy or terms of use or service applicable to end users of those services.

(iv) any non compliance or breach by Customer, any Designated User or any other Customer personnel, of any term, condition or provision of the Agreement, including the Designated User Authorization or any of Customer’s representations or warranties hereunder.

(v) any negligent act, omission or intentional misconduct by Customer, any Designated User, any of Customer’s other personnel, or by any other Person under or in connection with Customer’s Account or any User ID, including without limitation any negligent act, omission or intentional misconduct in connection with any access to or use of the Site or any Subscribed Service, the scanning or Processing of Customer Content or use of any Documentation.

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b. WDS shall at all times during the Term and for and during the first 2 (two) year period following expiration of the Term or following earlier termination of the Term for any reason other than by WDS for cause or by Customer without cause, indemnify, defend and hold Customer harmless from and against any and all Losses suffered and incurred by Customer resulting from Claims finally determined in a non-appealable judgment by a court of competent jurisdiction that WDS' TSXSM Election Management System database application software infringes a third party's U.S. copyright, provided however that: (i) the forgoing shall not apply, and WDS shall have no obligation to so indemnify Customer if and to the extent any such infringement arises from or is a result of specifications provided by Customer, or any negligent act, omission or willful misconduct of Customer or any of its Designated Users or other personnel or representatives and (ii) in no event shall WDS' entire aggregate liability for indemnification under this Section 7.1(b) exceed the sum of \$300,000.

7.2 **NOTIFICATION.** Each Party (each an "Indemnified Party") will promptly notify the other of any claim of which such Party becomes aware of and which it believes to be subject to indemnification by the other Party ("Indemnifying Party") under this Section 7. A Party's failure to promptly notify Indemnifying Party shall not, however affect any of Indemnifying Party's indemnification obligations hereunder except to the extent that such failure to promptly notify the Indemnifying Party materially prejudices Indemnifying Party's ability to defend the claim. Each Party shall have the right to select its own counsel and direct its own defense with respect to any such claims, demands, actions, suits or proceedings and Indemnifying Party shall cooperate fully and in good faith with the Indemnified Party in any such defense. At an Indemnified Party's option, Indemnifying Party will have the right to defend against any such claim(s) with counsel of Indemnifying Party's own choosing and reasonably acceptable to Indemnified Party (subject to a conflicts assessment), and to settle such Claim as Indemnifying Party reasonably deems appropriate, provided that neither Indemnifying Party nor any Person acting on Indemnifying Party's behalf may enter into any settlement without the Indemnified Party's prior written consent (which may be conditioned or withheld in Indemnified Party's sole and absolute discretion) and provided that Indemnified Party may, at any time, elect to take over control of the defense and, subject to the indemnifying party's reasonable consent, settlement of the subject claim.

8. **TERMINATION OF DESIGNATED USER AUTHORIZATIONS**

8.1 **TERMINATION OF DESIGNATED USER STATUS.** A Designated User's right to access and use the Site or any Subscribed Service, and the Designated User Authorization as to that individual, shall terminate: (a) if that individual or Customer terminates that individual's status as a Designated User; (b) that individual fails to comply with any of the terms or conditions of this TOS; (c) Customer defaults under or breaches any of the provisions of its Agreement with WDS; or (d) either WDS or Customer terminate the Agreement or the Term thereof. Upon or at any time following any of the foregoing events, WDS may (but shall not be obligated to) disable any such individual's User ID, even if Customer has not done so and such individual may no longer be permitted access to or use of the Site, any Subscribed Service (or any other part of the System).

8.2 **TERMINATION OR SUSPENSION OF DESIGNATED USER AUTHORIZATION BY WDS OTHER THAN FOR CAUSE.** WDS may terminate or suspend the Designated User Authorization as to any Designated User, and any Designated User's access to or


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use of the Site, any Subscribed Service or any other part of the System, for any reason, and in WDS's sole and absolute discretion at any time by providing Customer with not less than seven (7) days' prior notice, or without notice in the event of System outages, emergency maintenance, force majeure or to protect the System (or any part thereof) against unauthorized access or use.

8.3 TERMINATION OR SUSPENSION OF DESIGNATED USER AUTHORIZATION BY WDS FOR CAUSE. Notwithstanding any provision of the Agreement to the contrary, WDS may terminate or suspend the Designated User Authorization as to any Designated User and any Designated User's access to or use of the Site, any Subscribed Service or any other part of the System, in whole or in part, in WDS's sole and absolute discretion at any time with or without WDS giving any notice to Customer (or to any Designated User) if:

a. Customer or any Designated User, or any of Customer's Affiliates, employees or contractors directly or indirectly: (i) attempt or effect a denial of service attack on the System or any part thereof; or (ii) hack, break, override or disable or attempt to hack or break override or disable any security mechanism or feature of the Site or on any Subscribed Service or any other part of the System; (iii) otherwise access or use or attempt to access or use the Site, any Subscribed Service (or any other part of the System) in any way that is disruptive to or threatens the System (or any part thereof) or any access or use of the System (or any part thereof) by WDS or any of WDS's other customers; (iv) use any Proprietary Marks other than as expressly permitted herein; or (v) otherwise are in default or breach of any provision of the Agreement, including any provision of this TOS;

b. WDS determines in its sole and absolute discretion that:

(i) Customer's or any of Customer's Designated User's access to or use of the Site, any Subscribed Service (or any other part of the System) poses a security or service risk to WDS or any of WDS's third-party contractors, licensors or suppliers, or to any user of any Service or to any third-party, or may subject WDS or any third-party to liability or damages;

(ii) there is evidence of fraud or intentional misconduct with respect to Customer's Account or any User ID thereunder; or

(iii) the Designated User Authorization or WDS's provision of any of the Subscribed Services to Customer is prohibited by any applicable Laws, or WDS determines that the provision of the Subscribed Services to Customer by or through WDS in compliance with applicable Laws has become impractical or unfeasible;

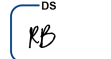
c. WDS receives notice or otherwise determines or suspects, in its sole and absolute discretion, that Customer, any Designated User or other Customer or County personnel may be accessing or using the Site, any Service (or any other part of the System) for any illegal purpose or in a way that violates, infringes, or misappropriates WDS's or any other Person's Intellectual Property Rights or otherwise violates this TOS (or any other provisions of the Agreement) or any applicable Laws;

d. If Customer or Designated User becomes the subject of any civil or criminal investigation; or

e. if Customer (i) becomes insolvent ;(ii) commences liquidation or

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dissolution proceedings; (iii) disposes of or attempts to dispose of its assets other than in the ordinary course of business; (iv) fails to continue its business as a going concern; (v) makes an assignment for the benefit of creditors; or (vi) becomes the subject of a voluntary or involuntary bankruptcy or similar proceeding.

9. DISCLAIMERS & LIMITATIONS ON LIABILITY

9.1 **GENERAL DISCLAIMER.** Unless (and then only to the extent) expressly stated otherwise in Sections 7.1 through 7.3 of the SaaS Subscription Agreement, the System, WDS Software, Services, Site, WDS Technology, and any other service, technology, software, feature, functionality, content, image, file, database, data, information, manual, guide, instruction or other materials provided by or through WDS or any of its Affiliates or third-party licensors, suppliers or contractors under or in connection with the Agreement or this TOS or which at any time or times comprise any part of the Site, any Subscribed Service or any other part of the System, (each an “Offering” or “OFFERING” and collectively the “Offerings” or “OFFERINGS”) are provided “AS IS” and “AS AVAILABLE”. Customer’s use of any Offerings is at Customer’s sole risk and Customer assumes full responsibility for all risk associated therewith. NEITHER WDS NOR ANY OF ITS AFFILIATES, AGENTS, REPRESENTATIVES, THIRD-PARTY CONTRACTORS, LICENSORS OR SUPPLIERS MAKE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE WITH RESPECT TO ANY OF THE OFFERINGS. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, WDS, ITS AFFILIATES, AGENTS, REPRESENTATIVES, THIRD-PARTY CONTRACTORS, LICENSORS, AND SUPPLIERS HEREBY DISCLAIM ALL WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, QUIET ENJOYMENT, OR ANY WARRANTIES ARISING OUT OF ANY COURSE OF DEALING OR USAGE OF TRADE. NEITHER WDS NOR ANY OF ITS AFFILIATES, AGENTS, REPRESENTATIVES, THIRD-PARTY LICENSORS, OR SUPPLIERS OR CONTRACTORS WARRANT THAT ANY OF THE OFFERINGS WILL FUNCTION AS DESCRIBED, WILL BE UNINTERRUPTED OR ERROR-FREE, FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS OR MALICIOUS CODE, THAT ANY CONTENT, FILES, DATA OR OTHER MATERIALS (INCLUDING BUT NOT LIMITED TO ANY CUSTOMER CONTENT) UPLOADED TO, DOWNLOADED FROM, OR STORED, DISPLAYED OR OTHERWISE PROCESSED BY OR UTILIZING ANY OF THE OFFERINGS WILL BE TIMELY, CURRENT OR SECURE, OR WILL NOT BE LOST, CORRUPTED OR OTHERWISE DAMAGED OR IMPAIRED, OR THAT WDS OR ANY OF ITS AFFILIATES, AGENTS, REPRESENTATIVES, THIRD PARTIES LICENSORS, SUPPLIERS OR CONTRACTORS WILL BE ABLE TO PREVENT DISRUPTION OF OR TO ANY OF THE OFFERINGS OR THAT THEY WILL CORRECT ANY DEFECTS.

9.2 **INTERRUPTION OF SERVICE.** Except for any Service Credit provided for under any SLA then in effect between WDS and Customer, neither WDS nor any of its Affiliates, agents, representatives or third-party licensors, suppliers or contractors shall have any liability whatsoever to Customer or to any other Person, for or with respect to any delay, outage, interruption or unavailability of any of the Offerings.

9.3 WDS MAKES NO, AND HEREBY DISCLAIMS ANY AND ALL REPRESENTATIONS OR WARRANTIES CONCERNING ANY WEBSITE LINKING TO THE

SITE OR ANY SERVICE, OR WHICH MAY BE ACCESSED VIA ANY LINK ON THE SITE OR ANY SERVICE, OR ANY GOODS OR SERVICES WHICH MAY BE OFFERED ON OR THROUGH SUCH WEBSITES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ANY USE OF SUCH WEBSITES OR ANY SUCH GOODS OR SERVICES BY CUSTOMER OR ANY OTHER PERSON IS AT CUSTOMER'S OR SUCH OTHER PERSON'S SOLE RISK.

9.4 **LIMITATIONS OF LIABILITY.**

Except as provided in Section 7 of this TOS, each party's liability for damages arising out of or in connection with this Agreement, whether based on a theory of contract or tort, including negligence and strict liability, shall be limited to an amount equal to the lesser of (i) the aggregate amount of all fees then paid by Customer to WDS under this Agreement, or (ii) \$700,000. Provided that nothing in this section is intended nor may be construed or operate to limit, modify or otherwise amend Customer's obligations to pay any subscription or other fees or charges as and when due and payable hereunder in accordance with Schedule 1.

Notwithstanding anything contained in this Agreement, including any exhibits to this Agreement, nothing herein shall be construed to waive nor shall operate as a waiver of privileges and immunities available to the County under applicable law including, without limitation, sovereign immunity, governmental immunity, judicial immunity, or official immunity, and all such privileges and immunities are expressly reserved and shall in no way be waived.

In no event shall either party be liable to the other party (nor to any person claiming any right, title, or interest derived from or as successor to either party's right, title, and interest) for incidental, consequential, or special damages of any kind, including, without limitation, lost revenues or profits, or loss of business or loss of data arising out of this Agreement, irrespective of whether the parties have advance notice of the possibility of such damage.

EXCEPT AS OTHERWISE EXPRESSLY SET FORTH ABOVE IN THIS SECTION 9.4 OR ELSEWHERE IN THIS AGREEMENT, WDS'S LIABILITY FOR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, WHETHER BASED ON A THEORY OF CONTRACT OR TORT, INCLUDING NEGLIGENCE AND STRICT LIABILITY, SHALL BE LIMITED TO THE LESSER OF (A) COUNTY'S ACTUAL DIRECT DAMAGES OR (B) THE AMOUNTS PAID BY COUNTY UNDER THIS AGREEMENT. THE PRICES SET FORTH IN THIS AGREEMENT ARE SET IN RELIANCE UPON THIS LIMITATION OF LIABILITY. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO CLAIMS THAT ARE SUBJECT TO SECTION 7, INDEMNIFICATION ABOVE.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL WDS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING BUT NOT LIMITED TO LOSS OF TAX REVENUE OR CLAIMS RELATED TO VALUATION OF PROPERTY, EVEN IF WDS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

10. MISCELLANEOUS

10.1 **FORCE MAJEURE.** Notwithstanding any provision of this TOS or the

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Agreement to the contrary, neither WDS nor any of its Affiliates or any of its of their respective third-party licensors, contractors or suppliers will be liable in any respect under any theory of liability for any delay, default or failure to perform any obligation under the Agreement, this TOS, or otherwise, due to any cause beyond WDS or their reasonable control including, but not limited to, acts of God, pandemic, epidemic or other public health emergencies ,war, terrorism or the threat thereof , riot or riots ; embargos; strikes or walkouts or other industrial disputes; acts of civil or military authorities, government interference, orders or advisories; denial or delays in processing of export license application; fire, floods, earthquakes, lightning, storms, hurricanes or tornados; accidents; fuel crises, failure or interruption of electric power, telephone, fiber optic cable or the Internet or other communication connections or service (each a “Force Majeure”).

10.2 **AMENDMENT.** This TOS may be unilaterally amended by WDS as provided under the SaaS Subscription Agreement or in accordance with Section 2.7 of this TOS, and otherwise only by written instrument duly executed by both WDS and Customer.

10.3 **GOVERNING LAW; VENUE; EQUITABLE RELIEF; REMEDIES CUMULATIVE.**

a. The Agreement and this TOS shall be construed in accordance with, and governed in all respects by, the internal laws of the state of Georgia and the federal laws of the United States, without giving effect to any principles of conflicts of laws which might cause the application of the laws of any other jurisdiction.

b. Except as otherwise expressly provided in this TOS or the Agreement, each Party’s’ rights and remedies under this TOS or the Agreement shall be cumulative (and not alternative). Notwithstanding anything in this TOS or the Agreement to the contrary, in addition to any and all other remedies available to WDS hereunder, thereunder or otherwise at law or in equity, WDS may seek and shall be entitled to injunctive or other equitable relief in any state, federal or national court of competent jurisdiction for any actual, threatened or alleged infringement of any of WDS’s Intellectual Property Rights or for any breach or threatened breach of any of the provisions of Sections 3, 4 or 5 of this TOS. Except as provided in the immediately preceding sentence, any dispute between or among any Designated User or Customer on the one hand, and WDS on the otherhand, arising from or incident to this TOS or the Agreement shall be adjudicated in the Fulton County Superior Courts in Fulton County, Georgia . Each Designated User and Customer each consent to the exclusive jurisdiction and venue in such courts and agree that each such court shall be deemed to be a convenient forum.

10.4 **HEADINGS.** The Section, Subsection, Paragraph or Subparagraph headings or captions contained in this TOS are for convenience of reference only, shall not be deemed to be a part of this TOS and shall not be referred to in connection with the construction or interpretation of this TOS.

10.5 **US GOVERNMENT.** With respect to the procurement or use of any Service by or for any agency or part of the U.S. Government, any software provided in connection with any Service and any related explanatory written materials are “commercial items” as that term is defined at 48 CFR Section 2.102, consisting of “Commercial Computer Software” and “Commercial Computer Software Documentation” as such terms are used in 48 CFR Section 12.212 or 48 CFR Section 227.7202, as applicable. Consistent with 48 CFR Section 12.212 or 48 CFR Section

227.7202-1 through 227.7202-4, as applicable, the Commercial Computer Software and Commercial Computers Software Documentation are being licensed to the U.S. Government end users (a) only as Commercial Items; and (b) with only those rights as are granted to Customer or its Designated Users pursuant to the terms, conditions and restrictions of the Agreement and this TOS. All Computer Software, technical data and documentation were developed exclusively at private expense by Wireless Data Systems, Inc. or its third-party licensors or suppliers.

10.6 **NOTICES**. All notices, requests, consents, claims, demands, waivers and other communications under this Agreement shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee as sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or email of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient or (d) on the fourth day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective Party at the following addresses or such other address for a Party as shall be specified in the Notice given in accordance with this Section 10.7:

If to Customer: Director
 Department of Registrations & Elections
 141 Pryor Street, Suite
 Atlanta, Georgia 30303
 Attn: Richard L. Barron
 Email: richard.barron@fultoncountyga.gov

With a copy to: Chief Purchasing Agent
 Department of Purchasing & Contract Compliance
 130 Peachtree Street, S.W., Suite 1168
 Atlanta, Georgia 30303
 Attn: Felicia Strong-Whitaker
 Email: felicia.strong-whitaker@fultoncountyga.gov

If to WDS: Wireless Data Systems, Inc.
 Attention: David Whitt, President
 20423 State Road 7, F-6 #6182
 Boca Raton, Florida 33498
 pdwhitt@wdsinc.com

With copy to: Wireless Data Systems, Inc.
 Attention: David Whitt, President
 5474 Arapaho Way
 Medina, Ohio 44256

10.7 **SEVERABILITY**. If any portion of this TOS is held by a court or arbitral body of competent jurisdiction to be invalid or unenforceable, the remaining portions of this TOS will remain in full force and effect, and any invalid or unenforceable portions shall be construed in a manner that most closely reflects the effect and intent of the original language and is valid and enforceable. If such construction is not reasonably possible, the provision will be severed from this

TOS and the rest of the TOS shall remain in full force and effect.

10.8 **WAIVERS**. The failure or delay by WDS to enforce any provision of this TOS or the Agreement shall in no way operate as, or be construed to be a present or future waiver of such provision, nor in any way affect WDS's right to enforce such provision thereafter. Any waiver by WDS, to be enforceable, must be in a writing executed by one of WDS's authorized executive officers.

10.9 **SURVIVAL**. The introductory provisions, and Sections **1, 3, 4, 5, 6, 7, 8, 9 and 10 and Subsections 2.1(a), 2.1(c), 2.2(c), 2.2(d), 2.3(b), 2.4, 2.5, 2.6, 2.7, and 2.8** of this TOS shall survive the expiration or termination of the Agreement, the Designated User Authorization or this TOS. Notwithstanding the foregoing, any provision of this TOS or the Agreement that contemplates performance or observance subsequent to expiration or termination of the Term of the Agreement or the Designated User Authorization, or which by its nature or express terms extends beyond the expiration or any earlier termination of the Term of the Agreement or of the Designated User Authorization shall survive termination of the Agreement or Designated User Authorization, shall remain in effect, and shall apply to Customer or its Designated Users (as the case may be) until fulfilled or discharged by Customer's and such Designated User's performance thereof.

10.10 **RELATIONSHIP**. Customer, on the one hand, and WDS on the other, are independent contractors with respect to all activities under the Agreement (including this TOS and nothing in this TOS is intended or may be construed or operate to create any employment, franchise, joint venture, agency, partnership, escrow, franchise, fiduciary or other relationship other than that of independent contractors.

10.11 **ASSIGNMENT**. WDS may assign the Agreement or any or all of its rights or delegate any or all of its obligations under this Agreement or this TOS to any third-party without any notice to or consent by Customer or any other Person, and for any purpose, including without limitation: (i) collection of unpaid amounts; (ii) in the event of an acquisition, corporate reorganization or merger; (iii) or sale of all or substantially all of WDS's assets or business to another Person. Customer and each Designated User hereby consent to any such assignment or delegation. Under no circumstances may Customer or any Designated User directly or indirectly rent, lease, sublicense, assign or otherwise transfer any rights under this TOS or delegate any of its or their obligations under this TOS (whether by operation of Law or otherwise). Any attempted assignment or delegation by Customer or any Designated User of any right or obligations under this TOS, whether by operation of Law or otherwise, is null and void and of no force and effect. This TOS is binding upon and inures to the benefit of not only the parties hereto but, subject to the preceding provisions of this Subsection 10.12, also their respective heirs, successors or permitted assigns.

10.12 **LANGUAGE**. All communications and notices to be made or given pursuant to this Agreement shall be in the English language.

10.13 **BINDING COMMERCIAL TRANSACTIONS**. Any commercial transaction properly transmitted pursuant to this TOS shall be considered to be a "writing" or "document in writing", and any such transmission when containing, or to which there is affixed a signature shall be deemed for all purposes (a) to have been "signed" and (b) to constitute an "original" when printed from electronic files or records established and maintained in the normal course of business.